

Landlord and tenant engagement questionnaire on rented sector reform

Evidence submitted to the Scottish Government 27 October 2023

This is a response to the Scottish Government's questionnaire on rented sector reform. The proposals are being considered for inclusion in the forthcoming Housing Bill.

Introduction

The Scottish Government is expected to introduce a Housing Bill before the end of this financial year which will include some elements of the draft Rented Sector Strategy intended to strengthen tenants' rights.

Over the summer, we carried out extensive engagement with our members and stakeholders on Housing Bill proposals through online events, a survey, and an in-person workshop. In total we received around 140 responses across all of our engagement activities and these views have been used to inform our response.

General comments on the nature of the consultation

We have some concerns about how the consultation has been managed and whether stakeholders have had adequate opportunity to respond.

The consultation was introduced with a very tight deadline, just four weeks, limiting our ability to consult with members and develop comprehensive responses to all of the questions.

The overview on the Scottish Government's website suggests that the consultation is relevant to landlords and tenants. However, some of the proposals are complex and the supporting documents were not as accessible as they could have been, leading Crisis and Living Rent to develop [a version for tenants](#) that would be more user friendly.

The closed nature of the questions and tick box format of the online form gave no option for respondents to provide more in-depth comments and the website did not make clear how people could submit more detailed responses.

The wording of some questions was problematic and likely to lead to bias, particularly questions 33 to 36 which asked respondents to rank answers in order of most to least beneficial, suggesting that all of the proposals are in some way



beneficial. This is a very basic and obvious example of bad practice in survey development leading to concerns about how analysis of the responses may be presented.

Consultation questions

Question 1: Please indicate which category applies to you:

CIH Scotland is a membership organisation representing the housing sector. We work across all tenures.

Question 2: What is the name of the organisation you represent?

CIH Scotland.

Question 3: If you are a landlord, how many properties do you have available for rent (including those currently occupied by tenants)?

Not applicable.

Question 4: If you are a tenant, what type of tenancy do you have?

Not applicable.

Question 5: Where is your property (or properties) primarily located? (Please tick all that apply)

Not applicable.

Question 6: Do you think rent control should be introduced on a local basis, where assessment shows that there is a need, or should rent control be universally applied across Scotland?

We understand that affordability is a significant issue in some parts of the private rented sector (PRS) and that rising rents are creating a barrier for people trying to access the PRS or looking to move to a new tenancy.

We have recently commissioned research into the affordability of the PRS for people in receipt of Local Housing Allowance (LHA) which shows significant shortfalls between the support available to low-income households and the real cost of renting. It will also make recommendations on how these households can be better supported. The report will be shared with Scottish Government colleagues when it is finalised in November.

However, the vast majority of available data on PRS rents is based on advertised rates rather than actual rent being charged. This does not present an accurate picture of rent inflation/deflation or affordability which would be needed to effectively implement any form of rent control and monitor the impact.



This lack of data makes it extremely difficult to judge whether any form of national rent control could be effective, or what unintended consequences could occur.

The existing rent cap introduced through emergency legislation has been widely criticised and there is some evidence to suggest that it has been poorly designed, leading to significant rent increases between tenancies further fuelling rising rents. This has not supported the tenants it was intended to protect.

It has also negatively impacted many private landlords who have been unable to meet their own rising costs including mortgage interest, repairs, maintenance and improvements. Many have indicated that they intend to leave the market, putting tenants at risk of eviction and risking the loss of residential accommodation if homes are taken out of the rental market.

We have seen little detail about how the proposed rent cap would be applied, or how existing gaps in data would be addressed. We cannot support policies or legislation that have not been based on evidence and with little detail of how they would work in practice.

That said, if rent control is introduced, it should be only be applied in areas where there is adequate evidence to support the need for intervention.

Question 7: Where restrictions on rent increases are being applied, do you think those restrictions should apply to both sitting tenants and in-between tenancies or sitting tenants only?

The current rent cap applied through emergency legislation has clearly demonstrated the unintended consequence of rents being increased significantly between tenancies in some cases. Living Rent have reported that this has included situations where one or more tenants have left a shared home, triggering a new tenancy and a rent increase for the remaining tenants.

If rent control is to be introduced, this must be addressed to prevent more significant rent increases between tenancies.

Question 8: Do you agree that, if rent controls in a rent control area apply both within and between tenancies, the first rent increase in a tenancy should be possible at any point after the start of the tenancy provided that at least 12 months has passed since the rent was last increased during the previous tenancy?

This proposal has not been fully tested with our members and other stakeholders. If a rent increase notice can be given at the start of a tenancy this could have a significant impact on prospective tenants and they must be made aware of the potential increase.



Question 9: Which of the following types of tenancy should be classed as “new to market” and therefore exempt from rent control when the first rent is set? You can select more than one answer.

It makes sense for an initial rent to be set at the market rate for the area with the cap applied thereafter.

Question 10: It is proposed that any rent control area will be in place for a fixed time period. To what extent do you agree with the following statements?

We agree that if a rent cap is to be applied, it must be for a time limited period (a maximum time that a cap could apply, not minimum) and subject to review before a decision is made to extend or revoke the cap. A review should also take place if circumstances in the area change.

This issue with this is the lack of robust data available to inform such a decision. We cannot support an approach to rent control without knowing the details of how it would work in practice or what evidence it will be based on.

Question 11: It is proposed that any rent control area will be in place for a fixed time period. To what extent do you agree with the following statements?

See above.

Question 12: If rent control areas are put in place for fixed time periods, which time period would you consider to be most appropriate?

If rent control is applied in an area it should be subject to continual review through regular reporting.

Question 13: Where Scottish Ministers intend to introduce rent control to an area, should there be a duty to consult with landlord groups, tenant groups and local authorities in the local area before introducing rent control to that area?

Yes, a robust consultation must be carried out and all stakeholders must be supported to take part. Some parts of the sector may be under-represented and unlikely to respond to a conventional consultation. Efforts must be made to ensure their views are taken into account.

Question 14: Should there be a mechanism that allows landlords to increase the rent above the annual rent cap in cases where they have not previously raised the rent for the let property when they were permitted to do so i.e. if the landlord chooses not to increase rent for a period of years then they would be allowed to increase it by an amount above the cap at the next rent increase?

If a rent control system is introduced, the Scottish Government must find a balance between preventing significant and unaffordable rent increases and ensuring



landlords are able to manage their business and continue to invest in maintenance, repairs and improvements.

Previous research has suggested that the majority of landlords did not regularly increase rents during tenancies – although evidence submitted on the impact of the emergency legislation rent cap suggests that landlord behaviour may now be changing to increase rents when they know they will be able to where they may not previously have done so.

If the Scottish Government’s ultimate aim is to smooth out rent increases so that tenants do not experience sudden and significant increases, allowing landlords to apply a greater increase after skipping annual increases would not make sense. Allowing landlords to apply a greater increase after skipping a year or more of allowable increases could also create additional stress for tenants if they thought they could face a more significant rise in rent. For example, research suggests that some tenants avoid raising issues such as repairs if they have not had a rent increase in some time and don’t want to draw attention to themselves. Such a mechanism could compound this problem.

On the other hand, the Scottish Government must be aware that further restrictions on how and when landlords can increase rents could encourage more frequent increases than may have been the case in the absence of restrictions.

Question 15: If there was a mechanism that allows landlords to increase the rent above the annual rent cap in cases where they have not previously raised the rent for the let property when they were permitted to do so, should this only apply to the first rent increase after a rent control area comes into force or to any rent increase while a rent control area is in force?

See question 14.

Question 16: Do you think there should be a mechanism to allow landlords to raise the rent above the rent cap, on a case-by-case basis, in certain circumstances such as where there have been improvements to the let property?

If a rent cap is applied, private landlords need to be able to fund repairs and/or improvements to their property to ensure that homes continue to meet the Repairing Standard and any new standards introduced, such as minimum energy efficiency standards. We would not want to see a system that discourages investment in the upkeep and maintenance of homes. This is potentially dangerous and contrary to other Scottish Government agendas such as net-zero and fuel poverty.

Question 17: If there were to be a mechanism to allow landlords to raise the rent above the rent cap on a case-by case basis, which of the following circumstances do you think this should apply to? You can select more than one answer.

See question 16.

Question 18: We propose to introduce a route by which tenants in a rent control area can verify that any proposed rent increase is in line with the rent cap. This could cover cases where the tenant believes their landlord may be proposing to increase the rent by more than the amount allowed. Do you agree with this proposal?

Yes, if a rent cap is applied there should be a route by which tenants can check whether a proposed rent increase is allowed under the rent cap. This is the case with Rent Pressure Zones, albeit no local authority has been able to make use of that mechanism to date.

Question 19: Do you consider that any of the categories of housing below should be considered for exemption from rent controls?

We agree that homes provided for social good should be exempted from rent controls. This should include mid-market rent (MMR) homes delivered to meet a need for affordable housing, and hostel accommodation.

Question 20: Given PRTs were introduced in Scotland more than five years ago, should consideration be given to setting a future date by which remaining assured and short assured tenancies should be phased out?

Yes, consideration should be given to setting a future date by which remaining assured and short assured tenancies should be phased out.

It does not make sense for tenants to have different legal rights, putting some at a disadvantage. It can also cause confusion. Moving towards one tenancy will help in the provision of clear and easily accessible advice and information about rights and how these can be upheld.

Question 21: Do you agree that the notice period which the departing joint tenant must give to the other joint tenants should be two months?

We do not think that any tenant should be held in a tenancy against their wishes. This is particularly significant in cases of domestic abuse, but could be equally distressing for someone whose financial, family or other circumstances have changed.

We understand that there must be a balance between the needs of the tenant/s wishing to leave a tenancy and the tenant/s wishing to stay but in cases of domestic abuse, a three-month notice period would be excessive and potentially lead to an escalation in violent or coercive behaviour.

Question 22: Do you agree that some small changes (for example putting up pictures and posters) should not require consent?



We agree that tenants should have more flexibility to personalise their rented home. This is especially important for those looking to stay for longer periods of time, and can help foster good relationships between landlords and tenants.

However, this requires clear guidance on different categories of changes and what “reasonable” changes would and would not require consent. Clear communication between tenants and landlords will be essential to prevent a breakdown of the relationship.

There may be issues in applying a greater deposit as suggested if, for example, the landlord would already have required the maximum two months’ deposit allowed within existing legislation to cover existing risks. It is not clear whether an additional deposit would be separate and therefore require an update to legislation.

Question 23: Do you agree that other bigger changes (for example painting walls and installing wall shelves) can be requested and not unreasonably refused?

See above.

Question 24: How long should landlords have to respond to a request for a change that cannot be unreasonably refused?

20 working days is adequate time for a landlord to respond to any request relating to a tenancy, as long as the necessary information has been provided. A standard template for tenants to fill out would help with this.

If additional information is required, this should be requested by the landlord within the initial 20-day period with further time allowed for consideration by the landlord after the additional information has been provided.

Question 25: How long should the tenant have lived in the let property before they can request bigger changes that cannot be unreasonably refused?

If changes are made at the tenants’ expense and there could be conditions applied to the request (as suggested) then there should be no time limit, but any conditions must be explicitly stated and agreed to. For example, whether any reinstatement work would be required to be carried out by the tenant when they leave and responsibility for covering costs.

Question 26: Do you agree that private tenants should have a right to request and not be unreasonably refused to keep a pet?

As with personalisation, we agree that tenants should be able to keep pets as long as it is reasonable to do so. If the pet/s are not causing a danger or a nuisance to other residents, visitors or staff.

Again, clear guidance will be essential and must set out the requirements and boundaries. It must also set out who is responsible for the behaviour of the pet/s and what action will be taken in cases where the pet/s are causing issues for other residents, visitors or staff who may have to visit the area.

As above, it is unclear whether an additional deposit would be expected to be applied within the existing legal limit of two months' rent, or whether a separate allowance would be made.

Question 27: How long should private landlords have to respond to a request to keep a pet?

20 working days is adequate time for a landlord to respond to any request relating to a tenancy, as long as the necessary information has been provided. A standard template for tenants to fill out would help with this.

If additional information is required, this should be requested by the landlord within the initial 20-day period with further time allowed for consideration by the landlord after the additional information has been provided.

Question 28: To what extent do you agree with the following uses of the funds?

We agree that every effort should be made to return unclaimed deposits to the tenant/s. Consideration should be given to whether tenants could pay their deposit directly into the agreed protection scheme. This would eliminate the issue of landlords not paying the deposit into a scheme and ensure that operators are more likely to have accurate details of the tenant/s to repay any undisputed funds.

We agree that any unclaimed funds should be used for the benefit of the sector. As well as the suggestions listed, the funds could be used to:

- Improve practice in the sector by supporting private landlords as well as tenants e.g. through the provision of advice, information or training.
- Establish a "one-stop-shop" for advice and information as a trusted neutral party supporting both landlords and tenants.
- Establish a national tenancy deposit guarantee scheme to support people moving into a new tenancy.
- Support additional deposits that may be required to personalise homes or keep a pet.

Question 29: Do you agree that in the private sector the Tribunal should be required to consider whether it is reasonable to delay the enforcement of an eviction at any time of year? Please note, this proposal will not apply to cases of antisocial or criminal behaviour.

We support the move away from the idea of restrictions on "winter" evictions. This would require the application of an arbitrary time-period during which the



household may or may not be under additional pressure depending on their individual circumstances. Instead, we think the focus should be on supporting tenancy sustainment throughout the year. This could take a number of forms and the Scottish Government should not just focus attention on restrictions and delays to evictions which are ultimately likely to end in the loss of home at some point in the future. Additional supporting measures could include:

- Better access to advice, information and mediation for both landlords and tenants.
- Guidance for private landlords on the benefits of tenancy sustainment and how they can support their tenants to access practical help.
- Improving the tribunal process so that tenants are more likely to understand the process and be able to uphold their rights and challenge, rather than delay, unfair evictions.
- Financial support for tenants struggling to cover rent or other bills.

Question 30: Do you agree that social housing tenants should have a right to request to keep a pet and not be unreasonably refused?

As per question 26.

Question 31: Do you agree that, in the social sector, the court should be required to consider whether it is reasonable to delay the enforcement of an eviction at any time of year? Please note, this proposal would not apply to cases of antisocial behaviour, criminal behaviour and domestic abuse.

Eviction is always the last resort for social landlords. Pre-action requirements already require a number of steps to have been demonstrated before eviction action proceeds. As well as being in the best interest of tenants, social landlords are aware of the additional costs associated with evictions and will work to avoid this wherever possible.

Question 32: Do you agree with the following proposal?

Yes, A new pre-action requirement for social landlords should be introduced to ensure that they have fully considered the impact of 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 the social landlord has fulfilled this pre-action requirement.

Question 33: Please rank the proposals in terms of which you feel will bring the most overall benefit to landlords, from most beneficial to least beneficial, with 1 indicating most beneficial and 7 indicating least beneficial.

As per our comment in the introduction, the wording of this question (and the following questions) is problematic. Respondents may feel that all, some, or none of these proposals are beneficial.



We feel that potential benefits for landlords could be realised if any new requirements are clearly communicated so that both parties understand their rights and responsibilities.

Our recent work on Rapid Rehousing Transition Plans (RRTPs) and Housing Bill engagement work suggests that private landlords would welcome access to trusted advice and information to help them improve their practice and keep up with the significant volume of changes that have been introduced in recent years. There should also be more consistent access to advice and support for private tenants who may not know where to go for help and miss the opportunity for early intervention and tenancy sustainment that is often afforded to social housing tenants.

Question 34: Please rank the proposals in terms of which you feel will bring the most overall benefit to tenants, from most beneficial to least beneficial, with 1 indicating most beneficial and 7 indicating least beneficial.

See question 33.

Question 35: Thinking of the financial impacts, please rank the proposals with regards to the potential impact for landlords, from most beneficial to least beneficial, with 1 indicating most beneficial and 6 indicating least beneficial.

Many of the proposals could have significant financial impacts for landlords and should not be ranked. They must be individually considered and assessed as part of a robust financial impact assessment as with the introduction of any new legislation.

Question 36: Thinking of the financial impacts, please rank the proposals with regards to the potential impact for tenants, from most beneficial to least beneficial, with 1 indicating most beneficial and 6 indicating least beneficial.

As per question 35, a full impact assessment should be carried out as part of the legislative process.



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