



Chartered
Institute of
Housing
Scotland

What role for a PRS Regulator?



Introduction

Since the publication of *Housing to 2040* in March 2021, the Scottish Government has made public its ambition for greater alignment across the rented sector and has committed to establishing a regulator for the private rented sector (PRS) in this parliamentary term. While the new regulatory framework is undefined, the Scottish Government has suggested it may have similar scope to the existing social housing regulator and may also include a charter to empower tenants who will need to understand those standards.

At the same time, the government needs to reflect on the challenging operating environment for the PRS with rent caps, eviction protections and expectations on energy efficiency measures encouraging many landlords to leave the sector all together, reducing housing supply in some areas.

This discussion paper will consider how to effectively bridge the gap between the sensitivity of the sector to overly onerous regulation while being mindful of the Government's ambition to enact policy changes to improve housing outcomes for tenants.

Current regulation of the PRS

Currently, all private landlords are required to register with local authorities through the landlord registration scheme. As part of this process, the local authority must ensure that only applicants judged to be 'fit and proper' are entered onto the register. Renting out a home without registering is a criminal offence and punishable with a fine of up to £50,000.

Letting agents are required to register with the Scottish Government and to do so, certain staff are required to undertake a qualification and continuous professional development (CPD). Carrying out letting agency work in Scotland without being registered is a criminal offence punishable with a fine of up to £50,000, up to six months imprisonment, or both.

Complaints are raised by tenants through the First Tier Tribunal which deals with areas of dispute including evictions, the Repairing Standard, Rent Deposits and other tenant-initiated cases.

However, it is not clear the extent and consistency of local authorities' enforcement against private landlords, as very few cases are brought to the Tribunal by local authorities. Many local authorities report not having the capacity to investigate instances where landlords fall short of their statutory duties. Enforcement of standards and rights is habitually led by tenants where they raise complaints if they feel standards are not being met.

However, the [Rent Better Wave 2 report](#) published in 2022 showed there was general dissatisfaction among tenants when raising disputes through the Tribunal system. There is a common complaint that it is often slow, leads to poor outcomes and often undermines a tenant's relationship with their landlord.

Tenant satisfaction in the PRS

The 2021 [Scottish Household Survey](#) showed that social rented households were marginally more satisfied with their housing (83 per cent) compared with those living in private rented households (81 per cent). Both were much lower than the satisfaction reported by owner occupiers which sits at 96 per cent. However, the Rent Better report also highlights the precarious nature of many living in the lower end of the market in the PRS. It concluded that satisfaction is more likely to be lower for tenants on lower incomes and in housing need.

Operating context in the PRS

In February 2022, [the Scottish Association of Landlords \(SAL\) reported](#), through a survey of 635 landlords with a collective PRS portfolio of 4,214 properties, that 34 per cent of respondents planned to reduce the size of their portfolio and just 19 per cent planned to increase the number of PRS properties they own. It was also reported that concern about future regulation requirements was one of the main reasons as to why landlords are looking to exit the market. Half of the landlords who took part in the Rent Better project reported plans to leave the sector within the next two to five years.

Findings of both surveys were made ahead of the Scottish Government emergency legislation which introduced temporary rent caps and eviction protections in the PRS in September 2022 to protect tenants who may be struggling due to the cost of living crisis. The Scottish Government intends to introduce permanent rent controls for the PRS in the upcoming Housing Bill. Alongside this, landlords have a target of ensuring PRS rented properties (with some exemptions) meet a minimum energy efficiency level of EPC level C by 2028. As noted above, this change is considered a contributory factor in exacerbating the loss of supply in the PRS.

Supporting this conclusion, the Rent Better report also highlights that PRS housing supply is likely reducing with new landlords not joining the market in the same volume as experienced a decade or so ago and new regulation being a primary cause of landlord disinvestment.

These findings were reinforced by a CIH Scotland PRS roundtable in March 2023 whereby participants also reported that the introduction of new PRS regulation was encouraging landlords to leave the sector. Participants suggested that if there are failing standards in the PRS then these should be addressed on a case by case basis rather than developing a new national enforcement framework and recommended that any approach to regulation should start by adequately enforcing existing regulations such as landlord registration ahead of introducing any new requirements. This supports the conclusion of the 2021 CIH Scotland paper on the [Whole Rented Sector](#) which noted the call for more time to bed-in existing regulations before any further changes are introduced.

At the same CIH Scotland roundtable, private landlords noted the need for more support and information about their rights and responsibilities. It was also suggested that local collaboration can help build relationships between landlords and councils, so landlords better understand the requirements. The value of this approach was repeated at a [Scottish Parliament Committee session](#) on 2 May 2023 where both SAL and PropertyMark reflected on the value of more information and support for landlords to ensure “they are fully aware of what they need to know and, more importantly, to see how they engage with their tenants and resolve issues that are reported by them.”

What should regulation look like?

The PRS is a critical part of Scotland's housing system, providing dynamic, accessible housing in a timeframe that tenants need. This doesn't negate the legitimate expectation to have greater clarity, consistency, and improvement in services.

However, the development of any new regulator and its scope must be managed in a way that doesn't undermine the very existence of the PRS in Scotland. It must be done in a way that provides clarity on the standards expected and in a way that is proportionate, risk based and balanced.

We know of concerns from PRS landlords that there is no authoritative source or organisation that sets out clearly what rights and responsibilities both landlords and tenants have and how issues can be resolved. This creates confusion and can lead to a poor relationship between both parties. We also understand there is ongoing concern about the lack of enforcement of existing rules and requirements and who is responsible, which landlords would like to be addressed ahead of any new regulations being introduced.

We also understand that PRS tenants are primarily concerned with issues of affordability, quick response time, adequate services, housing quality, communication and landlords getting it right first time.

Therefore, before any decision is made about the role and shape of a new regulator, we recommend that the Scottish Government, COSLA and the Scottish Association of Landlords collectively examine the effectiveness (or otherwise) of current enforcement powers to find out if they are underutilised, and if so why, and what could be improved to get better outcomes from the existing powers and duties. Such a review would provide insight and evidence to help inform the scope, scale, and case for any new regulator.

However, reflecting on the existing evidence we have from landlords and tenants, CIH Scotland believes that if a new PRS regulatory system is to be developed, an authoritative advice note/framework which mirrors some of the principles of the existing Scottish Social Housing Charter (SSHC), but in a way that is practical for landlords and tenants in the PRS, could be instructive for a new regulator. This would not add to the existing regulation but help clarify rights, responsibilities, and signpost good practice. We believe the design of this note could take a variety of forms. For example:

- It could replicate the approach of the SSHC and set out desired housing outcomes for tenants across several aspects of housing policy, and in turn, set expectations for landlords to determine how these outcomes are met.
- It could set out tenant and landlord responsibilities for the property, recognising both have rights towards each other against key areas of housing concern.
- It could utilise, review, and if necessary, update the voluntary Code of Practice developed by SAL for its members to ensure it covers the core priorities for tenants and apply this to the whole PRS.
- It could combine the above and set out core housing outcomes tenants expect to be achieved and use the SAL voluntary code of practice as part of the guidance as how to achieve these outcomes for tenants.

See Appendix below for more details.

It is in the interest of landlords as much as tenants to ensure the condition of a property is at the highest possible standard. As such, we believe the development of this authoritative advice note/framework, from a regulator, would provide greater awareness for tenants and landlords on existing rights, duties and responsibilities and can be communicated in an easy to read and transparent way.

CIH Scotland believes, if there is to be a regulator for the PRS, its role should include supporting landlords and providing advice on how to meet existing duties, rights, and responsibilities. This could take the form of good practice guidance, case studies and webinars alongside other suggestions on how to address common housing issues, including signposting to other third-party sources of advice. There is much that can be learned from the existing Scottish Housing Regulator in this regard.

However, recognising the sensitivity of the private rented market, it is vital the development of a regulatory framework doesn't by itself add to any existing requirements on landlords but would make it clear where existing responsibilities rest, how rights can be met, and the consequences for tenants and landlords for non-compliance.

What else

We also recognise that simply restating existing rights and responsibilities is unlikely to meaningfully improve housing outcomes in the PRS. The pace of change facing the PRS is significant and improving the viability of the sector, so that it remains a dynamic and accessible housing option, requires more than regulation but also investment and support. To ensure that this is realised, we recommend that, alongside the development of any new PRS regulatory regime, the Scottish Government considers the following to further enhance housing outcomes in the sector:

- Meaningful enforcement for lack of compliance with existing requirements. For example, as noted above, letting agents undertaking work without being registered can technically be subject to a £50,000 fine or up to six months imprisonment.
- Ring fenced grants to meet new housing quality standards for the PRS.
- Supporting media campaigns to make tenants and landlords aware of requirements.

We would also expect other policy and funding recommendations to arise from a SG/COSLA/SAL review of current PRS enforcement.

To achieve better outcomes for tenants, the PRS needs to be supported with the right regulation, advice, publicity, and funding. The shared ambition of the Scottish Government, landlords and tenants for a well performing sector with high customer satisfaction will not be achieved without recognising the need for grant investment. However, if this can be achieved and the Scottish Government can take a holistic approach to proportionate grant funding of the whole rented sector, then a new regulatory body can focus its time on addressing serious non-compliance with established legislation - allowing the rest of the PRS space to work towards continually improving housing outcomes for all tenants.

Conclusion

The introduction of a PRS regulator can be an opportunity to improve standards and tenant experiences across the sector. Our feedback shows that tenants are mostly concerned that standards of their home and property management are of a sufficiently high level, while landlords are concerned about having access to up-to-date information and advice. As such, any reform mustn't be about simply adding regulation to the PRS but instead recognising the need to create a greater understanding about rights, responsibilities and accountability among tenants and landlords. And crucially, realising that regulation by itself cannot drive improvements in housing outcomes but it must be matched by investment from the Government.

Appendix: Potential approach to PRS regulation

1. How an approach similar to the Scottish Social Housing Charter could apply to the PRS

Characteristic	Outcome
Communication	Tenants can communicate timeously with landlord and have a range of communication channels to choose from. Tenants can expect an acknowledgment to a query within 48 hours and a full response within three working days.
Quality of Housing	The property meets the minimum standard for housing for the tenure including appropriate fittings and fixtures.
Repairs and Improvements	Tenants know who to contact to raise issues about repairs and improvements. The repairs have the minimum impact on tenants living in the home and are dealt with as quickly as possible.
ASB and tenancy disputes	Tenant knows who to contact to raise issues about ASB and tenancy disputes. Landlord commits to explore informal means to resolve disputes with the tenant in the first instance.

2. Setting out both landlord and tenant responsibilities.

Characteristic	Landlords' Responsibility	Tenants' Responsibility
Communication	Tenants can communicate timeously with landlord and have a range of communication channels to choose from. Tenants can expect an acknowledgment to a query within 48 hours and a full response within three working days.	
Quality of Housing	The property meets the minimum standard for housing for the tenure including appropriate fittings and fixtures.	Tenants take good care of the property and contents.
Repairs and Improvements	Tenant knows who to contact to raise issues about repairs and improvements. The repairs have the minimum impact on tenant living in the home and a dealt with as quickly as possible.	Tenants should report repairs as quickly as possible to avoid any additional damage.
ASB and tenancy disputes	Tenant knows who to contact to raise issues about ASB and tenancy disputes. Landlord commits to explore informal means to resolve disputes with the tenant in the first instance.	The tenant is responsible for their own behaviour and the behaviour of visitors to their home.

3. Scottish Association of Landlords: Code of Practice

The voluntary code that all SAL members sign up to when joining this trade body

This Code of Practice is intended to apply to member landlords managing residential properties for let. Whilst this Code intends to promote good management standards in the PRS, members are reminded that landlords renting residential property are also obliged to abide by statutory duties as outlined in relevant Housing, Fire Safety, Health & Safety and Data Protection legislation. This code should not be construed as intent to replace any statutory obligations on landlords. This code does not apply to any short term lets operated by members.

1. All tenants will be provided with a written tenancy agreement or a written statement of the terms of their occupancy at the commencement of the tenancy. This will include a contact name, address and telephone number of the landlord for the provision of serving notices and ease of communication.
2. The landlord will acknowledge promptly all communications received from the tenant and make clear their procedure for dealing with tenant complaints.
3. All disrepair in the property for which the landlord is responsible will be attended to promptly, with minimum disturbance to the tenant.
4. The landlord will respect the tenant's right to peaceful and quiet enjoyment of the property free from harassment and threat of illegal eviction.
5. The landlord will, in except of cases of emergency, give the tenant reasonable notice of not less than 24 hours in writing or 48 hours for Private Residential Tenancies (unless otherwise agreed with the tenant) when access to the property is required by the landlord or their agents.
6. The landlord will give such reasonable assistance as is required by a local authority to enable a tenant to claim housing benefit.
7. The landlord will supply the tenant with a telephone number or other means of contacting the landlord or their agent in an emergency; in particular when the landlord is absent.
8. Before proceedings are commenced, the tenant will be notified of any breach of the tenancy agreement that is to be used as a basis for legal proceedings against the tenant.
9. The landlord undertakes to explore appropriate routes to resolve disputes with the tenant by informal means before turning to formal legal proceedings.
10. The landlord will provide the tenant with accommodation (including fixtures, fittings and furnishings) that complies with all legal requirements relating to the fitness of accommodation.
11. The landlord will, when so requested, provide the tenant with a written statement of their tenancy account.
12. Where tenants pay rent weekly a rent book will be provided by the landlord. Otherwise a proper receipt will be issued whenever rent is paid direct to the landlord by cheque or cash.
13. All tenants will be treated with appropriate courtesy and respect. The landlord will always act in a fair, honest and reasonable way in all their dealings with the tenant.
14. The landlord will not refuse a tenant a reference for the purpose of securing a new tenancy, without good cause.
15. At all times the landlord will keep information about tenants confidential and only disclose such information if full consent of disclosure is obtained from the tenant.
16. Where appropriate, the landlord will obtain relevant registration under the Data Protection Act.
17. The landlord will apply for, and obtain, relevant licences and be registered with the appropriate local authority to operate as a private residential landlord in Scotland.
18. All members who operate under contract from a statutory body to provide accommodation and intend to remove tenants/occupants from properties in the event that they fail to leave are required to obtain vacant possession of properties by an order of court.

4. How SAL Code of Practice could apply to a charter style approach and support tenant outcomes

Characteristic	Outcome	How the SAL Code of Practice can support tenant outcomes
Communication	<p>Tenants can communicate timeously with landlord and have a range of communication channels to choose from.</p> <p>Tenants can expect an acknowledgment to a query within 48 hours and a full response within three working days.</p>	<p>The landlord will acknowledge promptly all communications received from the tenant and make clear their procedure for dealing with tenant complaints.</p> <p>The landlord will supply the tenant with a telephone number or other means of contacting the landlord or their agent in an emergency; in particular when the landlord is absent.</p>
Quality of Housing	<p>The property meets the minimum standard for housing for the tenure including appropriate fittings and fixtures.</p>	<p>The landlord will provide the tenant with accommodation (including fixtures, fittings and furnishings) that complies with all legal requirements relating to the fitness of accommodation.</p>
Repairs and Improvements	<p>Tenant knows who to contact to raise issues about repairs and improvements.</p>	<p>All disrepair in the property for which the landlord is responsible will be attended to promptly, with minimum disturbance to the tenant.</p>
ASB and tenancy disputes	<p>The repairs have the minimum impact on tenant living in the home and a dealt with as quickly as possible.</p> <p>Tenant knows who to contact to raise issues about ASB and tenancy disputes.</p> <p>Landlord commits to explore informal means to resolve disputes with the tenant in the first instance.</p>	<p>The landlord undertakes to explore appropriate routes to resolve disputes with the tenant by informal means before turning to formal legal proceedings.</p>





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