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A NEW DEAL FOR TENANTS

Draft Strategy Consultation Paper
December 2021



Ministerial Foreword

The Scottish Government published Housing to 2040 in March this year, delivering Scotland's first long term housing strategy. We set out an ambitious vision that by 2040 everyone living in Scotland would have access to a safe, warm, affordable, high quality and energy efficient home that meets their needs in the place they want to be, in a community they feel part of, and proud of, no matter their circumstances or where they live.



Reaching that goal included improving accessibility, affordability and standards across the rented sector, and publishing a new Rented Sector Strategy. Therefore I am pleased, that the Shared Policy Programme, which underpins the Bute House Agreement, built on our ambition further by setting out specific agreements between the Scottish Government and Scottish Green Party Parliamentary Group to delivering a new deal for tenants.

This Draft Rented Sector Strategy sets out how we will work with private and social landlords and tenants to make that a reality, outlining a range of measures to provide an accessible and affordable rented sector in Scotland.

I am determined that we make the long term changes that are required to improve outcomes for people and communities, as outlined in Housing to 2040. This Draft Rented Sector Strategy delivers on an important early commitment and is a positive step forward in taking forward those changes needed in the rented sector to deliver a new deal for tenants. Through this consultation I want to hear the views of how we deliver a strong rented sector for all. Following this wide ranging consultation we will develop the final strategy by the end of 2022 and bring forward housing legislation in 2023.

While we have been in the grip of the Covid pandemic, we have seen fantastic examples of the sector adapting, of landlords and tenants working together and of innovation and determination to support those in need. I would like to thank everyone who has supported and continues to support tenants and communities during these challenging times. And it has been during that time we have all seen the value of having a secure place to call home.

We look forward to receiving your comments to help us build a strategy to ensure that all homes for rent in Scotland are good quality, provide affordable options for great homes in thriving communities and we achieve a fairer more equal Scotland.

Shona Robison MSP
Cabinet Secretary for Social Justice, Housing and Local Government

Ministerial Foreword

I believe that access to adequate housing is a fundamental human right, one that underpins the health, wellbeing, happiness and life-chances of people everywhere.

As we build towards a greener, fairer, independent Scotland – whilst making plans to recover from the Covid-19 pandemic – we have an opportunity and a responsibility to ensure our policies and services have people at the centre and to target support to those in most need. That is why this strategy aims to deliver a new deal for tenants. It represents an important part of delivering the Housing to 2040 strategy and is a central part of the cooperation agreement between the Scottish Government and the Scottish Green Party Parliamentary Group.



The strategy sets out the role rented housing will play over the next five years as we plan for a green economic recovery from the pandemic, respond to the climate emergency and to create a fairer country. The time is right to do more for people who rent their homes – to ensure everyone has a safe, high quality home that is affordable and meets their needs in a place they want to be.

Over that time, our new deal for tenants in Scotland will give them more secure, stable, affordable tenancies with improved standards of accommodation and more flexibility to personalise their homes.

Improving affordability by introducing an effective national system of rent controls is a key aim. It will take time to assemble the evidence we need but we have set out some shorter term reform too.

Our new deal for tenants will also improve security. We will review the grounds leading to an end of tenancy; deter landlords from undertaking illegal evictions by increasing penalties and compensation for tenants; and will build on the success seen in preventing evictions during the pandemic by considering new restrictions to evictions in winter.

To embed a strong, rights based approach, we will also introduce a new housing regulator for the Private Rented Sector, to improve standards and to ensure the system is fair.

To realise our aims, we must act to continually improve the fairness of the terms on which homes are rented and to ensure tenants' rights to an adequate home is properly respected.

We want to look closely at how the housing market is currently working and how we can work with landlords, letting agents, tenants and wider civic society to improve outcomes for people who rent their home.

Above all, tenants' experiences must be central to improving our understanding and we will be looking at a range of new ways to ensure tenant voices are central to how we shape our future policy and legislation.

This draft strategy consultation sets out an ambitious set of proposals for the phased implementation of a plan, over the next five years, to ensure that the rights and needs of people who rent homes in Scotland are met.

It is important, therefore, that we gather the broadest range of views, experiences and evidence as we develop the final strategy on a new deal for tenants, which we aim to publish by the end of 2022.

I encourage you to respond to the consultation and look forward to hearing your views.

Patrick Harvie MSP
Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights

Executive Summary

Vision and aims

This Draft Rented Sector Strategy Consultation sets out and seeks views on how we can deliver a new deal for tenants to progress the right to an adequate home and deliver our vision for Housing to 2040. It aims to ensure all tenants, whether living in private or social rented homes, can access secure, stable, tenancies, with affordable choices - whilst also benefiting from good quality of homes and professional levels of service and rights.

We believe a whole sector approach is required so that tenants should have the right to expect value for money and good housing outcomes irrespective of what tenure they are living in. Housing systems are integrated, neighbourhoods and even buildings are mixed, and each sector can learn from the other in best practice.

It is acknowledged in this draft Strategy that the private rented sector has further to travel than the social sector and therefore the weight of policy proposals where views are being sought, are for the private rented sector. However, we are looking to work with all private and social landlords and tenants to ensure our proposals will support good outcomes for all tenants.

Key Actions

This draft Strategy is an important first step in a phased approach to introduce reform during the course of this Parliament. Key actions identified to deliver improvements include:

- delivering a new deal for private rented sector tenants that puts them on a more equal footing with social rented tenants, through the introduction of a new Housing Bill in the second year of this Parliament;
- establishing a regulator for the private rented sector that will enforce defined standards and considering the role of the existing Regulator covering social rented housing - through legislation by the end of this Parliament;
- implementing a national system of rent controls for the private rented sector, whilst exploring what further action we can take to ensure rents in the social rented sector are affordable by the end of 2025;
- creating a new Housing Standard covering all homes; and
- regulating to set minimum standards for energy efficiency and zero emissions heating.

This ambitious programme of change is crucial in ensuring we progress towards fulfilling the human right of an adequate home for all and that our housing stock is maintained for future generations.

Consultation

Recognising the significant change represented by these proposals, this consultation is seeking to explore a wide range of interconnected policies and issues, enabling us to gather input and views from a wide range of stakeholders - including tenants and landlords as well as investors in the sector – so that we can identify the best actions, whilst also working to mitigate the challenges that will co-exist.

In Chapter 3, we are seeking views on the existing grounds for repossession and setting out proposed action to deter landlords from undertaking illegal evictions by increasing penalties and compensation for tenants. Building on the success seen in preventing evictions during the pandemic, and to support our aim of ensuring everyone has a safe, warm, affordable home that meets their needs, we also set out what further action we could take to introduce new restrictions to evictions in winter and ways to support the development of Tenants Unions and other ways of engaging tenants.

To ensure we can progress a meaningful right to an adequate home we must ensure rented homes are affordable. To tackle high rents in the Private Rented Sector we have committed to implementing an effective national system of rent controls by 2025. This draft Strategy seeks your views, in Chapter 4, on how we should take action to make rents affordable, whilst also setting out how we can learn from international evidence and what has or hasn't worked elsewhere. This critical part of our strategy will be subject to a further consultation ahead of finalising proposals for rent control.

Alongside looking at how to provide affordable options, it is also vital that there is an adequate supply of homes for rent in places where they are needed, as this can also impact on choice and affordability. The Scottish Government already invests significantly through the Affordable Housing Supply Programme and work with private sector funders and suppliers to maximise the delivery of the right homes in the right places. But we are keen, through questions in Chapter 5 of the Strategy, to gather views on what more can be done to ensure that the supply of rented homes continues to play a key role in addressing the affordability issues we are facing in Scotland.

To help embed a strong rights based approach across the whole rented sector, Chapter 6 invites views on establishing a new housing standard and then how a new housing regulator for the private rented sector could contribute and support enforcing those standards and raising standards of service. Given the range and complexity of the issues to be considered as part of establishing a new Regulator, we propose to bring together a range of stakeholders and experts to inform development of the options to deliver on our commitment to introduce a regulator for the private rented sector by 2025.

Throughout this consultation document we recognise that people's experiences of the housing system can differ, and it is particularly important to recognise and understand the different experiences of those who share a protected characteristic. Our vision is for people to have equality of outcomes no matter what tenure they live in. We want to act on what we know about these differences in experience but we

are also seeking views to better understand these experiences to ensure our final strategy drives greater equality in housing outcomes.

We want to hear your views

The draft Strategy sets out an ambitious set of proposals for a phased approach to introducing change, over the next four years in particular. We are keen therefore to gather a broad a range of views, experiences and evidence as we develop the final strategy for publication by the end of 2022.

Further details on how to participate in the consultation and the process for submitting a response, by the closing date of 15 April 2022, is provided at Chapter 7.

CHAPTER ONE: VISION AND STRATEGIC AIMS

Introduction

Housing to 2040¹ sets out a vision for what the Scottish Government wants homes and communities to look and feel like for the people of Scotland, no matter where they live and what point in their life they are at.

It is a vision where homes are affordable for everyone, where standards are the same whether you rent or own your home, where homes have easy access to green spaces and essential services and where homelessness, child poverty and fuel poverty have been eradicated.

Critical to achieving this vision will be to improve the quality, affordability and fairness of the rented sectors. We know that the rented sector provides homes for large numbers of families and individuals across the country, so to help deliver a successful and quality sector for tenants across Scotland, Housing to 2040 included a commitment to publish a Rented Sector Strategy.

While recognising differences in the history, regulation and make-up of the social and private rented sectors, the lived reality for people living in communities across Scotland is that local housing systems are integrated. Neighbourhoods and often even buildings are mixed tenure, with social and private tenants living alongside owner occupiers. We also know that the private and social rented sectors can learn from one another in best practice. Above all, our ambition to ensure that people have equality of outcome in both the private and social rented sector has led to the production of this cross rented sector strategy.

So this Draft Rented Sector Strategy applies to all types of rented home whether rented from a social or private landlord. While the two sectors have important differences in terms of regulation and how they are run, the most important thing they provide is homes and it is right that people living in those homes can expect similar quality, affordable choices and fairness of the terms on which they rent.

The final Strategy, informed by tenants, is being developed to improve accessibility, affordability and standards across the whole rented sector in Scotland. In this draft, our foremost focus will be on improvement in the private rented sector, which has further to travel as set out in chapter 2, in order to ensure that no matter where you rent, your rights, standards of service and property condition standards are comparable.

However, equally, we will be looking to work with all landlords across the social and private sectors to ensure effective progress in the next 5 years towards our vision for the rented sector to be an effective part of a whole housing system that, by 2040, offers quality, affordability and fairness to all tenants.

¹ [Housing to 2040 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

That matters because, while just over half of Scottish people living in rented housing aspire to own their own home, many households will benefit from having the option of an affordable, good quality rented home and we want to ensure that residents in rented homes in Scotland are provided with great homes, flexibility and choice.

This draft strategy sets out significant ambition for change and will require a dedicated, phased approach to ensure that the changes are effective, the consequences understood and we can secure the best outcomes possible for people living in rented homes.

This draft strategy is also underpinned by our ambition to deliver 110,000 affordable homes by 2031/32, with the aim that at least 70% of those homes will be for social rent and 10% in Scotland's remote, rural and island communities supported by a Remote, Rural & Islands Action Plan.

So our vision is for a rented sector which contributes to the following outcomes:

- **Everyone has access to a warm, safe, affordable and energy efficient home that meets their needs:** the rented sector promotes equality of housing outcomes and supports delivery of the right to adequate housing;
- **Improving the quality of rented homes:** all rented accommodation, irrespective of tenure, provides tenants with good quality, sustainable/net carbon homes, supporting social justice and equalities;
- **Ensuring adequate supply of homes:** rented accommodation supports local approaches to maximising supply of the right homes in the right places and improving choice, affordability and quality in both the social and private sectors;
- **Anyone who requires support to manage and stay in their tenancy can access it:** no matter the tenure, all tenants who require additional support can access it;
- **People have affordable housing choices:** there are available housing choices with total housing costs that are proportionate to people's average incomes, including for those on low to modest incomes and people with an acute housing need have swift access to the Social Rented Sector;
- **We recognise that the private rented sector provides a range of housing solutions,** with options that are affordable for most people, allowing them to benefit from the flexibility and choice of location provided by the sector;
- **The rented sector supports a place based approach to housing** that supports community empowerment; and
- **All tenants have a voice:** building on existing strengths and experience in Tenant Participation in the social sector that extends to all tenant groups.

In order to achieve this vision, the following strategic aims have been identified:

- to ensure that all homes for rent in Scotland are good quality and help deliver net zero aims;
- to provide affordable options, irrespective of the tenure lived in or where in Scotland a home is rented;
- to help enable growth and investment and help increase the overall supply of affordable housing;
- to contribute to tackling child poverty, eradicating fuel poverty, ending homelessness and ensuring the right to an adequate home; and
- to ensure a clear understanding of the needs of minority ethnic communities, women, people with disabilities and all people with protected characteristics – informs delivery of this strategy to promote equality of outcome and experience of the rented sector.

Overview of key actions

New housing legislation will be introduced during this Parliament to support the policy aims of strengthening tenants' rights, improving regulation and tackling affordability. The results from this consultation, alongside extensive work with tenants' groups from both the private and social sector and in partnership with the Joseph Rowntree Foundation, will inform a final version of the Strategy to be published in 2022.

Good quality housing will generate benefits that can help tackle poverty (including for families with children), promote equality, support wellbeing, eradicate homelessness and boost economic recovery by building affordable, sustainable communities where people can prosper.

In essence, we want to ensure that everyone has a safe, warm place to call home and have committed to taking forward an ambitious programme of affordable housebuilding, eradicating homelessness and rough sleeping, and strengthening rights for people in the rented sector.

By 2025 we intend to deliver:

- enhanced rights for tenants;
- new requirements for data collection on rents in the private sector;
- new cross-tenure housing standards;
- a new Private Rented Sector Regulator; and
- legislation to underpin a new effective system of national rent controls.

The right to an adequate home

Our starting position for any strengthening of the rented sector is that first and foremost - social or private - it should provide good quality homes and services for people.

We also know that whilst the right to housing is already a human right enshrined in international law and that we have taken positive action in some areas such as homelessness - where Scotland already has some of the strongest rights in the world – not everyone can yet access an adequate home and the rented sector provides both opportunities and challenges to securing this aim.

We want to ensure that people don't just have theoretical rights but can practically realise those rights, that judicial remedies are available when things go wrong and that housing rights are effective in practice. Ultimately everyone should have a home that is affordable, warm and meets their needs.

Unfortunately, many people in Scotland still cannot access appropriate housing. We know that significant inequality in housing outcomes remain. Some have nowhere to live or live in places which do not meet their housing needs or are of an unacceptable standard. Those in Scotland facing particular difficulties include people experiencing the most acute forms of homelessness (those who are rough sleeping); victims of domestic abuse; Gypsies, Roma and Travellers; migrants; tenants without security of tenure; people who cannot find an accessible home to meet their needs and people facing poverty and destitution. For many, renting can provide a good solution.

In the social sector, strengths include lower rents and long term security of tenure and the private rented sector can provide flexibility of location and tenure. However, the private rented sector in particular can also be part of the problem - especially where it provides poor quality but high priced stock or where landlords do not fulfil their duties or intentionally flout the law.

The UN Committee on Economic, Social and Cultural Rights has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. The characteristics of the right to adequate housing are clarified mainly in the Committee's general comments No. 4 (1991).

For housing to be adequate, it must, *at a minimum*, meet the following criteria:

1. **Security of tenure:** housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.
2. **Availability of services, materials, facilities and infrastructure:** housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.
3. **Affordability:** housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.
4. **Habitability:** housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.
5. **Accessibility:** housing is not adequate if the specific needs of disadvantaged and marginalised groups are not taken into account.

6. **Location:** housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.
7. **Cultural adequacy:** housing is not adequate if it does not respect and take into account the expression of cultural identity.

While all of these criteria inform policy in Scotland, some are better developed than others. For example, it is vital to understand the key role of renting policy in wider place-making and neighbourhood design agendas. This is more developed and understood in the social rented sector, but more needs to be done to understand how the private rented sector contributes.

In March 2021, the National Taskforce for Human Rights Leadership published 30 recommendations for a new human rights framework for Scotland. The Scottish Government has accepted all of these recommendations and a new multi-treaty Human Rights Bill will be introduced during this parliamentary term incorporating the right to adequate housing for all. This should also result in an increased awareness of rights and help individuals to enforce those rights, including within the rented sector.

To establish the best way to make the right to adequate housing a reality, we will undertake a comprehensive audit of our current housing and homelessness legislation. The audit will help us to identify where there are gaps in current domestic legislation and where remedies for violations of housing rights can be strengthened, including within the rented sector. It will also help us to assess how well current legislation protects marginalised groups and people with protected characteristics. We intend to commission this audit before the end of the 2021/22 financial year.

Examining the role that the rented sector plays in ensuring the right to an adequate home is fundamental to this work, with many of the areas we are seeking to improve and enhance within this consultation making huge strides towards achieving rented properties that meet the characteristics of an adequate home.

Homelessness

Of course delivering the right to an adequate home in practice means ending homelessness and understanding the role the rented sector can play in both causing homelessness and being part of the solution. Despite policies to support tenants, sometimes a tenancy cannot be sustained and a tenant can face homelessness. Although we have some of the strongest homelessness legislation in the world, which ensures people receive the support they need, we recognise that prevention and early action is critical.

Each local authority has a Rapid Rehousing Transition Plan which has the aim of changing the homelessness system and moving people into appropriate settled accommodation reducing the lengths of stays in temporary accommodation and ultimately reducing the use of temporary accommodation at all. In order to do this local authorities will seek to prevent homelessness occurring in the first instance but where homelessness does happen they will work with the household so that they

can move to settled accommodation which will be sustainable and remove the potential for repeat homelessness to happen. Often this settled accommodation is in the social rented sector, but the private rented sector also has a part to play to see where homelessness can be prevented. The private sector can also be explored as a housing options solution as a means for a local authority to support a household into a sustainable, settled home where this would meet their needs.

Housing First is an approach which benefits people who have the most complex needs. It provides wrap around support and is proven to be very successful in terms of tenancy sustainment (rates vary but generally around 80%). Both the social rented sector and the private rented sector are used for the accommodation with the support being provided by a mix of statutory and third sector providers.

The COVID-19 pandemic saw many people experiencing homelessness accommodated temporarily in hotels and bed and breakfasts. The Scottish Government provided £140,000 towards a pilot operated by Cyrenians and Crisis to create a pathway from hotels to settled accommodation in Edinburgh's private rented sector. The pilot focused on supporting people from a variety of housing backgrounds with a higher need for tenancy support. Historically, the private rented sector has been underused in Scotland as a housing option for this group.

While the private rented sector cannot replace the critical role social housing plays in ending most people's homelessness for good, the pilot showed that, when the right tenancy support is included in the package, the private rented sector can provide choice and relatively rapid access to settled housing. Social housing cannot always offer this, especially in a pressured market such as Edinburgh's. The private rented sector pilot has helped 24 tenants to secure a home and the first tenant has now been in his home for a year.

Conclusion

This consultation seeks your views on how we can build on the important work that has taken place over the last decade or so and go further, to ensure that the fundamental human right of everyone – including people living in the rented sector – having the right to an adequate home.

To do this, we examine what we can do in key areas such as improving tenants' rights and choice, affordability and working to ensure delivery of high standards of property management and professional levels of service. We examine what legislative change might be required and what we need to consider to ensure tenants' needs are met.

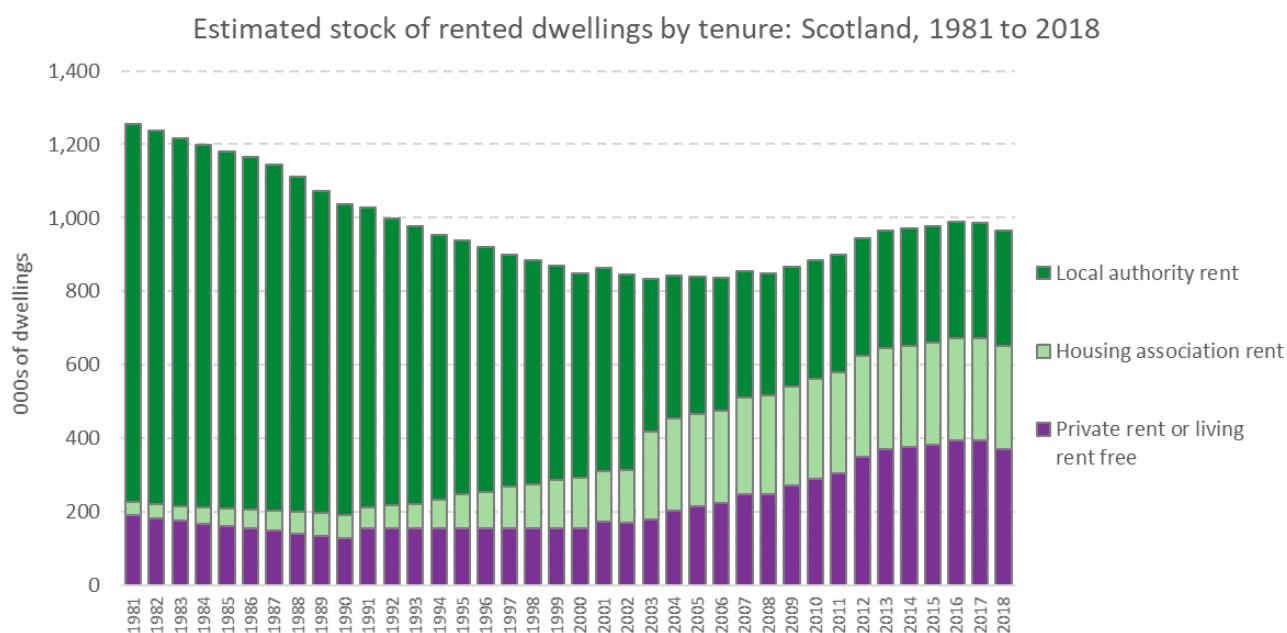
CHAPTER TWO: SECTOR OVERVIEW AND POLICY CONTEXT

Scotland's Rented Sector

Around 37% of households in Scotland currently rent the home they live in. While in the past the majority of rented homes were provided by local authorities, we now have three major sources of homes for rent providing broadly similar numbers of homes: private rented homes (14%); local authority housing (14%); and homes for social rent provided by Housing Associations (10%)².

The nature of the private and social parts of the rented sector have evolved over time. Over the longer term, since 1981, the number of local authority rented homes has shrunk by some 713,000 properties due to Right to Buy sales as well as stock transfers to housing associations over this period.

However, the rate of decrease has slowed in recent years due to an increase in new supply of local authority housing from 2007 onwards and the Right to Buy scheme ending in 2016. In addition, the proportion of homes that are social rented (23%) remains a notably higher proportion than in England or Wales (17% and 16% respectively in 2018³).



This long-term decline in the percentage of social housing has been accompanied by substantial changes in the profile of its tenants. Results from the Scottish Census⁴ show that in 1981 the profile of social sector tenants was similar to the profile of all

² Scottish Household Survey 2019 results ([SHS Data Explorer \(shinyapps.io\)](https://shinyapps.io/shs/))

³ [Dwelling stock by tenure, UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/dwelling-stock-by-tenure)

⁴ See Chart 10 on Page 35 of <https://www.gov.scot/Resource/Doc/201716/0053780.pdf> (webarchive.org.uk)

Scottish households in terms of size, composition and social and economic characteristics.

This is no longer the case, with household characteristics in more recent years showing some marked differences by housing tenure, with households in social housing now being more likely to consist of single pensioners and single parents.

Tenants of social landlords are less likely to be in employment than those in households generally, with less than half of tenants being in employment. Social tenants are also more likely to be unemployed or chronically ill than other households. Consequently, 60% of social rented households have incomes of £20,000 or less a year and around 61% are in receipt to some extent of housing benefit or the housing element of Universal Credit⁵.

Social rented homes are provided by around 150 housing associations and 26 out of 32 local authorities (with 6 authorities no longer managing housing stock due to previous stock transfers to housing associations). We know there is high demand for social homes with an estimated 130,000 (5%) of households on a housing list in 2019, with a further 20,000 (0.7%) of households estimated to have applied for social housing using a choice based letting system within the last year⁶.

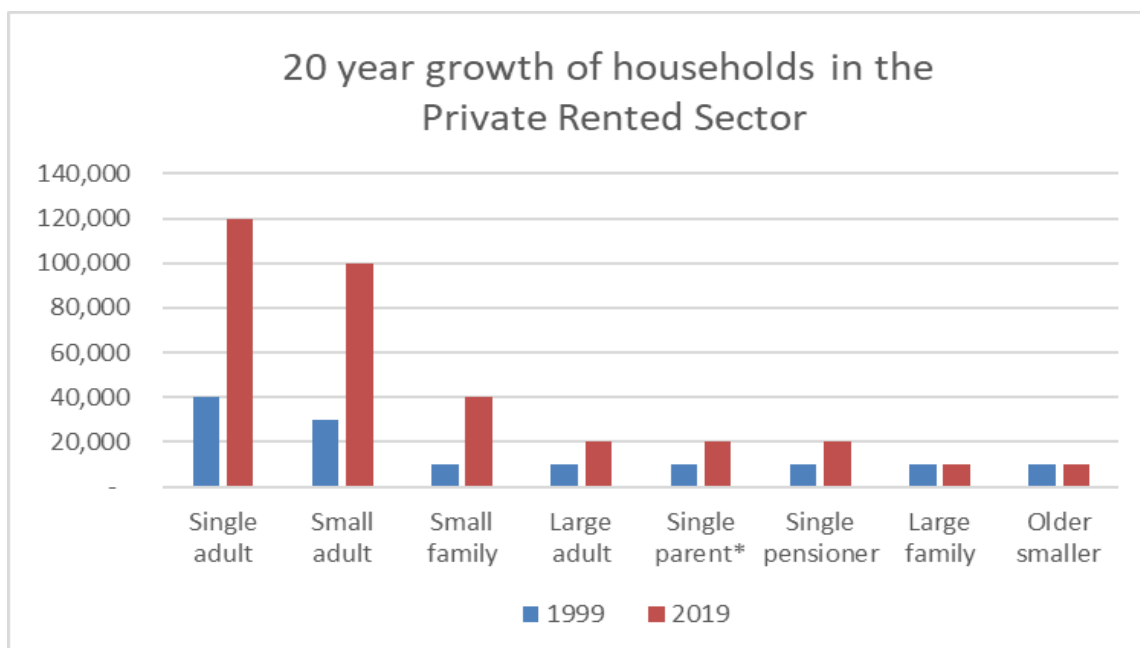
Meanwhile over the past 20 years the private rented sector has grown by more than 2 and a half times from 130,000 to 340,000 households, during which period the percentage of younger households owning with a mortgage decreased over the years from 2003 to 2015, likely due to the increases in house prices from 2002 to 2008 and the subsequent impacts of the financial crisis from 2008 onwards. In 2019, the private rented sector was home to 710,000 people, including 120,000 children, about 13% of the Scottish population.

Much of the growth has been in single adult and small adult⁷ households, although there have also been noticeable increases in other household types, especially small families.

⁵ [SHS Data Explorer \(shinyapps.io\)](#), [Social tenants in Scotland 2017 - gov.scot \(www.gov.scot\)](#)

⁶ Scottish Household Survey 2019 figures - [Scottish household survey 2019: annual report - gov.scot \(www.gov.scot\)](#)

⁷ Contains two adults of non-pensionable age and no children.



There is more variation in experience and circumstances among those living in the private rented sector. Whilst the private rented sector is dominated by younger households, there are a mix of household types living in the sector, with over a third (37%) having a household income of £20,000 or less, over a fifth (22%) of households having children, almost a fifth (17%) of adults being in further or higher education, and 8% of adults being retired from work.

In the social rented sector, an estimated 54% of households have a highest income householder who is female, with the equivalent percentage for private renting households being 43%⁸. Scottish Household Survey findings for 2019 show that 53% of householders in the private rented sector are under 35 years old (based on the HH), and that 59% of households in the social rented sector in Scotland have someone living with a long term physical or mental health condition or illness⁹. The findings also show that 37% of private rented sector households and 60% of social rented sector households have a net household income of £20,000 or under.

The experience of affordability within the private rented sector is also likely to be very different for tenants with lower incomes compared to the tenants with higher incomes. Over the latest period 2017-20, private rented sector households in the lowest income quintile were paying an average of almost half (47%) of their household income on housing costs, compared to only 17% for private rented sector households in the highest income quintile¹⁰.

Housing experiences for minority ethnic households

As highlighted in a recent evidence review of the housing needs of minority ethnic groups in Scotland¹¹, the minority ethnic population in Scotland is not a homogenous

⁸ <https://www.gov.scot/publications/social-tenants-scotland-2017/pages/1/>

⁹ [SHS Data Explorer \(shinyapps.io\)](https://shinyapps.io/shs-data-explorer/)

¹⁰ [Additional poverty analysis 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/additional-poverty-analysis-2021/pages/1/)

¹¹ [Housing needs of minority ethnic groups: evidence review - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/housing-needs-of-minority-ethnic-groups-evidence-review/pages/1/)

group and each ethnic group has differing practical and cultural needs, which often vary from white Scottish/British households. Evidence suggests that, in respect of tenure, the private rented sector can offer greater flexibility and choice for some minority ethnic groups. However, there are indications that the specific housing needs of some minority ethnic groups are not being fully met. There is evidence that a higher proportion of minority ethnic highest income householder (HIH) households had some level of disrepair to the dwelling and overcrowding for minority ethnic HIH households was a particular issue. This is likely due to higher rates of disrepair found in the private rented sector combined with the higher prevalence of minority ethnic households in this tenure.

Minority ethnic households are more likely to live in the private rented sector and on the whole are less likely to live in the social rented sector or in owner occupation than white Scottish/British households. Combined Scottish Household Survey data from 2017-2019 indicates that where the HIH is from an ethnic minority group, households were more likely to be living in the private rented sector than white Scottish/British HIH households. Depending on ethnic group, 32-50% of minority ethnic households live in the Private Rented Sector, compared to 11% of white Scottish/British households.

People from minority ethnic groups are also more likely to be living in relative poverty after housing costs than people from the 'White – British' (including white Scottish) group. In 2015-20 the poverty rate was 41% for the 'Asian or Asian British' ethnic groups, and 43% for 'Mixed, Black or Black British and Other' ethnic groups, compared with 24% for 'White - Other' and 18% for 'White - British'¹².

Secondary analysis of the Scottish House Condition Survey (SHCS) found indications that occupancy levels in minority ethnic HIH households were much higher than in white Scottish/British HIH households and, as a consequence, these households were more likely to be overcrowded. Some minority ethnic households contained larger families, with 3 or more dependent children, or engaged in extended family living. For these families, a lack of affordable larger properties in the private rented sector often meant living in housing which didn't meet their need for space.

For some ethnic groups, the risk of experiencing homelessness may be higher. 13% of main applicants in households assessed as homeless/threatened with homelessness had a reported ethnicity other than 'white'; this compares to only 5% of the Scottish (adult) population. Factors that increased the risk of experiencing homelessness were experiences of domestic abuse and recent arrival in the country.

Although evidence in Scotland is limited, some UK studies have shown that while individuals from minority ethnic communities face common housing problems and may find accessing services difficult, certain groups can face particular challenges where ethnicity intersects with other protected characteristics. In particular, minority ethnic women and older people may face particular challenges in accessing and securing housing. For some minority ethnic women, isolation, language difficulties and experiences of racism, may increase their risk of experiencing homelessness or prevent them from escaping domestic abuse. With regards to older people, a lack of

¹² [Poverty and Income Inequality in Scotland 2017-20 - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/consultation-papers/collections/documents/2017-20-Poverty-and-Income-Inequality-in-Scotland-2017-20.pdf)

language skills, low awareness of housing services and mobility issues often left them in accommodation which was unsuitable and did not fully meet their needs.

A recent evidence review by the Scottish Government found limited evidence on the ways in which ethnicity intersects with disability. However, data from the Scottish Survey Core Questions 2018 indicates that minority ethnic groups were less likely to report that they were living with a limiting long-term physical or mental health condition than their white Scottish/British counterparts. Although, these lower levels may, in part, be attributable to the younger age profile of some minority ethnic groups.

Housing experiences for people with disabilities

A Scottish Government report from 2016 on housing pathways for people with disabilities found three key issues affected their housing experiences, including a lack of suitable housing; struggles accessing and maintaining support; and the expectations of housing officers, care professionals and parents. Positive housing experiences for people with disabilities were seen to be characterised by five factors, including location; space; participation (including choice in housing decisions); information; and social and emotional understanding¹³.

The report showed that unsuitable housing can leave disabled people and/or their carers 'trapped' within their home and this feeling can lead to poor mental health. Housing should allow its occupants as much independence as possible and greater control and choice on how they live.

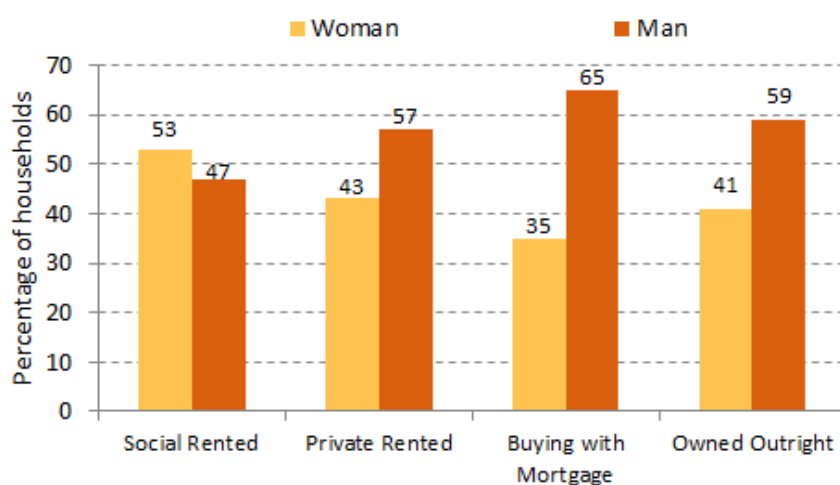
Housing experiences for women

Rental experiences can also have a gendered dimension. According to the Wealth in Scotland report¹⁴, lone parents (of whom 76% in Scotland are women) and working-aged women with no children are the least likely groups to own any property. According to the Scottish Household Survey, households where women are the highest earner are less likely to own or rent a private property than those where men are the highest earner, and are overrepresented in the social rented sector (see chart below).

¹³ [Understanding Disabled People's Housing Pathways: Initial Insights \(webarchive.org.uk\)](https://web.archive.org)

¹⁴ [Wealth in Scotland 2006-2018 \(data.gov.scot\)](https://data.gov.scot)

Gender of households (by highest income householder), 2019, by tenure



Source: Scottish Government analysis of Scottish Household Survey data, 2019.

Note that the question on gender includes an additional response category of 'in another way', although this category hasn't been presented in this chart due to the small percentages of responses involved.

Within Scotland, single women are more likely to be recipients of Housing Benefit than single men. Whilst a precise gender breakdown isn't available for other household types on Housing Benefit or for households receiving the housing element of Universal Credit, the available data suggests that it is likely that women in Scotland are overall more likely to be in receipt of Housing Benefit or the housing element of Universal Credit than men¹⁵. Additionally, although the gender pay gap in Scotland is lower than that of the UK more widely, its continued existence means that women are likely to pay proportionately more of their income to obtain a mortgage.

In a 2020 review of evidence related to Gender, Housing and Homelessness in Scotland, Engender¹⁶ found that women's access to adequate and safe housing is linked to structural and systemic gender inequalities such as women's economic inequalities, violence against women, and women's position in domestic spheres. Within the labour market, women are more likely to be in part time and low paid/precarious work but are also likely to shoulder unequal responsibility for unpaid caring.

More generally, women also spend a higher proportion of net income on housing (and fuel and food)¹⁷. Additionally, while men are more likely to present as homeless, women are more likely to provide reasons for homelessness as violent household dispute, fleeing non-domestic violence or harassment (men are more likely to give a reason of non-violent household dispute).¹⁸

¹⁵ StatXplore Housing Benefit Table 4 - Family Type by Gender <https://stat-xplore.dwp.gov.uk/>

¹⁶ [GENDER-HOUSING-AND-HOMELESSNESS---A-LITERATURE-REVIEW.pdf](https://engender.org.uk/GENDER-HOUSING-AND-HOMELESSNESS---A-LITERATURE-REVIEW.pdf) (engender.org.uk)

¹⁷ <https://scotland.shinyapps.io/sg-equality-evidence-finder/> under fuel and food

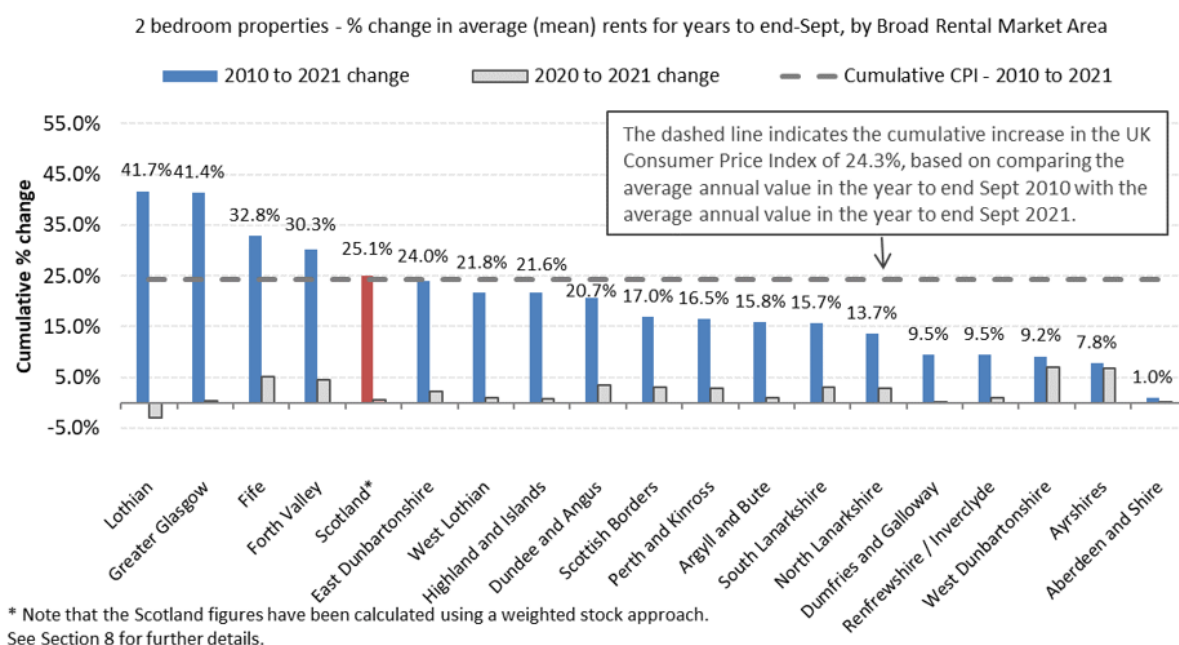
¹⁸ [Homelessness in Scotland: 2020 to 2021 - gov.scot](https://www.gov.scot/Homelessness-in-Scotland-2020-to-2021) (www.gov.scot)

Affordability of rents in the rented sectors

Affordability of rents is a recurrent debate in the rented sector, most obviously in the private rented sector where rents are higher. Above, we highlighted the stark contrasts in rent to income ratios between higher or lower income groups in the private rented sector. Similar contrasts can be seen looking at rents in different market areas.

At a national level, average rents for 2-bedroom properties, the most common property size in the private rented sector, have increased around the rate of inflation over the past 10 years. However these trends have not been uniform across all regions of Scotland.

Lothian and Greater Glasgow have seen the largest cumulative % rises in average 2 bedroom rents between 2010 and 2021, although Lothian has seen a drop of 2.9% in the latest year



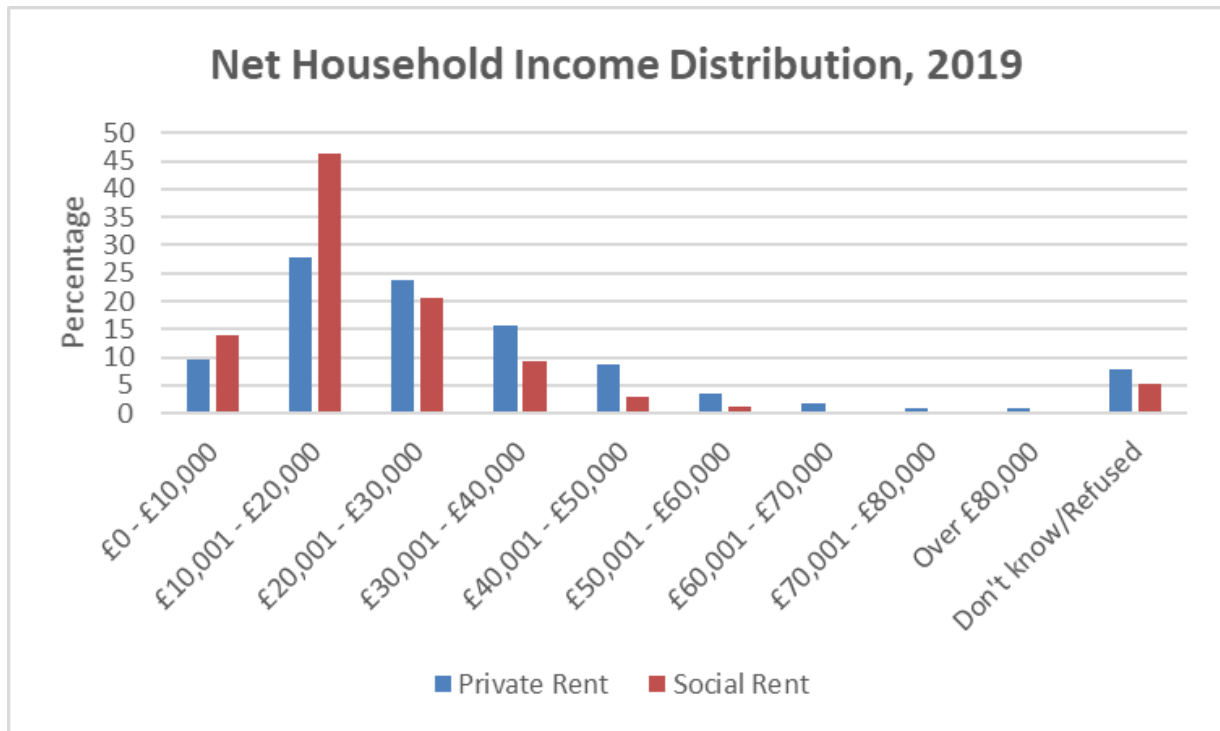
In particular, Lothian and Greater Glasgow have seen rent increases of 41.7% and 41.1% respectively, compared to the corresponding inflation rate of 24.3%. Fife and Forth Valley have also seen above inflation increases, whereas all other regions of Scotland have seen increases below the rate of inflation.

There is a higher risk that some households in the private rented sector areas who have experienced large rental increase or who have limited options but to move into properties with high rents, cannot afford to stay in their homes without having to compromise on other necessities to maintain an acceptable standard of living. As a result, some of these households will be in income poverty, child poverty or fuel poverty after housing costs have been taken into consideration.

At a national level 37% of households in the private rented sector have a net household income of less than £20,000, rising to 61% with less than £30,000. In the social rented sector, 81% of households have a net household income of less than

£30,000. Market rents in the private rented sector are higher than social rents. These two factors combine to result in similar levels of *average* housing affordability across these sectors.

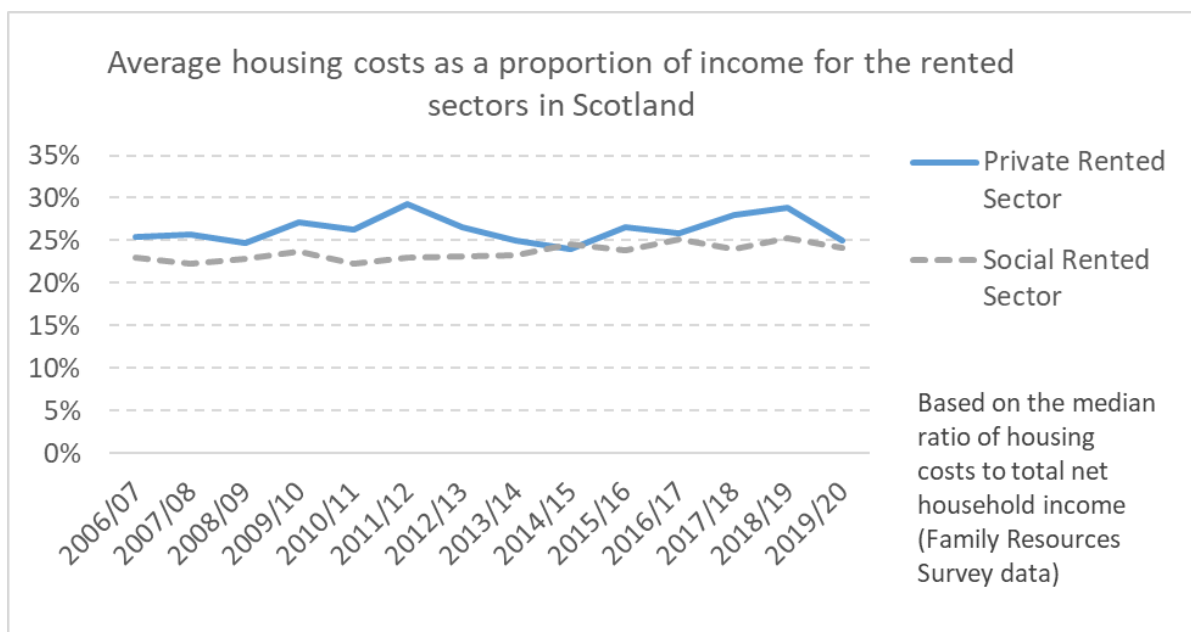
Crucially, it also means that households on a low income in the private rented sector are more likely to struggle with being able to afford their rents than households on a low income in the social sector, especially if living in areas such as Lothian and Greater Glasgow where rents are high and have increased greatly in excess of inflation over the past 10 years.



The situation of high and rapidly increasing rents in the private rented sector, especially in areas with low to moderate household incomes needs will be addressed by the introduction of rent controls as part of this strategy.

At a national level, the average affordability of housing costs (including rents) as a proportion of income has fluctuated for the private rented sector over the past 13 years, with identical proportions of 25% in both 2006/07 and 2019/20.

To some extent this will reflect increases in average incomes of households in the private rented sector, where median income increased 35.9% (over the 10 year period 2007-10 to 2017-20), considerably above the rate of inflation of 24.3%. For much of the past 13 years, affordability in the private rented sector by this measure has been worse than in the social rented sector, although by 2019/20 the two rates had converged again at around 25%.



Although these national average trends are informative, we need to assess subnational levels of housing affordability, where local rents and local incomes can be taken into account. Furthermore, we need to focus in on those households in the private rented sector on lower incomes, who are experiencing most financial hardship from unaffordable rents.

In the social rented sector, average 3 apartment (2 bedroom) rents have risen by 24% between 2013/14 and 2020/21, a larger percentage increase compared to the 12% increase over this period for average 2 bedroom private rents. However social rents remain much lower on average than private sector rents, with the average monthly social housing rent of £359 for a 3 apartment (2 bedroom) property in 2020/21, equating to about half (52%) of the average 2 bedroom monthly private rent of £693. When looking at average affordability of housing costs (including rents) as a proportion of income, this average has remained relatively stable over the past 13 years in the social rented sector, with similar proportions of 23% in 2006/07 and 24% in 2019/20.

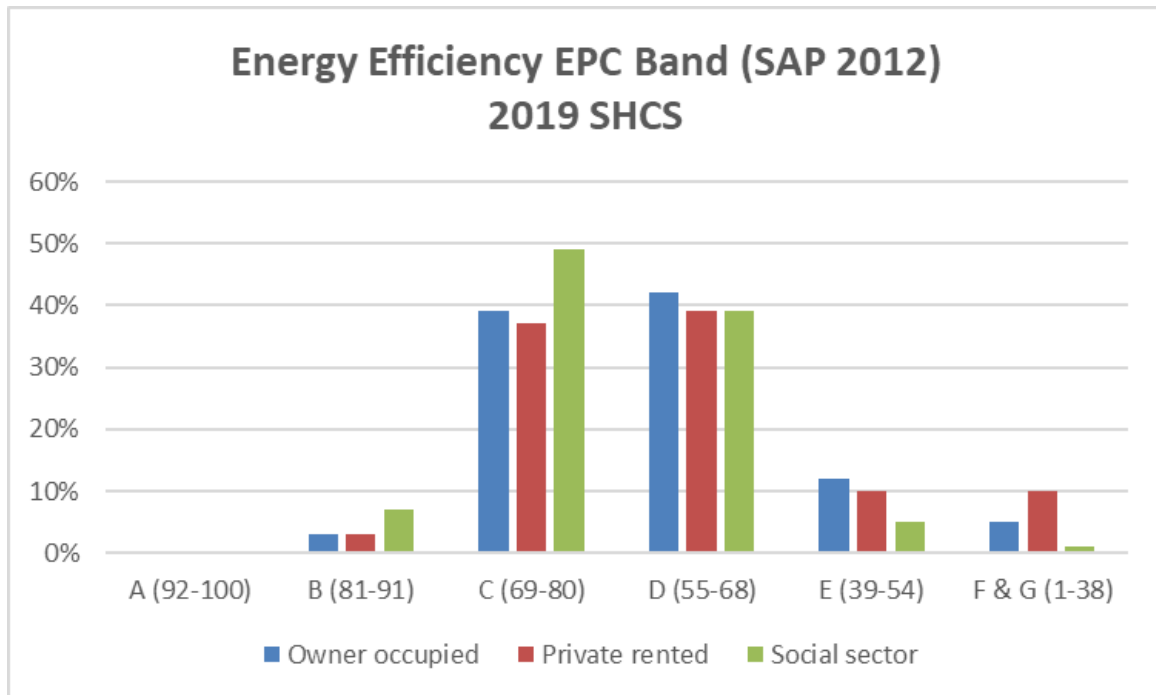
In a similar way to the private rented sector, the experience of affordability in the social rented sector is likely to be very different for tenants with lower incomes compared to the tenants with higher incomes. Over the latest period 2017-20, social rented households in the lowest income quintile were paying an average of 38% of their household income on housing costs, a much higher percentage than for households in higher income quintiles¹⁹.

¹⁹ A median ratio of 38% for social rented households in the lowest income quintile, which compares to a ratio of 25% for quintile 2, 18% for quintile 3, and 13% for quintile 4, with the sample size too small to provide a robust estimate for quintile 5. [Additional poverty analysis 2021 - gov.scot](http://www.gov.scot) (www.gov.scot)

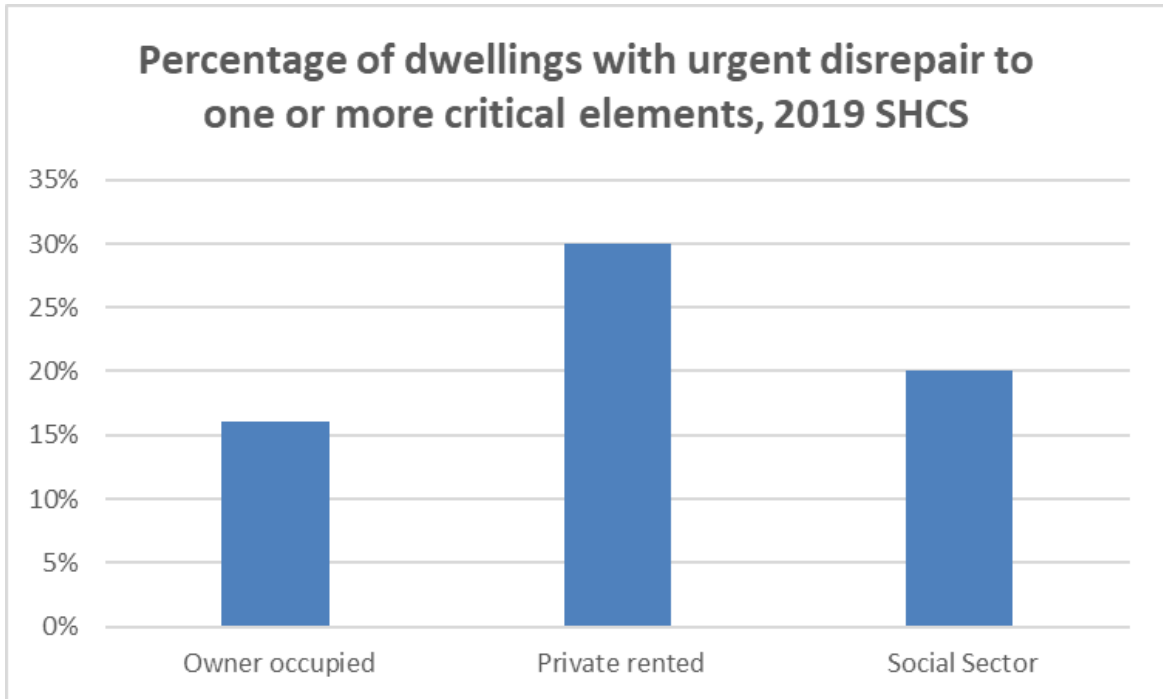
Condition of properties in the rented sector

Overall, the condition of properties in the private rented sector is not as high as in other sectors. This needs to be addressed in order to ensure everyone has a warm, safe, affordable home to live in.

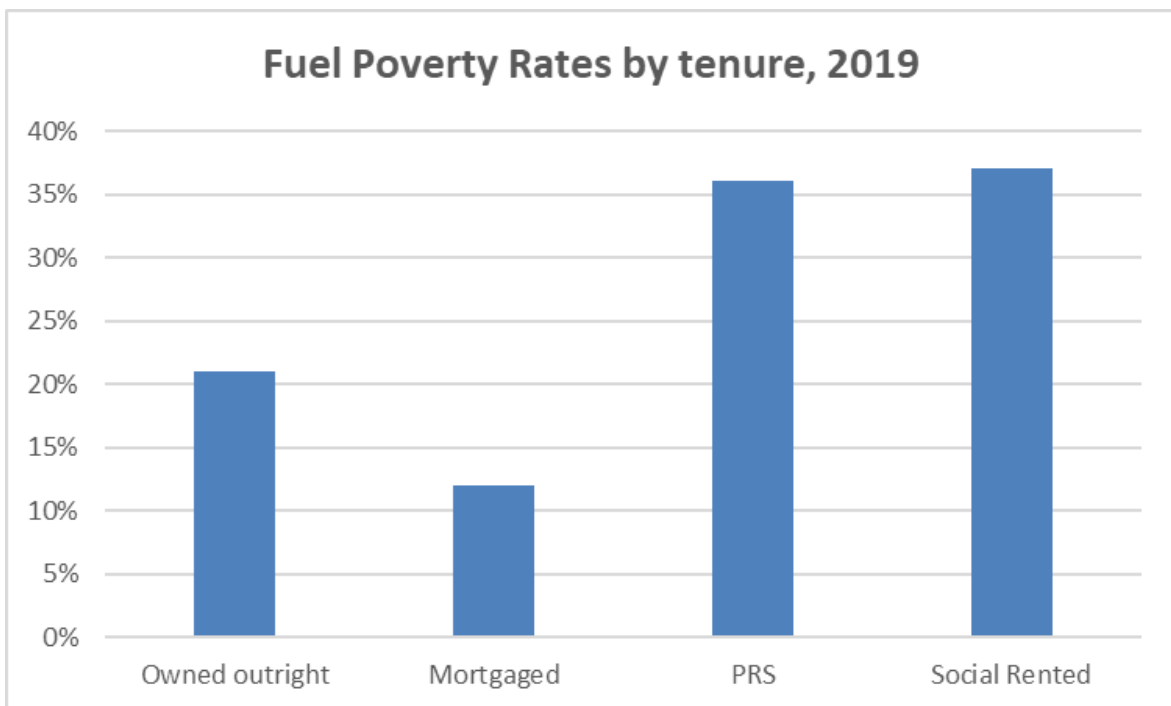
In 2019, 20% of dwellings in the private rented sector were in the lowest energy efficiency bands E,F,G (as measured by Standard Assessment Procedure (SAP) 2012), compared to 17% in owner occupation and 6% in the social rented sector.



30% of dwellings in the private rented sector in 2019 had an urgent disrepair to one or more critical elements, compared to 20% in the social sector and 16% in owner occupation.



In 2019, the fuel poverty rate, which reflects household incomes, rents and other housing costs as well as levels of energy efficiency was 36% in the private rented sector. This is similar to 37% in the social rented sector, but higher than the 12% for owner occupiers with a mortgage and 21% for those who own outright.



Current Regulatory Framework

The social and private rented sectors in Scotland have fundamentally different characteristics and are structured very differently, which must be considered when attempting to align standards, approaches and outcomes.

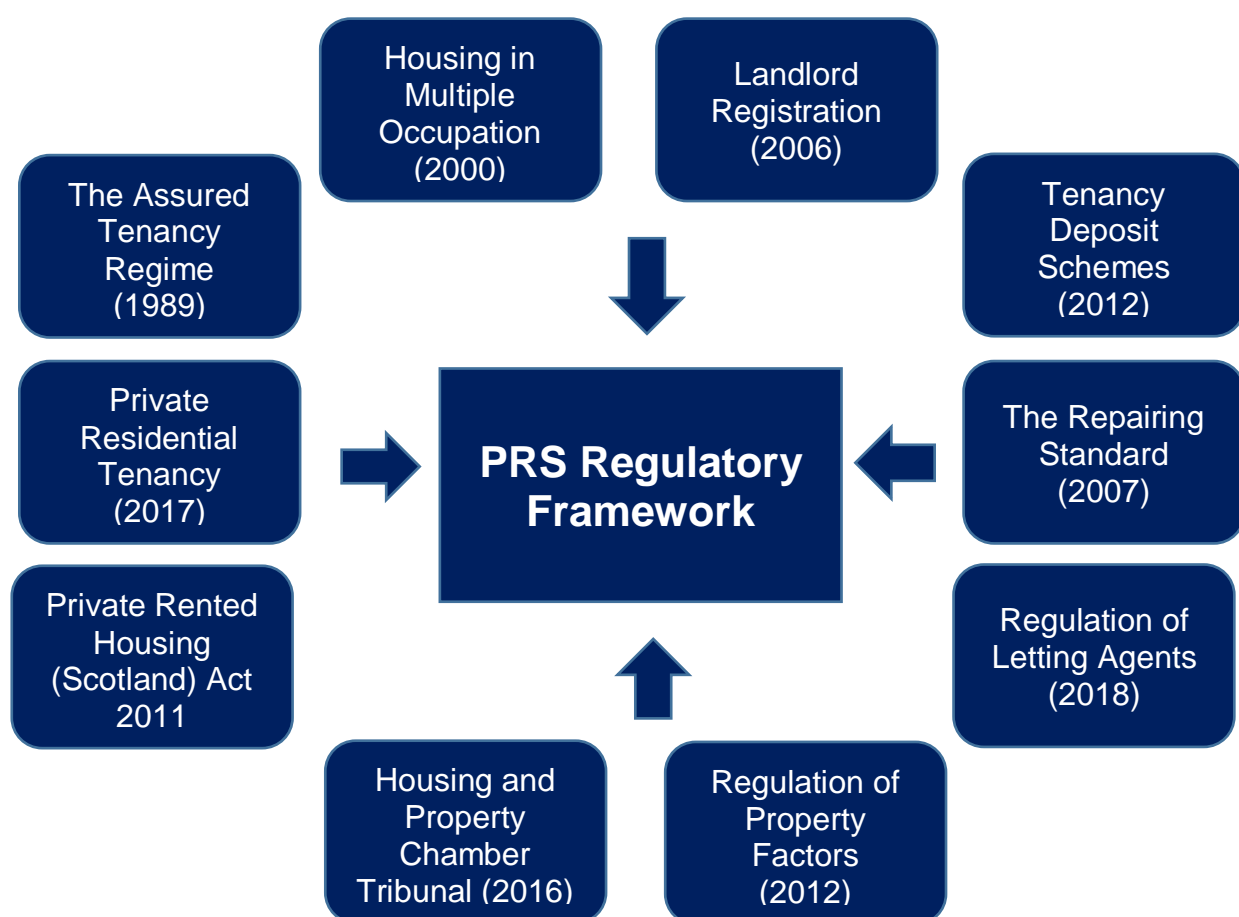
Regulation plays an important role in the effective and efficient functioning of the private and social rented sectors, although there are different opinions on the adequacy or impact of the range of measures that regulate both.

For example, in the private rented sector, the introduction of the Private Residential Tenancy in 2017 saw a range of new rights provided to tenants – however many claim it does not go far enough and measures such as rent adjudication and Rent Pressure Zones have not achieved the desired policy outcome.

In the social rented sector, with the establishment of the independent Scottish Housing Regulator in 2011, the focus of regulation is on landlord self-assurance and the promotion of a strong tenant voice.

Private Rented Sector

The following diagram highlights the main provisions governing regulation of the private rented sector in Scotland, and when they were introduced:



As the diagram illustrates, the framework for regulation of the private rented sector has evolved incrementally over a significant period of time.

Social Rented Sector

Regulation of housing associations has been in place for decades, with the extension to local authority housing and homelessness functions more recently. The Scottish Housing Regulator, which was established by the Housing (Scotland) Act 2010, is responsible for the regulation of all social landlords in Scotland.

The Scottish Housing Regulator is the independent regulator of social landlords (local authorities and Registered Social Landlords) and has the single statutory objective of safeguarding and promoting the interests of current and future tenants of social landlords and other users of social landlord services.

Their regulatory framework sets out how they regulate Registered Social Landlords and the housing and homelessness services provided by local authorities with landlord self-assurance at its heart.

The main duties of the Scottish Housing Regulator are to:

- monitor, assess and report on social landlord performance, particularly against the standards and outcomes in the Scottish Social Housing Charter;
- monitor, assess and report on the financial health and governance of RSLs; and
- support social landlords to become compliant with the regulatory standards and – where appropriate – take intervention action, including statutory intervention, to protect the interests of current and future tenants and other users of social landlord services.



Conclusion

In pursuing significant change in the rented sector to promote greater affordability, quality and fairness it is essential we consider proposals in the context of both the private and social rented sectors, along with the regulatory framework within which they currently operate, as set out in this chapter. This provides a useful overview when considering what further changes we can make to help provide affordable choices and to ensure tenants' rights are enhanced, which we examine in greater detail in the following chapter.

CHAPTER THREE: A NEW DEAL FOR TENANTS

Principles

Whether renting in the private or social sector, all tenants deserve good quality accommodation and a high standard of service from their landlord, which they pay for through their rent. In return tenants should meet the conditions of their tenancy and landlords should be able to take action where serious breaches of tenancy occur.

Establishing high service standards will benefit both tenants and landlords. It strengthens and improves the reputation of the sector overall and in the private rented sector, will encourage good, high quality landlords into the sector whilst removing landlords who treat tenants badly. This is the shift we need to see to ensure the needs of tenants are met.

In the social sector we have a good basis to build on with existing strong tenants' rights, which help to ensure tenants and registered tenant organisations get involved in decision making and that there are opportunities for tenants to challenge rent increases and be involved in rent setting. There is also a clear focus on improving service delivery and standards through the requirement for social landlords to meet the outcomes and standards set out in the Scottish Social Housing Charter. Social landlord performance against the charter is monitored and reported on by the Scottish Housing Regulator on an annual basis and tenants can easily compare their landlord's performance with others. Social housing tenants have clear routes for making complaints, through their landlord's formal complaints procedure, the Scottish Public Sector Ombudsman and, for serious and consistent cases, by reporting a significant performance failure to the Scottish Housing Regulator.

Social sector tenants also have strong security of tenure rights through the Scottish Secure tenancy (introduced by the Housing (Scotland) Act 2001 – 'the 2001 Act') where a tenancy can only be ended in very limited circumstances such as by mutual agreement, by the tenant giving notice or by court order.

Although there are still areas where improvements could be achieved, particularly in supporting engagement across a more diverse range of people living in social homes and those who would like to live there, tenants in the social sector have more opportunities for influence over decision making, service standards, rent levels and value for money than tenants in the private sector in general. For private sector tenants, while many tenants can enjoy good relationships with landlords, it is often a matter of luck and the balance of power to determine quality of accommodation, rent levels and maintenance lies principally with landlords, especially in areas with limited availability of rental choices. We want to do more to ensure that tenants can get the service and quality of accommodation that they pay for. In turn this will help to increase tenure stability for both tenants and landlords. Turnover of tenancies is expensive for landlords, the more comfortable and at home tenants feel the better it is for landlords too.

We value the contribution that good private landlords make to providing good quality homes across Scotland and we are committed to working with both them and tenants in developing effective solutions. So the range of actions we are seeking to implement will benefit both tenants and landlords by encouraging good and supportive landlords, improving the overall professionalism of the sector and better challenging those who do not act fairly and legally towards their tenants.

We have already taken important steps to improve security, stability and predictability for private tenants, balanced with safeguards for landlords, lenders and investors through the Private Housing (Tenancies) (Scotland) Act 2016 ('the 2016 Act') - the most significant change in private renting in Scotland for almost 30 years. We must now build on that solid foundation and through the Shared Policy Programme²⁰ agreed between the Scottish Government and the Scottish Green Party in August 2021, we have committed to delivering on a New Deal for Tenants that will raise standards across the rented sector, ensuring that tenants can feel at home in their properties and be protected from unfair evictions. This chapter outlines some of the immediate reforms we think will help to deliver this.

1. Ensuring tenants' voices are heard with an equalities led approach

We know the rented sector provides a home for a diverse group of people and that understanding the needs and different experiences of tenants is crucial in helping to successfully deliver our vision for Housing to 2040.

That is why Housing to 2040 makes clear the Scottish Government's intention to 'put tenant participation at the heart of developing our new Rented Sector Strategy' and for the private rented sector specifically commits to 'establish a Tenant Participation Panel and consider and consult on what additional tools and materials are needed to support both tenants and landlords more effectively, including an improved understanding of rights and responsibilities across the sector'.

Chapter 2 sets out some of the evidence available about how people with protected characteristics may experience housing, how those needs may differ and what challenges people may face in accessing suitable housing. As we work towards ensuring people can realise the right to an adequate home (chapter 4) and build a housing system that provides people with real options for living in quality, affordable rented accommodation, we must consider how the sector can meet the needs of everyone.

Consultation Question: What particular barriers do people with protected characteristics face in their experience of the rented sector?

These variations demonstrate the importance of ensuring our approach to tenant participation includes people from a range of different backgrounds and includes people who share protected characteristics. In seeking tenant views and an equality led approach we will work with people to explore their experiences of renting in

²⁰ [Scottish Government and Scottish Green Party - Shared Policy Programme - gov.scot](https://www.gov.scot)
(www.gov.scot)

Scotland and ask their views on how the rented sector can support equality in housing outcomes and experiences.

In the Social Rented sector, through powers introduced in the Housing (Scotland) Act 2001, tenants can set up their own Registered Tenant Organisation (RTO). This is an independent organisation set up primarily to represent tenants' housing and related interests.

RTOs give tenant groups a recognised role in the tenant participation process and landlords must consult with registered groups on housing related issues such as, rent setting, changes to management policies, standards of service and stock transfers. This means that RTO's are able to influence the way tenants' homes are managed and work to improve standards and services.

While tenant participation and tenant scrutiny in the social rented sector is well established and developed, tenant participation in the private rented sector is less well developed. In the preparation of this draft strategy we met with Tenant Information Service (TIS), Tenant Participation Advisory Service (TPAS) and tenants' union Living Rent, along with bodies representing landlords and letting agents to hear about existing work to engage tenants.

We believe a tenant participation panel will add to that work by providing a forum in which a wide range of private rented sector tenants, representative of the diverse range of people living within the sector, can share their experience and views and be supported to actively influence national housing policy and legislation in Scotland, contributing to achieving the Scottish Government's vision for Housing to 2040.

ACTION: We will ensure private rented sector tenant participation in the development of the Rented Sector Strategy and establish a Private Rented Sector Tenant Participation panel to provide an effective and long term forum for tenants' involvement in the development and implementation of national policy. We will ensure the panel membership represents diversity within the sector.

For the social rented sector, we will further develop the Regional Networks to represent diversity within the sector by including people with protected characteristics, younger people and people with a wide range of backgrounds (such as those who have experienced homelessness).

1.1. Ensure that we understand tenants' experiences and priorities for change to inform effective policy interventions.

In the social sector we are currently reviewing the Scottish Social Housing Charter. The Charter sets the standards and outcomes that social landlords should be achieving for their tenants and other customers. The feedback to our formal consultation was published recently²¹.

²¹ [Scottish Social Housing Charter: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot/consultation/analysis/Scottish_Social_Housing_Charter_consultation_analysis_-_gov.scot)

It recognised that the introduction of the Charter in 2012 has increased tenant engagement by the development of tenant participation scrutiny activities, increased opportunities for tenants to become involved across housing services, more opportunities for tenants to provide their views and higher levels of communication from landlords. A revised Charter will be in place by April 2022 which will build on this.

In the private rented sector we have already taken steps to meet these commitments. The first phase of this work is focussing on hearing from private rented tenants in developing this draft Rented Sector Strategy consultation document. As part of this, we are working in partnership with the Joseph Rowntree Foundation on a tenant insights project exploring low-income tenants' priorities for change as well as bringing together tenants, housing specialists, landlords and policy makers to agree shared, specific and deliverable recommendations.

The project involving researchers from Edge Hill University and the UK Collaborative Centre for Housing Evidence involves two phases. The first phase of the project comprised a desk-based review collating existing research, initial focus-groups and interviews with renters and a bespoke survey of over 1000 PRS tenants - asking them about their experiences within the sector and their priorities for change. It also held an initial focus group with the Expert Stakeholder Group members to understand some of their priorities for improvements to the PRS, as housing experts. From the survey and qualitative work, some interim findings were developed (November 2021). In 2022, the project will conduct further focus groups and one-to-one interviews and then move to bring together tenants, landlords, housing experts and policy makers to consider, co-design and co-develop some shared recommendations for positive change.

Emerging findings from Phase 1 show a nuanced picture of the experiences of private renters in Scotland. Some key emergent themes from this project, including a survey of over a 1,000 private tenants appear to be around:

- finding a tenancy - a lack of supply of affordable housing;
- affordability – some low-income households are having to prioritise rents at the expense of other, basic necessities; and
- support with disputes - low-income households are less likely to challenge unprofessional practice and to raise disputes with their landlords.

While the research to date has highlighted there are many renters who have had a positive experience(s), there are renters who have not and further analysis is needed to examine the experiences of particular groups. Key issues and priorities highlighted in the focus groups were around:

- affordability;
- professionalism of the sector;
- repairs and property conditions; and
- empowering renters to assert their rights safely.

We have also enlisted the support of the Tenant Information Service and Tenant Participation Advisory Service who have delivered a series of focus groups to

explore the needs and views of a number of other Private Rented Sector tenants including students who rent privately; individuals who rent mid-market, and individuals with agricultural tenancies and tied houses.

5 focus groups were held during October and November 2021 and involved 40 private tenants. There were challenges recruiting individuals in the agricultural sector and for rural workers in tied accommodation. However, discussions were followed up by direct interviews with stakeholder organisations whose membership is drawn from rural tenants, including the Scottish Tenant Farmers Association, the National Farmers Union Scotland, Scottish Land and Estates, the Scottish Gamekeepers Association and the Gamekeepers Welfare Trust.

The following table provides a summary of the main issues raised across all groups within the different tenures:

Affordability	Students who rent privately	Rent controls can potentially address unreasonable rent increases and nurture affordability for students, creating sustainable tenancies. However, it was felt that it may compel a proportion of landlords to sell their properties reducing the overall availability of let-able housing stock.
	Mid-market Rent	Whilst still more affordable than full market rents, it was difficult to save a deposit, especially as the whole value of the housing market was going up. Many of these tenants now feel trapped in limbo – unable to afford to either buy or rent in the same area at market prices, now above the income threshold for a move to another mid-market rent property, and a low priority for the very limited social housing available in the area.
	Agricultural and tied worker tenancies	There were concerns that increasing regulations on standards will have a knock-on consequence of both increasing costs and rents, and also reducing the availability of housing where farm workers need to live, as landlords would become increasingly less interested in letting the houses if requirements become too burdensome.
	Generic focus group	Affordability requires a definition at a national level and local authorities must be empowered with rent controls to hold landlords to account over unacceptable rent levels and increases. By limiting rent increases (rent caps) it will potentially support tenancy sustainment and PRS tenants experiencing poverty.
Security of Tenure	Students who rent privately	Students frequently and reluctantly accept poor quality housing standards and services, and unreasonable rent levels/increases. Any challenge can be met with the threat of eviction.
	Mid-market Rent	Generally, the tenants taking part felt secure in their tenancies and were expecting to be able to remain in their homes for as long as they wanted or needed to stay. Some tenants in homes funded through the National Housing Trust model did not feel secure and were very anxious about their end of tenancy options.
	Agricultural and tied worker tenancies	Around 60-70% of agricultural tenancies are secure, with the remainder on limited duration tenancies. These provide security but may limit access for new entrants to farming. Tenancies let separately to a limited duration commercial farm contract and at market rent risk losing the availability of already limited affordable rented housing in rural areas for agricultural workers. Tied tenants live in their accommodation as part of their employment contract, not through a tenancy agreement. They are on low wages and do not pay additional rent. They have no tenancy rights and are at risk of losing accommodation at short notice if employment ends or at retirement.

	Generic focus group	Landlord acknowledgement and engagement must be monitored independently when tenants raise concerns with property conditions or standards. The introduction of a minimum set standard for communication and/or engagement would improve the landlord-tenant relationship and establish an element of trust, which in turn would improve property conditions and tenancy sustainment.
Property Management	Students who rent privately	Students are often limited in terms of high-quality housing options and availability. Subsequently they are often driven to compromise and “trade-off” counter-balancing affordability against quality.
	Mid-market Rent	Generally, the Mid-market Rent tenants taking part were in relatively new homes and were pleased with standard of their accommodation and had good experience with repairs.
	Agricultural and tied worker tenancies	Tenancies let under a limited duration lease are generally let in fair condition and have clear tenant / landlord repair responsibilities. Responsibilities for secure tenancies are much harder to interpret depending on how leases are set out, which may have been set up generations ago and under very different standards and expectations. Not all secure tenants have a written lease. Conditions for tied tenancy accommodation vary enormously. Whilst conditions overall have improved some are still extremely poor. Tenant are generally reluctant to complain for fear of losing their employment.
	Generic focus group	The Scottish Government and local authorities must do more to proactively monitor the regulation of individual landlord performance to improve property standards and conditions. This will alleviate the negative stigma that surrounds private renting, making it a more viable option for those who wish to consider through choice, rather than reluctant acceptance.

We will learn from this initial phase to help inform the longer term establishment of a Private Rented Sector Tenant Participation Panel, which will help direct and co-produce national housing policy in the future. As highlighted in the feedback, representation must be diverse and take into consideration equalities to be fully representative of Scotland's private rented sector.

We will ensure that we fully consider the impact of any proposed policies on all protected characteristics and engage with relevant stakeholders to further improve our understanding and knowledge. Developing and acting on a deeper understanding of the experiences and needs of people in different equalities groups is essential.

Consultation Question: 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?

1.2. Consider the role of tenant unions in tenant participation and influencing decision making processes and policies.

In some countries, such as Sweden, tenants' unions are a well-established way in which tenants make their collective voice heard, working together to influence decision making; raising awareness of tenant rights; and actively representing and supporting members to exercise their rights in disputes with landlords.

As we look to further develop and embed our approaches to tenant participation we are interested in views on the potential future role tenants' unions could have in supporting tenants to actively participate in decision-making at a national, local and neighbourhood level in Scotland.

In addition, we know that despite measures to strengthen rights and improve access to redress, some tenants still feel unable to challenge poor or illegal practices for fear of the consequences. Tenants' unions can help to empower tenants and actively support them to exercise their rights and we are keen to consider how this type of grassroots support and advocacy can be encouraged.

Consultation Question: 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?

1.3. Awareness of rights and support to exercise them.

Awareness of rights is vital across the rented sector but especially in the private rented sector given the sheer number and diversity of landlords. Ensuring that people living in the private rented sector in particular are aware of their existing rights and feel supported in exercising them, if needed, is crucially important.

That is why we will deliver a further national awareness raising campaign early in 2022 and will seek to continue exploring how we can best ensure people are aware of their rights at all times.

We also want to consider how best we can provide advocacy and advice to people who are, or are seeking to, access the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) in order to exercise those rights.

Consultation Question: How best can we ensure people are aware of their rights and how to exercise them in:

- A. The private rented sector?
- B. The social rented sector?

2. Enhancing rights within the existing tenancy framework

We have set out how we want to improve how tenants can influence policy and practice at national, regional and neighbourhood level. However, that also needs to be the case for individual tenants dealing with individual landlords or agents.

Tenants have clearly benefited from these reforms, such as the additional security of tenure provided by the Private Residential Tenancy, since it came into force in 2017 and this is supported by feedback and research²². However, as it has bedded in, through stakeholder feedback from both tenants and landlords we have identified a number of areas where further improvements could be made.

This was highlighted in a recent baseline research report, *Rent Better*, funded by the Nationwide Foundation into the impact of these changes which ‘shows that most private sector tenants in Scotland feel secure in their properties, particularly when they have a good relationship with their landlord and feel able to pay their rent.’ However, ‘where deprivation and lack of financial power is an issue, tenants in Scotland still feel a sense of precarity²³. The research also found that most private tenants don’t have a good understanding of their rights, which affects their ability to challenge poor or illegal practices, preventing the full benefits of these changes being realised.

Below is detailed a number of reforms to the existing Private Residential Tenancy we will aim to make through legislation and a number of areas we are seeking views on:

2.1. Review and consider potential reforms to the current grounds for repossession under the Private Residential Tenancy.

The Private Residential Tenancy has been in place since December 2017 and the Scottish Government made a commitment to review the [18 grounds for eviction](#) after the tenancy had been in operation for five years. The 18 grounds are:

²² [Research: Evaluating changes to rental agreements in Scotland - Shelter England; Rent-Better-Wave-1-Summary_print.pdf \(nationwidefoundation.org.uk\)](#)

²³ [Rent-Better-Wave-1-Summary_print.pdf \(nationwidefoundation.org.uk\)](#)

1. Landlord intends to sell
2. Property to be sold by lender
3. Landlord intends to refurbish
4. Landlord intends to live in property
5. Family member intends to live in property
6. Landlord intends to use for non-residential purpose
7. Property required for religious purpose
8. Not an employee
9. No longer in need of supported accommodation
10. Not occupying let property
11. Breach of tenancy agreement
12. Rent arrears
13. Criminal behaviour
14. Anti-social behaviour
15. Association with person who has relevant conviction or engaged in relevant anti-social behaviour
16. Landlord has ceased to be registered
17. HMO licence has been revoked
18. Overcrowding statutory notice

All grounds have currently been made discretionary under the emergency Coronavirus legislation, and will remain so until 31 March 2022. As part of the Covid Recovery Bill consultation, we have sought views on making this change permanent, bringing the position in line with the social rented sector.

To understand better the different grounds used to bring tenancies to an end we have looked at cases brought to the Tribunal. In comparison to the number of tenancies the numbers coming to the Tribunal are relatively small. The vast majority of tenancies coming to an end through landlord action, citing grounds, will not proceed to Tribunal so we cannot be sure that the data below represent the use of grounds as a whole. Nevertheless, it can give us some useful insight.

Data from published decisions by the Tribunal was analysed in two stages using data from two 6 month periods, September 2019 - March 2020 and May 2021 – November 2021. On 18 March 2020, the Tribunal postponed all scheduled hearings in response to the Covid-19 pandemic, setting a universal date of postponement of 28 May 2020. On 22 May 2020, a further postponement was made to the 9 July 2020. The first stage of the analysis was conducted using eviction case data from the 6 months prior to the closure of the Tribunal due to the Covid-19 pandemic.

Information on Private Residential Tenancy eviction cases, gathered from published decisions by Tribunal, from September 2019 to March 2020 shows that multiple eviction grounds are often relied upon in each application. The following analysis discusses eviction case data for Private Residential Tenancy evictions only and therefore does not seek to draw conclusions about eviction case outcomes for other forms of tenancies.

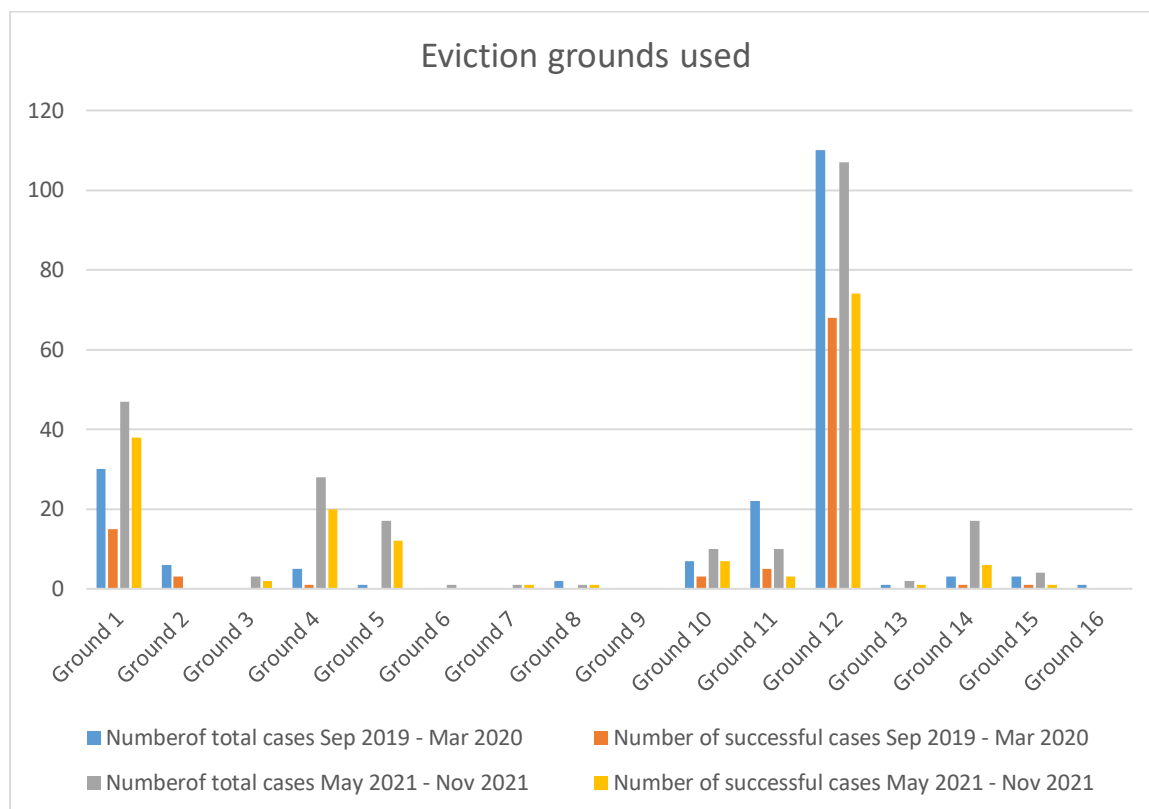
In the September 2019 – March 2020 period, the following grounds were the most commonly used:

- Around 77.5% of cases where a decision had been made, relied on ground 12 (rent arrears) as the main or additional ground. Of these, 61.8% resulted in a successful eviction on the basis of ground 12.
- Around 15.5% of cases where a decision had been made relied on ground 11 (breach of tenancy agreement) as the main or additional ground. Of these, 22.7% were successful on the basis of ground 11. Ground 11 was typically an additional ground and cases often succeeded on another ground, if ground 11 was not successful.
- Around 21.1% of cases where a decision had been made, relied on ground 1 (landlord intends to sell) as the main or additional ground. Of these cases, 50% resulted in a successful eviction on the basis of ground 1.

The above findings represent eviction case outcomes involving a Private Residential Tenancy before the Covid-19 pandemic. The second stage of the analysis of eviction case outcomes using data from May 2021 - November 2021 is currently ongoing. Initial findings from this analysis are presented below alongside the previous analysis from the period September 2019 - March 2020.

The graph below sets out the number of eviction cases alongside the number that were successful in relation to all 18 grounds for both periods.

Chart 2.1 Number of times eviction grounds used



When compared to the September 2019 - March 2020 time period, there are some notable differences in how often grounds were used. Previously, cases most commonly relied on ground 12 “rent arrears”, ground 11 “breach of tenancy agreement” and ground 1 “landlord intends to sell”, with few instances where other grounds were used. The current analysis presents a more varied picture, indicating that cases are relying on a much wider range of grounds than in the previous time period.

Notable differences included:

- There were 201 cases where a decision had been made in the period May 2021 – November 2021 compared to 142 cases where a decision had been made in the September 2019 – March 2020 period. Although some of this increase may be due to an overall higher number of Private Residential Tenancies being used in the private rented sector across the more recent time period, compared with the number of tenants who are still on other previous forms of tenancies.
- Cases were less likely to rely on ground 12 “rent arrears” in the more recent time period (51.9% of submitted cases), compared to 77.5% previously. Although cases relying on ground 12 were slightly more likely to be successful in the most recent time period analysed, 69.2% compared to 61.8% previously.
- A similar number of cases in both periods relied on ground 1 “landlord intends to sell”, with 22.8% of cases relying on this ground compared to 21.1%

previously. However, cases relying on ground 1 were more likely to be successful in the May-November 2021 period, 80.9% compared to 50% previously.

- Cases in the most recent time period were more likely to rely on ground 4 “landlord intends to live in the property”, 13.6% of submitted cases, compared to 3.5% previously.
- Cases in the most recent time period were also more likely to rely on ground 5, “Family member intends to live in the property”, 8.3% of submitted cases, compared to 0.7% previously.

Although there is insufficient evidence to draw firm conclusions at this stage, there is a possibility that an increased reliance on grounds 4 and 5 could be driven by comparatively shorter notice periods (3 months compared to 6 months for most grounds).

Limited research has been carried out to date on the impact of the Private Residential Tenancy and the operation of the grounds for repossession. However, the ‘Rent Better’ research reported there were ‘significant problems for landlords and a sense of discontent’ around the use of ground 12 “rent arrears” – due to the length of time it takes to achieve eviction for rent arrears and the resultant loss of earnings for landlords. The summary report goes on to recommend further consideration of ground 12.

The second most commonly used ground in Tribunal cases was the ‘Landlord intends to sell’ making up around 20% of cases. As part of our review of repossession grounds we want to look at what more we can do to support tenants where the let property is being sold. We know that some landlords sell the property to another landlord with a sitting tenant rather than ending the tenancy; or offer the tenant the opportunity to buy the property themselves. We are interested in exploring how we can encourage more landlords to consider alternatives to ending the tenancy and avoid tenants being required to move in these circumstances – for example, considering how the repossession grounds could minimise disruption to tenants.

In addition, we are aware from stakeholder feedback that since the introduction of the Private Residential Tenancy there has been some confusion regarding whether a landlord could use the eviction ground 6 “Landlord intends to use for non-residential purpose” to evict a tenant in order to use a property for short term holiday let(s).

This is contrary to the original policy intention and we will therefore consider taking legislative action 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.

Assessing what is the correct balance between maintaining tenancies wherever possible and landlords’ rights is crucial to reviewing and considering potential reforms to repossession grounds. To help inform this review, we are seeking feedback on the operation and effectiveness of the current repossession grounds.

Consultation Question: After 4 years of use, how well do you think these grounds are working? Is there anything that you would like to see changed?

Please explain your answer with reference to the relevant ground(s).

Consultation Question: Are there any additional specific grounds for ending a tenancy that you think should be added?

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

Consultation Question: Do you have any views on our proposal to take forward a clarification in relation to the use of ground 6 – 'Landlord intends to use for non-residential purpose'?

2.2 Introduce pre-action protocols on a permanent basis in the private rented sector and revise pre-action requirements in the social rented sector to include a new obligation to ensure domestic abuse has been fully considered before commencing legal action to recover possession of a property for rent arrears.

The Scottish Government's consultation paper "[Covid Recovery: A consultation on public services, justice system and other reforms](#)", sought views to enact the provisions in relation to pre-action requirements and Tribunal discretion – as put in place through the emergency Coronavirus legislation - on a permanent basis.

Pre-action requirements and discretion for the Courts to determine the reasonableness of an eviction case are already permanent features of the social rented sector legislative framework. Making these also permanent in the private rented sector would help us achieve our aims to have tenure neutral outcomes for tenants and will help to ensure that eviction action is always a last resort.

[Pre-action requirements](#) ensure that prior to seeking a repossession on the grounds of rent arrears, private landlords must make reasonable efforts to work with tenants to manage arrears. This measure formalises the steps landlords should take when working with tenants to manage arrears, helping to sustain tenancies. In addition, should the landlord make an application to the Tribunal to repossess the property, the Tribunal is required to take account of a landlord's compliance with the pre-action requirements in deciding whether to grant an eviction order.

Alongside making these pre-action requirements permanent, the consultation sought views on permanently giving the Tribunal discretion in either all repossession cases; or restricting Tribunal discretion to rent arrears cases only.

If a private landlord serves a notice to leave and the tenant chooses not to leave the property, a private landlord must go to the Tribunal for an eviction order. Under normal tenancy legislation, many of the eviction grounds are mandatory, meaning a Tribunal has to grant an eviction order if all the requirements have been met. Emergency legislation currently gives the Tribunal discretion to take all circumstances into account in deciding whether it is reasonable to issue an eviction order or not.

The Covid Recovery consultation has now closed and careful consideration is being given to responses on making both pre-action requirements and discretion for the Tribunal permanent measures in the forthcoming Covid Recovery Bill. However, as the Scottish Ministers have already committed to bring forward further housing legislation in this parliamentary term, this provides an additional opportunity to refine these provisions should they be taken forward, if required. For example, we could consider whether to require a landlord to make a homelessness prevention referral to the local authority as part of the pre-action protocols (with the tenant's consent) – similar to the current Section 11 notification, but earlier in the process, and therefore proactively notifying a local authority before eviction action commences.

We also want to take forward further work to refine the existing Social Rented Sector pre-action requirements, which have been in place since 2012. This could include refinements to take account of changes made to rent arrears processes by Universal Credit and to ensure the impact of domestic abuse is taken into account in rent arrears cases.

Consultation Question: 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?

Consultation Question: Can you provide any examples/case studies of where the pre-action requirements have worked well in practice?

2.3 Rented sector and gender based violence

Everyone should feel safe in their home. Having safe accommodation is fundamental for women's safety and wellbeing. However, violence against women (VAW) in all forms can have a significant impact on housing needs and experiences.

Domestic abuse is the most common reason for women to make a homelessness application and we also recognise that other forms of abuse, such as sexual violence and "honour based" violence, may leave victims unsafe in their homes. The recent legislative changes with the Domestic Abuse (Protection) (Scotland) Act 2021, when enacted, will give social landlords the power to initiate eviction proceedings against a perpetrator of domestic abuse, enabling victims to remain in the family home, rather than the perpetrator of domestic abuse, where an appropriate order has been granted by the court. This Rented Sector Strategy will support work to extend this to tenants in the private rented sector as well.

The specific harms of commercial sexual exploitation (CSE) as a form of VAW, and particularly the exchange of sex for rent, are important in the context of the Private Rented Sector; this is an example of how housing can be a pivotal factor in pushing women into CSE and act as a barrier to them exiting.

Sex for rent is not the only harmful way in which housing can be interlinked with commercial sexual exploitation. People involved in sex work, including women subject to CSE, may have difficulty in providing employment information and references which makes them vulnerable to exploitation and not having a legal tenancy agreement. Overall this lack of choice and control and risk of exploitation

from landlords can result in discrimination against people involved in sex work and in particular can leave women vulnerable to starting to exchange or sell sex or not being able to exit.

The terms “immoral purposes” and “brothel keeping” in the model [Scottish Secure Tenancy Agreement](#) and [Private Residential Tenancy: Model Agreement](#) have also been used to control women or, in some cases, evict people solely because they are involved in sex work and we will support work to review these terms to provide clarity and consistent government messaging for both landlords and tenants.

Women’s right to housing could be better realised by the provision of mainstream support. The vulnerabilities faced by some women can be extremely complex and varied and looking at housing issues in isolation is unlikely to overcome them. While noting the range of views on these issues, we will support work to review legislation to tackle commercial sexual exploitation and to consider as part of a wider package of support, housing measures to that support women to exit.

Consultation Question: What measures could be implemented to support people involved in sex work, including women subject to commercial sexual exploitation in the rented sector?

2.4. Ensure that:

- **a joint tenant can end their interest in a private rented sector tenancy; and**
- **joint tenants who experience domestic abuse in a private rented sector tenancy, can, where appropriate, remain in the family home as a sole tenant.**

We want to improve housing outcomes for women and children experiencing domestic abuse in private housing. As detailed in the previous section, the Domestic Abuse (Protection) (Scotland) Act 2021 will give social landlords extra powers, and the Domestic Abuse Homelessness Prevention Pathway Working Group set out recommendations for social housing in 2019, which are now being taken forward by the Scottish Government and partners. Next year this group will take forward a program of work to consider the needs of women and children in private housing and make recommendations for change.

The recent legislative changes with the Domestic Abuse (Protection) (Scotland) Act 2021, when enacted, will give social landlords the power to initiate eviction proceedings against a perpetrator of domestic abuse, enabling victims to remain in the family home, rather than the perpetrator of domestic abuse, where an appropriate order has been granted by the court.

From previous stakeholder engagement in this area we are aware of two specific tenancy issues that we wish to address in advance of this work and have committed to take action on in Housing to 2040 - joint tenants experiencing domestic abuse can end a joint tenancy in the private rented sector and, where appropriate, can remain in the family home as a sole tenant.

A joint tenant can end their interest in a private rented sector tenancy

Under the Private Residential Tenancy, introduced under the 2016 Act, where there is more than one person named on a tenancy agreement as the tenant, the tenancy will be a joint tenancy. This means that each person is responsible on their own individually - as well as equally along with all of the others - for all of the payments and other things the tenant is required to do under the tenancy. For example, if any of the tenants in a joint tenancy fell into rent arrears, the landlord could ask one of the other named tenants to pay the money owed. That person must pay the landlord the full sum that is owed and then try to get the other people who are also joint tenants to repay them their share.

However, under a Private Residential Tenancy one joint tenant cannot terminate a joint tenancy on behalf of all the joint tenants. This ensures that no tenant can inadvertently be made homeless. To end a Private Residential Tenancy, all joint tenants must agree and sign the Notice to Leave, giving the landlord at least 28 days' notice in writing (unless a shorter notice period has been agreed). If a landlord receives Notice to Leave from only one joint tenant, that notice will not have the effect of terminating the tenancy and the joint Private Residential Tenancy will continue, with all parties remaining liable.

If the other joint tenants don't want to leave, they can try to negotiate a new agreement with the landlord's permission. For example, they can seek to arrange for:

- another tenant to move in to replace the person who wants to leave and the tenancy is either assigned to the new tenant or a new tenancy is created, or
- any other joint tenants can decide to stay on and pay the extra rent themselves through a revised or new tenancy.

However, if the other joint tenant(s) decide to stay on and not to release the tenant that wishes to leave, then all tenants, including the tenant that has left will continue to be jointly and severally liable regardless of whether they are living in the property.

We are aware of situations where, for example, tenants are effectively 'trapped' in a tenancy whilst experiencing a complete relationship breakdown with other joint tenants but are unable to end their interest in the tenancy as other joint tenants are refusing to bring the tenancy to an end. The original policy intention was to prevent one, or more, of the joint tenants being made unintentionally homeless without their knowledge. However, in practice this may be causing unintentional harm.

These issues are particularly acute for those who experience domestic abuse, but not limited to people in these circumstances. For example, due to the ongoing joint and several liability for rent and any other financial obligations, including existing and future rent arrears, preventing their partner from ending their interest in the tenancy, even if they have moved out, can be one form of abusive and coercive behaviour. This can enable the abusive partner to continue to exert control and perpetrate abuse when they are no longer living together.

In the social rented sector, provisions under the Housing (Scotland) Act 2001, as amended, allow a joint tenant to terminate their interest in a joint tenancy. This

means that if a joint tenant wishes to leave in the social rented sector, they must give the other joint tenant(s) and their landlord four weeks' notice in writing. After this notice period, the departing tenant no longer has any liability for the property, although will remain jointly liable for any rent and other tenancy obligations before their interest in the tenancy ended.

We believe there is a need to make legislative changes to the operation of the Private Residential Tenancy to ensure that a joint tenant can end their interest in the tenancy without the agreement of the other joint tenant(s). We think this change will be of particular benefit to those experiencing domestic abuse.

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

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

Consultation Question: In the social rented sector, the notice period required for a joint tenant to end their interest is four weeks.

- A. Should a similar 4 weeks' notice period apply for a joint tenant in the private rented sector to give to their landlord and other joint tenant(s) to end their interest in the tenancy?

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

- 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?

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

Consultation Question: 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.

Joint tenants who experience domestic abuse in the private rented sector, where appropriate, can remain in the family home as a sole tenant

We want to ensure that private tenants who experience domestic abuse can, where appropriate, remain in the family home. In the social rented sector much work has already been undertaken to support and protect joint tenants being abused and enhancing of their rights in relation the ending and transferring of tenancies.

Once implemented (expected by the end of 2022) the social housing tenancy provisions in the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) will give social landlords greater control to transfer tenancies to a victim/survivor, upholding their

rights to remain in the family home and to take a more proactive role in supporting and protecting victims/survivors of domestic abuse.

When commenced, the provisions will allow social landlords to apply to the court to end a sole tenancy of a perpetrator of domestic abuse or end a perpetrator's interest in a joint tenancy in certain circumstances enabling the victim to remain in the family home. The new powers allow landlords to initiate action to transfer the tenancy and reinforces social housing landlords' zero tolerance of domestic abuse.

There are a number of conditions that must be met to allow these grounds to be used, including that the property is the victim's only or principle home, that they wish to remain living there and that the parties have been in a co-habiting relationship for at least 6 of the 12 months preceding any action being taken by the landlord.

We want to ensure that private tenants who experience domestic abuse are offered the same protection and options to remain/return to the family home as in the social rented sector. We are therefore interested in views on introducing a similar ground to enable a private landlord to apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) to transfer a tenancy to enable a survivor of domestic abuse to remain in the family home as a sole tenant.

We recognise that many small private landlords may be less equipped to support their tenants where domestic abuse occurs and would also be interested in how we can build private landlords' capacity to support tenants where domestic abuse occurs.

Consultation Question: Should we introduce a similar ground to that in the social sector, to enable private landlords to initiate eviction proceedings to end a perpetrator's 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, No, Don't know - Please explain your answer.

Consultation Question: 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?

Consultation Question: 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?

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

Consultation Question: How can we help improve the immediate and longer term housing outcomes of domestic abuse victims living in the private rented sector?

2.5 Amendment to the Private Residential Tenancy rent adjudication process

Chapter Four of this draft Strategy seeks views on action that can be taken in relation to affordability and rent regulation. However, we believe more immediate reform could be made to the current rent adjudication process²⁴ within the private rented sector to support this aim.

As part of the adjudication process, the rent officer determining the case will set the rent level based on a range of information about the property and has the ability to increase the rent if they decide it should be higher, as well as decreasing it if they think it's too high.

To date, there has been only a small number of rent adjudication applications to Rent Service Scotland with only 89 rent adjudication applications between 1 December 2017 and 30 November 2021. Many suggest this is because tenants are deterred from challenging a rent increase because there is a risk that the Rent Officer (or the Tribunal, on appeal) could increase the rent above that being requested by a landlord to market value.

We now wish to remove this risk to ensure a Rent Officer or Tribunal can only agree to the rent increase proposed by the landlord or agree a lower increase upon receiving an application from a tenant.

ACTION: We will take legislative action to ensure that a Rent Officer or Tribunal will only be able to agree the proposed rent increase, or lower the rent increase, as part of the existing Rent Adjudication process.

2.6 Tenancy Deposit Schemes (TDS) – use unclaimed deposits to improve and benefit the private rented sector

Where a private landlord asks for a tenant to pay a tenancy deposit, the deposit must be lodged with one of three independent schemes. These three approved tenancy deposit schemes have been operating in Scotland since 2012. Monitoring of the schemes has highlighted the previously unforeseen issue of unclaimed deposits. An unclaimed deposit occurs where a landlord or letting agent notify one of the three approved tenancy deposit schemes that a tenancy has ended and the amount of deposit that they think should be returned to the tenant. This should result in the tenant being repaid the money. However, it has proved difficult in practice for the schemes to contact the tenant to return the deposit. There are currently 13,554 unclaimed deposits amounting to approximately £3.5 million as at October 2021.

A review of tenancy deposit schemes²⁵ was carried out in 2018 and explored this issue further. It found that the majority of unclaimed deposits ‘belong to students, in particular, overseas students who regularly return home without claiming their money back from the schemes. In addition, some of the larger unclaimed deposits relate to tenancies taken out by companies on behalf of their employees.’

²⁴ [Apply to Rent Service Scotland about your rent increase - mygov.scot](#)

²⁵ [Tenancy Deposit Scheme: review - gov.scot \(www.gov.scot\)](#)

In response to this issue, each of the schemes takes proactive steps to reunite tenants with their deposit, for example emailing, sending letters, calling, texting and awareness raising campaigns to ensure tenants are aware of what they need to do to claim their deposit back. Unfortunately, returning deposits becomes more difficult where contact details are out of date, for example when a University e-mail address has been used. Despite this work, a large number of deposits remain unclaimed.

As part of the review, the schemes were asked for their views on unclaimed deposits. They indicated at that time that they ‘agreed in principle with the Scottish Government’s proposal to explore the reinvestment of unclaimed deposits after a five-year expiry period with no current risk to business viability.’

The review also asked differing questions from landlord and tenants on unclaimed deposits. Tenants were asked about their experience of getting their deposit back and if they, or anyone they knew, had ended a tenancy in the last 5 years without reclaiming the deposit. 85% had not experienced this and did not know someone who had.

Landlords were asked specifically for their views on reinvesting unclaimed deposits in the private rented sector in Scotland after 5 years. 55% of landlords did not object to money being invested in this way and 12% proposed it should be invested to the benefit of others in a different way, for example homelessness, 18% objected but did not give an alternative suggestion and 14% thought the money should go to the landlord.

Unclaimed deposits continue to be protected by the schemes and there is no statutory limit for this. We now want to address this issue and propose legislating to enable the reinvestment of these deposits. Given these deposits should be returned to private tenants, we think it is only right that any reinvestment is to the benefit of tenants living in the private rented sector – for example, to fund the provision of additional tenant advice or advocacy services, or to support the development of tenants unions or other forms of representation in Scotland.

To ensure tenants have sufficient time to claim back the deposit we propose this action would only be taken after a period of 5 years has elapsed; and where all other reasonable efforts to reunite the tenant with their deposit has been exhausted.

Consultation Question: 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, No, Don't know - Please explain your answer.

3. Greater flexibility to personalise a rented home

Private rented tenants, especially those living in rented accommodation for a significant period of time, would like more opportunity to personalise it so it feels more like their home in the way that both owner occupiers and social rented tenants are already able to.

People would also like the option of keeping pet, and for those who already have a pet, it can often be difficult to find suitable private rented accommodation where pets are allowed.

Of course to achieve this there must be a balance between the right of tenants to treat the property as their home and any costs associated with ensuring the property is returned to an equivalent standard to when first let at the end of the tenancy.

Current Position

In the table below is a summary of where responsibility and costs currently lie within the different tenures:

	PRS – Private Residential Tenancy	Social Sector – Model Scottish Secure Tenancy Agreement	Owner occupied
Pets	Pets are generally allowed only by explicit written agreement of the landlord and landlords may impose conditions where it is granted. If there is damage cause by pets, it is likely to be taken out of the deposit. Risk of increased costs caused by damage increases with a furnished property. There may also be limitations in the deeds or rules associated with the property.	Pets are also allowed only by agreement of the landlord but permission is usually granted unless there are reasonable reasons for not doing so. As properties in the social sector are generally unfurnished, the costs of any damage to furniture or decoration is borne by the tenant. Landlords may designate particular types of property as being unsuitable for a particular type of pet and this will be reflected in the tenancy agreement at the time a tenancy is offered.	Owners generally have freedom to keep pets if they choose and all costs/damages are borne by them. However, restrictions may exist in the property deeds (for example in a flat). All pet owners should consider the suitability of the accommodation for different animals and be mindful of not causing a nuisance to neighbours.
Internal Decoration	Good decorative order should be maintained and paid for by the landlord. The tenant can decorate	Landlords will have a minimum empty house standard in place, generally agreed with	Responsibility and cost of the owner

	only with the Landlord's written permission and landlords can claim from the tenant's deposit where there has been damage to the walls (for example putting up pictures). Properties come both furnished and unfurnished.	their tenants, which includes the standard of decoration at point of allocation. Tenants are responsible for decoration and furnishings (some landlords provide decoration grants as part of their empty house standard)	
Adaptations	Cannot be unreasonably refused	Cannot be unreasonably refused	Owner responsibility

Considerations

Any policy which creates greater flexibility in respect of a tenant personalising a property will most likely affect the Convention rights of landlords and tenants²⁶. Accordingly, any such policy will need to demonstrate an appropriate balance between the rights of landlords and tenants.

In considering how to give renters more flexibility in personalising their homes and keeping pets there are a number of considerations and differences in the tenures that need to be taken into account, including:

- Social landlords do not pay for decoration during the course of a tenancy (above a minimum empty house standard) and therefore costs for any damage to a tenant's furniture or decoration will be borne by the tenant. Social landlords may be financially liable for reinstatement of damage and decoration to allow the property to be re-let but can recharge tenants for damage to fittings such as kitchen units, bathroom suites and internal doors and where a pet has been kept they may have to pay for a deep clean between tenancies. At the end of a tenancy social housing tenants can also apply for financial compensation for improvements they have made to the property, subject to specific criteria.
- Private landlords are financially responsible for decoration and damage. This can be recouped through the deposit but any costs above the deposit value (which is set by legislation), will often be borne by them. Should the choice of painting and decorating schemes be unusual, the landlord may need to redecorate at the end of a tenancy in order to attract another tenant and even if a pet has caused no damage to the property the landlord may need to deep clean between tenancies to avoid issues with allergies. Landlords may also be concerned about additional damage if the painting is not done professionally.
- Tenancies in the private rented sector tend to be shorter this could lead to increased costs for landlords of having to redecorate or deep clean soft furnishings frequently. Against that, it is perhaps less likely that very short term tenants would wish to redecorate anyway.

²⁶ [Guide on Article 1 of Protocol No. 1 - Protection of property \(coe.int\)](#)

Clearly, there is a balance to be struck and it may be necessary to consider what is reasonable and this could also depend on the length of the tenancy. For example, if a tenant leaves after 5 years it may be reasonable for a landlord to redecorate as part of routine maintenance and with a shorter tenancy it may be reasonable for the tenant to return the property to the original state of decoration, allowing a landlord to re-let without further expense.

3.1 Allowing people to keep pets

We understand that pets are an important part of the family for many and believe private tenants should be able to benefit from the experience of pet ownership, as is the case in other tenures. Studies have consistently shown that owning a pet comes with many benefits for health and wellbeing. Even so, there remains a reluctance amongst some private landlords to allow pets due to perceived risk of property damage or mess.

Currently pets are generally allowed only by explicit written agreement and where a landlord agrees for their tenant to keep pets, the Model Private Residential Tenancy Agreement outlines the expectations that pet owners must meet. The 'Respect for Others' clause sets out that tenants should control their pets properly and should not allow them to foul or cause damage to other people's property. The 'Pets' clause sets out that the tenant must not keep any animals or pets in the Let Property without the prior written consent of the Landlord. It also requires the tenant to keep any pet under supervision and control to ensure that it does not cause deterioration in the condition of the Let Property or common areas, nuisance either to neighbours or in the locality of the Let Property.

The Easy Read Notes that must accompany every Private Residential Tenancy make clear that if the tenancy agreement bans pets, a tenant can ask the landlord to change it to allow an assistance dog if the tenant is disabled and needs an assistance dog to be able to live in the property. They also make clear that if the landlord refuses, they may be discriminating on the grounds of disability and could be acting illegally.

We are interested in views on how best to encourage more pet-friendly tenancies. Possible consideration of how the Model Private Residential Tenancy Agreement could be amended to make consent to keep a pet the default position for a responsible pet owner. Landlords using the contract would have to object in writing within a specified timeframe of a written pet request from a tenant to overturn it - and provide a good reason.

Allowing a tenant to keep a pet may encourage them to stay long term. However, along with pet owners in any tenure, they will also need to make sensible choices about whether the accommodation is suitable for different kinds of pets and be in a position to pay for the costs of any damage caused by them. Existing mechanisms are in place should pets contribute to or cause a nuisance to neighbours or anti-social behaviour.

However, we must also ensure that landlords cannot charge unreasonably for damages or cleaning from the deposit of a pet owner and exceptions may be needed, for example where the property deeds limit pet ownership. Tenancy deposits are currently limited to a maximum of 2 times the monthly rent and must be lodged with one of three approved tenancy deposit schemes, who also provide a free adjudication service for tenancy deposit disputes, which will already include disputes that include damage and cleaning relating to pets.

Average monthly rent for a 2 bed property (the most common type of property size in Scotland) at end September 2021 was £693²⁷, which would allow for an average of £1386 available to offset costs of any damage or cleaning required at the end of a tenancy should that be required. Bearing these points in mind, we have a number of questions to help us develop this proposal further.

Consultation Question: 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?

Consultation Question: 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.

3.2 Amend the Private Housing (Tenancies) (Scotland) Act 2016 to allow people to personalise their home by internal decoration.

Within both the social and owner occupied sectors people can pay for decoration and personalisation of the inside of their home as they see fit to make them feel at home. This can make a big difference to how people feel about their home.

A recent report by CaCHE²⁸ provides some understanding of how living in the private rented sector affects wellbeing and highlights the negative impact of constraints on decorating or furnishing. Difficulties in trying to establish a sense of home while lacking the necessary autonomy can negatively impact wellbeing.

At present under the Private Residential Tenancy, the tenant needs to get the landlord's written consent, in advance, before making any alterations to the property to fixtures and fittings or internal/ external decorating. It's entirely up to the landlord whether or not the landlord agrees to any of these things being done. However the landlord cannot unreasonably refuse any request by the tenant for adaptations, auxiliary aids or services under section 52 of the Housing (Scotland) Act 2006 or section 37 of the Equality Act.

Currently there are often limitations for private sector tenants on issues such as putting up pictures on walls. It must also be recognised that a landlord may have chosen the decoration scheme carefully and spent money on it to ensure that the

²⁷ [Private sector rent statistics: 2010 - 2021 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

²⁸ [Health and wellbeing in the private rented sector : CaCHE \(housingevidence.ac.uk\)](http://housingevidence.ac.uk)

property can be let easily when a tenant leaves, especially given that tenancies in the private sector can be short lived and have a high turnaround, so the needs of both landlords and tenants must be considered.

Tenancy deposits are currently limited to a maximum of 2 times the monthly rent and must be lodged with one of three approved tenancy deposit schemes, who also provide a free adjudication service for tenancy deposit disputes. This will already cover some disputes relating to damage from the personalisation of the property. We are interested in views on how the current framework could be adapted to enable a right to personalise a privately rented home including on what an appropriate definition of personalisation should be, responsibility for returning the property to an equivalent standard at the end of the tenancy, and how disputes should be resolved.

Consultation Question: 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?

Consultation Question: Should different consideration be given where a property is furnished or unfurnished?

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

Consultation Question: 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?

4. Reform to the eviction process

Background

Prior to the Covid-19 pandemic, Scottish tenants already had significantly more security of tenure than tenants in other parts of the UK at any time of the year. This helps to ensure that tenants are protected from arbitrary eviction.

For private tenants, the introduction of the Private Residential Tenancy in 2017 (through the Private Housing (Tenancies) (Scotland) Act 2016), provided improvements in security of tenure and affordability. Landlords cannot ask a tenant to leave for no reason and must now use one of 18 grounds. In addition, a landlord must give their tenant at least 84 days' notice that the tenancy will come to an end if they have lived in the let property for more than six months, and when a conduct ground is not being used for eviction.

Where a private tenant does not leave the property at the end of the notice period, the landlord must follow the correct legal process to remove the tenant through an application to the Tribunal. A tenant can challenge any eviction action in the Tribunal and they cannot be evicted while their case is being heard. Where the Tribunal issues an eviction Order, the landlord can then legally instruct Sheriff Officers to

enforce the Order. Failure by the landlord to follow the legal process would result in an unlawful eviction, which is a criminal offence.

If a private landlord applies to the Tribunal to evict a tenant, they must tell the local council responsible, through a section 11 notice, in case their tenant becomes homeless.

For social sector tenants, the Scottish Secure Tenancy Agreement introduced in the Housing (Scotland) Act 2001, provides strong protection for tenants against eviction. In most cases, including rent arrears cases, it is at the discretion of a sheriff whether to grant an eviction order after considering all of the circumstances of the individual case.

The legislative protection for social sector tenants facing eviction for rent arrears was strengthened further in 2012 by the introduction of pre-action requirements. Before an eviction order can be granted by the court, social landlords must now also satisfy the court that a range of steps called pre-action requirements have been met. These include giving tenants in arrears every opportunity to take up help to maximise their income, to manage their debts and to agree an affordable and sustainable repayment plan.

This means that social landlords must have exhausted all attempts to resolve rent arrears with the tenant before taking action to evict. In addition, where a court order for eviction is granted, the tenant can apply to the court to recall the decree in certain circumstances, such as where the tenant was not represented in court. The tenant can also appeal against the court decision to grant a decree.

These rights not only protect tenants from arbitrary eviction, but also give them time to find alternative accommodation and obtain advice and information on their housing options. Where people may be at risk of homelessness, the authority has a legal duty to provide them with accommodation.

During the course of the Covid-19 pandemic, and in recognition of the gravity of the health crisis facing the country, the Scottish Government introduced a range of further emergency measures to support tenants – including extended notice periods and ensuring all private rented sector eviction cases were considered on a discretionary basis – and took unprecedented action to introduce a ban on the service and enforcement of eviction orders that was lifted in its entirety on 30 September 2021.

Winter Evictions

We know that being asked to leave a tenancy and finding alternative accommodation can prove a stressful and difficult time at any time of the year for tenants.

However, during winter, particularly around the festive period, this can be exacerbated by a reduction in available properties to let, disruption to services due to staff holidays and people facing increased costs (such as utilities) and are at greater risk of financial hardship.

As part of the Shared Policy Programme agreed by the Scottish Government and Scottish Green Party, we now want to build on learning from the temporary Covid-19 eviction ban in order to consider how we could support and further protect tenants from being asked to leave or being evicted from their rented property over the winter period.

4.1 Introduce measures to give tenants more time to access support and find alternative housing during the winter period where they are subject to a notice to leave or notice of proceedings.

Most tenancies in the private rented sector that are brought to an end by a landlord are not formally challenged by the tenant and we therefore have limited data on the number of notice to leaves being issued in Scotland. For the social rented sector, the Scottish Housing Regulator provides information as part of their Coronavirus dashboard²⁹ on the number of notices of proceedings for recovery of possession issued by social landlords.

Given the challenges that winter can present, we are seeking views on a range of potential interventions to support tenants where they have been given notice to leave by a private sector landlord, or have been served with a notice of proceedings by a social landlord. These could include:

- the introduction of extended notice periods in relation to most repossession grounds during the winter period, but with exceptions for antisocial and criminal behaviour cases; and where the landlord intends to live in the let property;
- as an alternative to extending notice periods we could seek to delay the service of the prescribed notice to leave or notice of proceedings during the winter period. This would see any notice to leave issued by a private sector landlord to end a tenancy during a specified period, or any notice of proceedings in the social rented sector not being legally served until the end of the specified winter period;
- a third alternative would be to extend the period within which eviction proceedings could be raised following expiration of a notice period;
- where a tenant being in rent arrears is the reason that they have to move – support interventions could include the local authority providing assistance in sourcing a new, more sustainable property and/or undertaking income maximisation;
- financial support to reduce the rent arrears in order to enable a manageable repayment plan to be established and to prevent eviction; and
- where it is not possible for the tenancy to be sustained - financial support to assist with the cost of moving.

Options in respect of extending existing legal time periods for serving notice of the end of a tenancy and raising eviction proceedings will require further consideration and analysis.

²⁹ <https://www.housingregulator.gov.scot/landlord-performance/national-reports/covid-19-dashboards>

Consultation Question: 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.

Consultation Question: 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?

Consultation Question: What other policies or interventions could be considered to prevent evictions during the winter period?

4.2 Introducing a specific requirement for the Sheriff Court and Tribunal to consider delaying the enforcement of eviction orders and decrees during the winter period.

While most tenancies come to an end either by the tenant giving notice or by the tenant leaving within the prescribed notice period, some end up as civil disputes.

As set out above, in the private rented sector where a tenant does not leave at the end of the notice period, a landlord is required to make an application to the Tribunal to seek an order to recover possession of the property. In the social rented sector, these types of cases are heard in the Sheriff Court.

Given the additional challenges tenants can experience during winter in finding suitable housing, we are seeking views on introducing a specific requirement on the Tribunal and Courts that, in using their discretion, they would be specifically required to consider delaying the enforcement of an eviction order or decree during the winter period except in cases of antisocial or criminal behaviour.

This approach would allow the Tribunal or Court to:

- take account of all the circumstances of the case;
- consider the impact of delaying the enforcement of an eviction until a later date on both the tenant and the landlord; and
- reach a decision which balances both the rights of tenants and landlords appropriately.

The Courts already have discretion when determining whether to grant a decree for eviction and we have consulted on taking steps through the forthcoming Covid Recovery Bill ([consulted on](#) between August and November 2021) to continue

discretion for the Tribunal in relation to private rented sector cases on a permanent basis too. Our proposed approach would be an extension and clarification of the Recovery Bill proposals to ensure that, in using this discretion, the Tribunal/Court specifically considers delaying an eviction during the winter period and the reasonableness of this action.

This would be similar to the current provisions within paragraph 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which directs the Tribunal to take account of any delay to benefits when examining a repossession for rent arrears and considering whether it is reasonable to grant an eviction order. Similar provisions exist for the Courts at section 16(3) of the Housing (Scotland) Act 2001 when considering social rented sector rent arrears cases as they must determine whether it is reasonable to grant an order for recovery of possession.

Consultation Question: 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

Illegal evictions

The criminal offence of unlawful eviction is set out in section 22 of the Rent (Scotland) Act 1984 and covers most types of residential tenancy in Scotland and also protects occupiers, not just tenants.

Section 22(3) of the 1984 Act provides that on summary conviction the maximum fine would be £10,000 or to imprisonment for a term not exceeding six months or to both; or on indictment, the court can impose an unlimited fine or to imprisonment for a term not exceeding two years or to both. Whether a case is prosecuted on summary conviction or on indictment will usually be a question of seriousness and will be for the prosecutor to determine.

In addition to a criminal prosecution, unlawful eviction also leaves the landlord liable to pay damages to the former occupier of the property (see section 36 of the Housing (Scotland) Act 1988). At present, the valuation of damages set out in section 37 of the 1988 Act is the difference between the landlord's interest in the property with and without a sitting tenant. This requires expensive expert evidence from a surveyor and can lead to a nil valuation being made.

In Scotland, tenants can usually only be legally evicted from their homes by order of the Sheriff Court (for social rented properties) or the First-tier Tribunal for Scotland (Housing and Property Chamber – for private rented tenants). Evicting someone, without obtaining such an order, has been a criminal offence for more than half a century.

Anecdotal evidence suggests that many cases of illegal eviction go unreported, and where a tenant does report the matter to the Police, there is often an inconsistent approach to how police officers handle the situation with many tenants being advised that the dispute is a civil matter. Over recent years, both the Scottish Government

and housing stakeholders have worked closely with Police Scotland in an attempt to raise awareness of housing law amongst front line officers. Most recently, front-line call handlers have been issued with training on the matter and are able to advise officers attending reported illegal evictions that the offence is criminal and the relevant legislation that applies.

However, even where police report a landlord who has been found to have illegally evicted their tenant, in reality, the experience is that prosecutions and claims for damages are rare and awards even more so.

Improving the way in which compensation can be awarded and the method of calculating the level of compensation may be a good way to make it easier and more attractive for tenants to challenge an illegal eviction and receive compensation where an illegal eviction has occurred. It must be more difficult, expensive and risky for landlord to pursue an illegal eviction than going through the correct routes.

4.3 Reform how civil damages for unlawful eviction are calculated

There are growing calls for a reform of how unlawful eviction damages are calculated as outlined in a recent briefing paper prepared on the issue by the Legal Services Agency (LSA)³⁰. This indicates that the current process for calculating civil damages where an unlawful eviction occurs is outdated, costly, and requires a specialist valuation of the property to be carried out, making it an inaccessible route for many tenants.

Currently, Section 37 of the Housing (Scotland) Act 1988 sets out the mechanism for the valuation of damages where an unlawful eviction has occurred. This calculation requires a professional surveyor valuation of the difference between the landlord's interest in the property with and without a sitting tenant. This is not only an expensive process but feedback from stakeholders indicates can also lead to a nil valuation.

Only a small number of cases have therefore ever been taken. Reform would help to simplify the process for a tenant to challenge an unlawful eviction increasing access to justice. This would in turn deter landlords from carrying out an illegal eviction as the risk of challenge and penalty will be higher.

Consideration is therefore being given to the LSA proposal to remove the current process for calculating damages for an unlawful eviction and replacing it with a multiple of the monthly rent in line with the approach taken in relation to wrongful termination orders. This would better empower tenants to seek redress where a landlord does not follow the correct legal process for ending a tenancy.

We would be interested in views on what the appropriate parameters of multiplication that the First-tier Tribunal would use for determining the damages paid to a former tenant, where a private landlord has been found to have unlawfully evicted them.

The level of damages should reflect the seriousness and negative impact on the tenant, of an illegal eviction. For example, the LSA proposal suggests a minimum of

³⁰ [Unlawful-evictions-damages-law-reform-briefing-11-August-2020.pdf \(lsa.org.uk\)](#)

6 times and a maximum of 36 times the monthly rent should be set. Other examples of this type of approach currently in use are penalties in relation to a wrongful termination order would be a maximum of 6 months' rent.

Based on the average rent of a 2 bedroom property in Scotland (£693³¹) these examples would result a maximum level of damages of:

- i. 36 times = £24,948
- ii. 6 times = £4,158

Consultation Question: Do you agree the current calculation for unlawful eviction should be reformed and simplified, as proposed?

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

Consultation Question: 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?

4.4 Increasing penalties for non-compliance and illegal action

In addition to potentially reforming how unlawful damages for illegal eviction are calculated, the Scottish Government would like to consider whether any further legislative action in this area would encourage and enable tenants to exercise their rights and seek redress.

In particular, we want to consider what other action could be taken to address non-compliance and illegal behaviour where a criminal prosecution has not taken place. For example, further use of fines. Such an approach is likely to help establish a clear principle that it is a significant financial risk for a landlord to evict illegally, and therefore act as a clear deterrent and thus encourage landlords to follow the correct legal processes for eviction. This is discussed further in Chapter Six.

Consultation Question: What other ways can we make it easier and more attractive for victims of illegal eviction to seek redress and exercise their rights?

Consultation Question: 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?

5. Supporting Students

For those students living away from their family home there tends to be two main types of accommodation options - either halls of residence/purpose built student accommodation or private rented accommodation. Each of these options have their own associated tenancy arrangements.

³¹ [Private sector rent statistics: 2010 - 2021 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Although the Scottish Government has no direct role in the provision of student accommodation nor with capacity within the private rental market, we are aware of the pressures relating to these. That is why the Scottish Government is committed to bringing forward a Student Accommodation Strategy for Scotland, which, in part will be informed by a review of Purpose Built Student Accommodation. We will look to develop and incorporate our Student Accommodation Strategy alongside and within the final Rented Sector Strategy.

The review will include issues such as supply, affordability and wider planning and regulatory issues. Work on the review is being driven forward by a Review Group, which includes Universities Scotland, the Scottish Funding Council and NUS Scotland and we are also progressing other related pieces of work, including our commitment to a Guarantorship scheme.

Students renting from a mainstream private landlord will have a Private Residential Tenancy, which provides the same rights to students as any other person living in the private rented sector. However, Purpose Built Student Accommodation is exempt from the private residential tenancy because it does not form part of the mainstream private rented sector due to Purpose Built Student Accommodation providers effectively acting as private providers of 'halls of residence' accommodation.

While this enables such providers to continue to fulfil their obligations under nomination agreements to accommodate students from Higher and Further Education Institutions, there are growing concerns in relation to the disparity of rights and protections that exist between students living in Purpose Built Student Accommodation, compared to those renting from a private landlord.

In contrast, some private landlords who rent their properties to students have signalled that the introduction of the Private Residential Tenancy has negatively impacted their business model and resulted in a decline of private rented accommodation for students.

They claim that excluding Purpose Built Student Accommodation from the Private Residential Tenancy creates an unfair advantage due to such providers being able to lock students into a certain length of rental contract. Whereas private landlords, who are serving the same market, can be given 28 days' notice from their tenants and therefore result in loss of income and increasing financial risk.

ACTION: We are committed to working with students and other key stakeholders across the housing and education sectors to develop a Student Accommodation Strategy for Scotland informed by the PBSA review.

Consultation Question: 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.

Consultation Question: 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.

6. Rent Guarantor Scheme

Sometimes private landlords and letting agents will ask for a tenant to provide a guarantor to secure a tenancy. This might be because the tenant doesn't have a stable income, has a poor credit score or is unable to provide suitable references. Although any tenant in these circumstances may be asked to provide a guarantor, guarantor requirements are common practice for student tenancies.

Using a guarantor provides reassurance to the landlord, or their agent, that should the tenant not pay the rent, or other tenancy related costs, that the guarantor will do so in their place. A guarantor is often a parent, guardian or friend but where a young person is estranged from their family or does not have a support network they can call upon, being unable to find a guarantor can be a barrier to accessing the private rented sector. Foreign students can also find it difficult to provide a UK based guarantor.

Where a person can't provide a guarantor, landlords may ask tenants to pay rent in advance as an alternative. There are also a number of commercial and insurance based schemes available but not all tenants can make use of these options.

There are a number of Rent Guarantor Schemes already in operation in Scotland, provided mainly through Universities. We have begun to collate information from across the sector on the models in use here in Scotland and to examine other schemes which exist in the rest of the UK. We have also consulted on a potential philanthropic charity-based model with Stand Alone, a charity which provides support for estranged students. Further work is required to identify the costs of introducing a scheme and to consider how a potential scheme may be funded.

We are therefore working with our Purpose Built Student Accommodation Review Group to consider how we can support the delivery of Guarantor Schemes for estranged young people. We are interested in views on current provision of guarantor schemes in Scotland, as well as how we can support further schemes to be established to increase access to the private rented sector.

Consultation Question: What would be the key features of an effective guarantor scheme?

Consultation Question: How could we support the development of guarantor schemes that meet the needs of those groups who could benefit from them?

Non-Standard Rented Accommodation

The vast majority of people either own their home or live in the private rented sector or the social rented sector. However, there are an important minority of people for whom these classifications either don't apply or are not straight forward.

This Strategy is looking to support all tenants to have the same outcomes, high quality and affordable accommodation, even where the structures are different.

7. Gypsy/Traveller Communities

According to the 2011 census³² - approximately 14% of Gypsy/Travellers lived in caravans, or other mobile or temporary structures. Gypsy/Travellers were half as likely to own their homes and twice as likely to live in rented accommodation as the general population. Research evidence published in 'Is Scotland Fairer'³³ and confirmed by Scottish Government's analysis of the 2011 Census shows that on every indicator of what is required to live a happy, productive and fulfilled life, Gypsy/Travellers are worse off than any other community in Scotland.

For Gypsy/Travellers, an adequate home may be accommodation that enables them to follow cultural traditions, either in a residential mobile home or caravan. Many Gypsy/Travellers stay in the same location for the long term and want the same secure tenancy as people in the social or private rented sector.

The accommodation on the 26 publicly provided Gypsy/Traveller sites across Scotland does not meet the definition for housing or a dwelling and therefore sits outside the social rented sector. Gypsy/Travellers have individual occupancy agreements with the site provider. The Scottish Social Housing Charter includes an outcome for Gypsy/Traveller sites which highlights the responsibility of Landlords to ensure that residents have occupancy agreements which reflect the rights and responsibilities set out in the Minimum Standards for Gypsy/Traveller Accommodation.

Improving the Lives of Gypsy/Travellers, our joint Action Plan with COSLA, sets out our commitment to more and better Gypsy/Traveller accommodation. In Housing 2040, the Scottish Government committed up to £20m from 2021-26 to the Gypsy/Traveller Accommodation Fund. Building on the £2 million of short term funding in 2020/21, this represents a sustained investment to support local authorities to improve and widen access to Gypsy/Traveller accommodation.

To drive a significant improvement in the quality of sites going forward, we have published an interim Site Design Guide for Gypsy/Traveller sites, developed in conjunction with residents and local authorities. This will set the standard for new accommodation, in keeping with the key principles such as accessibility and energy efficiency, which are important for all our homes.

³² [Housing | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk)

³³ [Is Scotland Fairer? | The state of equality and human rights 2015 \(equalityhumanrights.com\)](https://equalityhumanrights.com)

Needs vary for different communities and pitch agreements need to balance the need for flexibility for residents to pursue cultural traditions of travelling, with security of tenure, while ensuring equality with the settled community. We will work with local authorities to examine pitch agreements and rent affordability through the demonstration projects under the Gypsy/Traveller Accommodation Fund to share good practice and inform future policy.

Consultation Question: What are the key issues and concerns relating to current pitch agreements for Gypsy/Travellers on public sector sites?

8. Residential Mobile Homes

People living in residential mobile homes are more likely to be older and on fixed incomes as they are a popular option for those wishing to retire or downsize. Owner occupiers of residential mobile homes tend to live on established sites, renting a pitch for their home under the Residential Mobile Homes Act 1983 (and related regulations), which control the consumer rights of mobile home owners.

It sets out terms which must appear in the “written statement”, which covers things like the location and size of the pitch, pitch fees and park rules – as well as consultation with residents and residents’ associations. In 2013, the Scottish Government used secondary legislation to change the implied terms that are automatically included in every contract between a permanent resident and a site owner. e.g. to remove the requirement for the site owner to approve the purchaser of a mobile home, a 28 day period to consider the terms of the agreement before signing up, to improve protections for residents.

The Housing (Scotland) Act 2014 established the framework for a new, robust, licensing system for mobile home sites with permanent residents. Introduced on 1st May 2017, this gives local authorities a range of tools to make sure sites meet modern standards. The requirement for sites to have a licence came into force in May 2019. In Spring 2021, the Local Government and Communities Committee gathered evidence on issues relating to the licencing of residential mobile home sites. Stakeholders reported a number of concerns, centred on the rules for and operation of the fit and proper person test and the enforcement of the licence conditions. We continue to consider this evidence and intend to carry out a post implementation review of the Residential Mobile Homes Site Licencing scheme, as recommended by the LGCC, before the end of this Parliament.

In addition to those who rent a pitch for a mobile home that they own, there is a small number of people who rent a residential mobile home as their main home. We do not have good up to date evidence of how legislation to improve protections for renters have impacted on those who rent mobile homes. In conjunction with the development of the single housing standard, which will include residential mobile homes, we will gather information to improve our understanding of this sector and identify potential gaps in protections to inform future policy.

Consultation Question: 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?

9. Agricultural/Crofting/Tied Worker Tenancies

'Housing to 2040' explicitly committed the inclusion of agricultural tenancies, within the tenure neutral approach to driving up standards and rights.

In our 2021 Programme for Government, there was a commitment to develop a Remote, Rural & Islands Housing action plan, to meet the housing needs of, and retain and attract people to, those communities.

Housing forming part of an agricultural holding (tenant farm) or rented croft house is subject to agricultural holdings and crofting legislation and the treatment of the houses within those leases are subject to the details of the individual leases. Where the tenancy includes agricultural land exceeding two acres, or if it is a 'relevant agricultural tenancy' the tenancy cannot be a private residential tenancy, and therefore people living in such arrangements do not have the rights afforded to them that those living in the mainstream private rented sector do.

We also know that many farmers and their families are living in substandard homes, which if provided by a private landlord would be unacceptable. This is explored further in Chapter Five.

As part of our work to ensure a tenure neutral approach to improving standards and rights across the rented sector – we want to explore how we can improve security of tenure for those living in the range of agricultural tenancies.

Initial stakeholder engagement with people who have lived experience suggests that one overwhelming issue is that of security of tenure at the end of employment – particularly for those people living in tied accommodation.

For example, gamekeepers have no rights of security and very little protection if their employment ends or if the landlord wants the property for another use. Many have to rely on verbal assurances that they will be able to remain in their property, post-retirement for as long as they wish – however a fear remains that should the relationship with their landlord breakdown, they could be asked to leave.

Others have been asked to vacate their home upon retirement – losing a home they have lived in for many years and being forced to move away from an area where they have put down roots over many years, due to no other accommodation being available.

ACTION: Given the complex nature of agricultural holdings, rented croft houses forming part of a croft and tied worker accommodation and tenancy rights variations that exist across Scotland, we will undertake a mapping exercise to establish the differences in rights and to explore which should be applied equally with those already offered via the Private Residential Tenancy.

Consultation Question: 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?

Consultation Question: 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?

Conclusion

Delivering a New Deal for tenants in Scotland will help build on the important work that has already taken place in recent years to improve rights and security of tenure for the large number of people and families who rent. But the time is right to do more, and to go further, in order to deliver more secure and stable tenancies – with improved standards of accommodation and more flexibility to personalise a rented home.

We are seeking your views on a complex range of issues, which will take time to develop and deliver. However, our intention is to deliver further change to the rental sector over the course of this Parliament and much of the New Deal for Tenants is expected to be introduced in legislation in the 2nd year of this Parliament.

Improving rights however, must be delivered alongside work to make rents more affordable, and how we can best achieve this is explored further in Chapter Four.

CHAPTER FOUR: AFFORDABLE RENTS

Introduction

In order to realise the right to an adequate home, and for the overall housing system to work well for the people of Scotland, there must be options for people to live in quality, affordable rented accommodation.

Influences on rent levels are multiple and complex and the picture of both rent levels and rent inflation are not the same across the country, with huge geographical differences in experiences.

Supply of, and demand for, private rented accommodation can be impacted by a wide range of circumstances including the prevalence of holiday lets and second homes, investment in the sector, macro-economic changes such as changes to interest rates, levels of demand, the cost of home ownership and demographic change to name a few.

This means that rent levels set by the market can end up being unaffordable and unfair in some areas, with rent increases substantially above the rate of inflation or maintenance and upgrade costs leading to people struggling to find suitable homes.

However, we also know that ambitions to improve the quality and standards of homes in the rented sector mean that investment is needed and the regulation of rents must be achieved while also ensuring the quality of properties is maintained and raised, in order to meet our ambitions around standards set out in Chapter Six.

A shared understanding of housing affordability

The Scottish Government's aim is for everyone to have a safe, high-quality home that is affordable and meets their needs in a community they want to be part of. Scotland has led the way in the delivery of affordable housing across the UK.

The Scottish Government is investing £3.6 billion in affordable housing in this parliamentary term towards the delivery of more social and affordable homes, continuing to ensure the right homes in the right places.

Since 2007, we have delivered more than 105,000 affordable homes and we have committed to deliver a further 110,000 energy efficient homes through the Affordable Housing Supply Programme by 2032, with the aim that at least 70% of those homes will be for social rent and 10% in Scotland's remote, rural and island communities³⁴.

³⁴ The majority of homes delivered by registered social landlords and councils through the grant-funded element of the Affordable Housing Supply Programme are new-build homes. However, grant to acquire 'second hand' stock that is for sale on the open market can be made available where it can be demonstrated that this is the most appropriate method of meeting housing need in a particular area. And funding may also be made available to remodel/ rehabilitate existing properties.

Delivering this ambitious affordable homes' target will support a total investment package of around £18 billion and up to 15,000 jobs each year, while contributing to Scotland becoming a net zero nation through modern, energy efficient housing.

Rent affordability plays a crucial role in tackling poverty and, whilst the majority of households enjoy good housing conditions, we know that the housing market as a whole does not work as well for some – with poorer and younger households in particular more likely to be in the rented sector³⁵.

Research suggests that high housing costs are one of the biggest drivers of poverty in the UK, especially affecting poorer and younger households. Many private renters are being priced out of home ownership because saving for a deposit is unrealistic for them, given that a high proportion of their salaries is being spent on rent. Low-income households might also lower their housing standards in order to meet their non-housing needs, which can affect health and other social outcomes.

Child poverty, in particular, featured as one of the key themes in stakeholder engagement and public consultation for Housing to 2040. There was consensus among stakeholders that housing and child poverty are inextricably linked and that there is a relationship between expensive, poor quality housing and mental health; educational attainment; excess winter deaths; and child and fuel poverty.

Affordability of homes, rising rents, the roll out of Universal Credit resulting in the increase of rent arrears, and access to secure and reliable employment were also highlighted as factors impacting on child poverty levels.

Housing affordability also interacts with fuel poverty and access to affordable housing has a role to play in ending homelessness and ensuring the right to an adequate home.

During the development of Housing to 2040, many respondents called for affordability to be more clearly defined in relation to housing. At present, there is no consensus on what housing affordability means and no universally accepted definition. Measures of affordability exist but there is a tendency to rely on simple measures in spite of their shortcomings. That said, housing affordability problems are not new and the debate on how to define affordability has been going on for decades, without consensus. There have been improvements in the last century (e.g. less overcrowding, better sanitary accommodation) but the proposed solutions to affordability problems have remained similar.

ACTION: We are continuing to work with stakeholders to develop a shared understanding of affordability that is fit for the future and takes into account the drivers of poverty and inequality, the housing market, the distribution of homes, the supply of affordable homes, the financial sustainability of the affordable rented sector and the real costs of living in a home and a place.

³⁵ Scottish Household Survey findings for 2019 show that 53% of householders in the private rented sector were under 35 years old (based on the highest income householder), and that 37% of private rented sector households and 60% of social rented sector households had a net household income of £20,000 or under ([SHS Data Explorer \(shinyapps.io\)](https://shinyapps.io/shs-data-explorer/))

This work on affordability will consider how the housing market works for different households with different levels of income and at different stages in their housing careers.

While having a shared understanding of housing affordability will not directly benefit people with protected characteristics, it will help us to measure how effectively Scotland's housing system is serving people with protected characteristics and enable us to take action to address any disadvantages that exist.

Consultation Question: 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)?

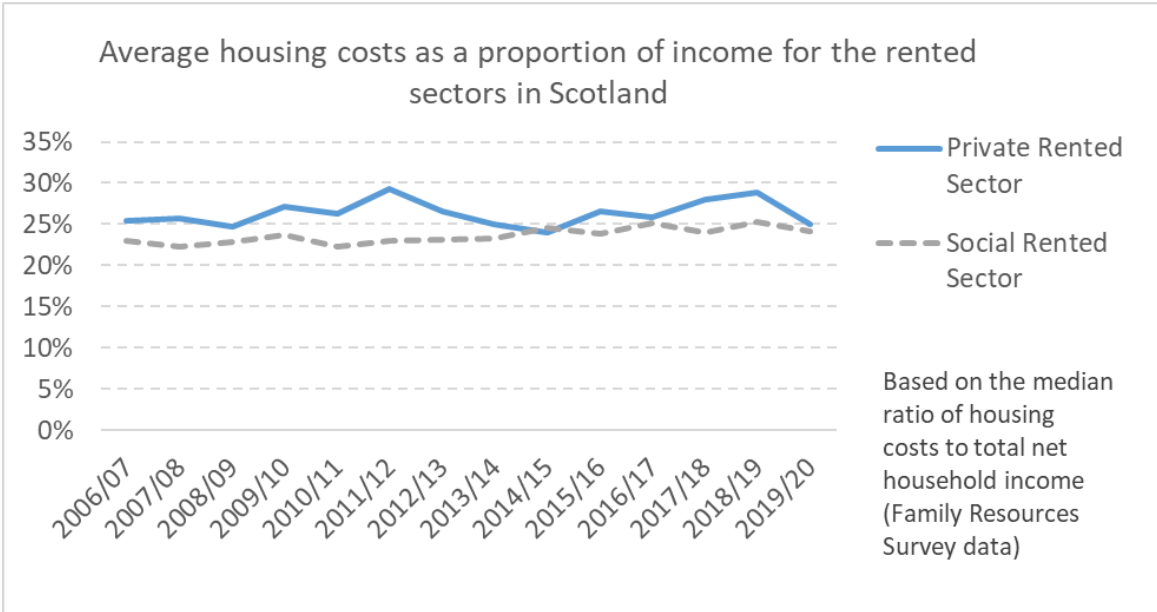
Consultation Question: If we are successful in reaching a shared understanding of affordability in Scotland, how should it be used and evaluated?

Affordability in the Scottish rental sector

At a national level since 2006/07, people living in the private rented sector have spent the highest proportion of their income on housing (26%) of all the tenures, this is compared to 24% for social rented³⁶ and for owner occupiers with a mortgage the average proportion of income has fallen from 12% in 2006/07 to 7% in 2019/20.

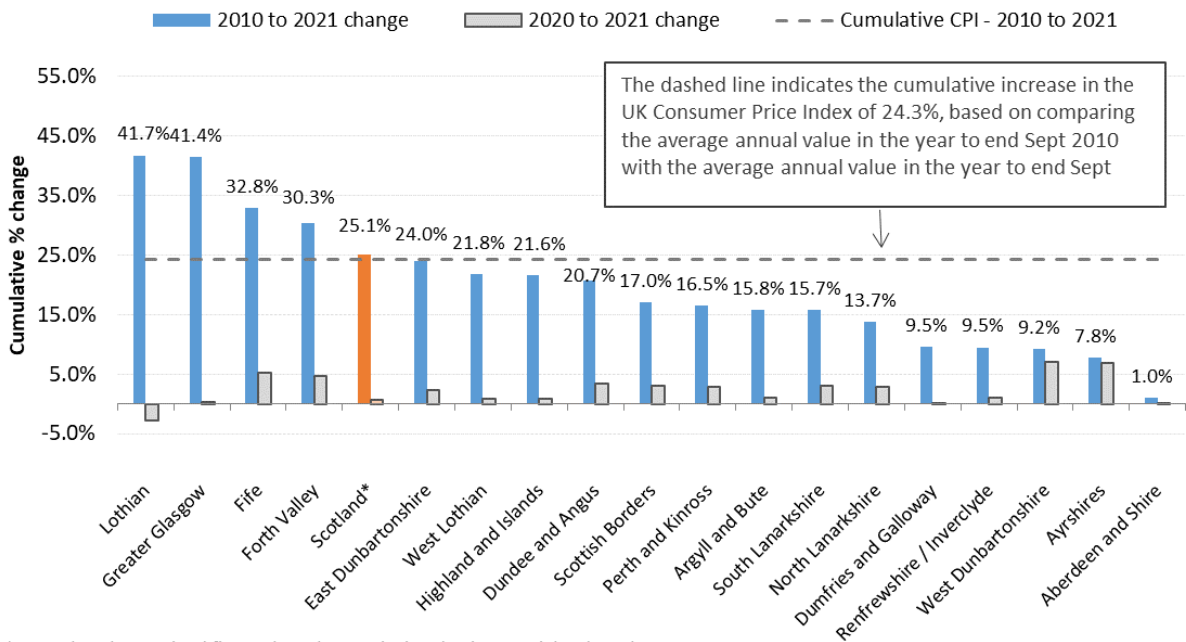
Of course a direct comparison of the costs of renting and buying is difficult to make because the capital element of a repayment mortgage creates an asset for the owner, which rent does not, and conversely renters will need to provide a smaller deposit than home owners or landlords. In addition, an owner or landlord will be liable for costs such as buildings insurance, repairs and maintenance and Land and Buildings Transaction Tax whereas tenant will not pay for these separately and such costs are factored into the rent.

³⁶as measured by the Housing and Regeneration Outcome Indicator on the average ratio of housing costs to income ([Housing and regeneration outcomes framework: indicator updates - gov.scot](https://www.gov.scot/publications/housing-and-regeneration-outcomes-framework/indicator-updates-2020-21/pages/10.aspx) (www.gov.scot))



At a national level, average 2 bedroom private sector rents (the most common size of private rented sector property³⁷) have risen at a cumulative rate that is broadly similar to inflation over the years 2010 to 2021, with the average 2 bedroom monthly rent increasing from £554 in 2010 to £693 in 2021, an increase of 25.1% and which compares to an increase in inflation of 24.3% (see chart below³⁸).

2 bedroom properties - % change in average (mean) rents for years to end-Sept, by Broad Rental Market Area



* Note that the Scotland figures have been calculated using a weighted stock approach.

However, behind these national trends it is important to note that average private sector rents have changed at vastly different rates across different areas of the country with Lothian and Greater Glasgow seeing average 2 bedroom rents increase

³⁷ based largely on advertised rent data.

³⁸ [Private sector rent statistics: 2010 - 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/private-sector-rent-statistics-2010-2021)

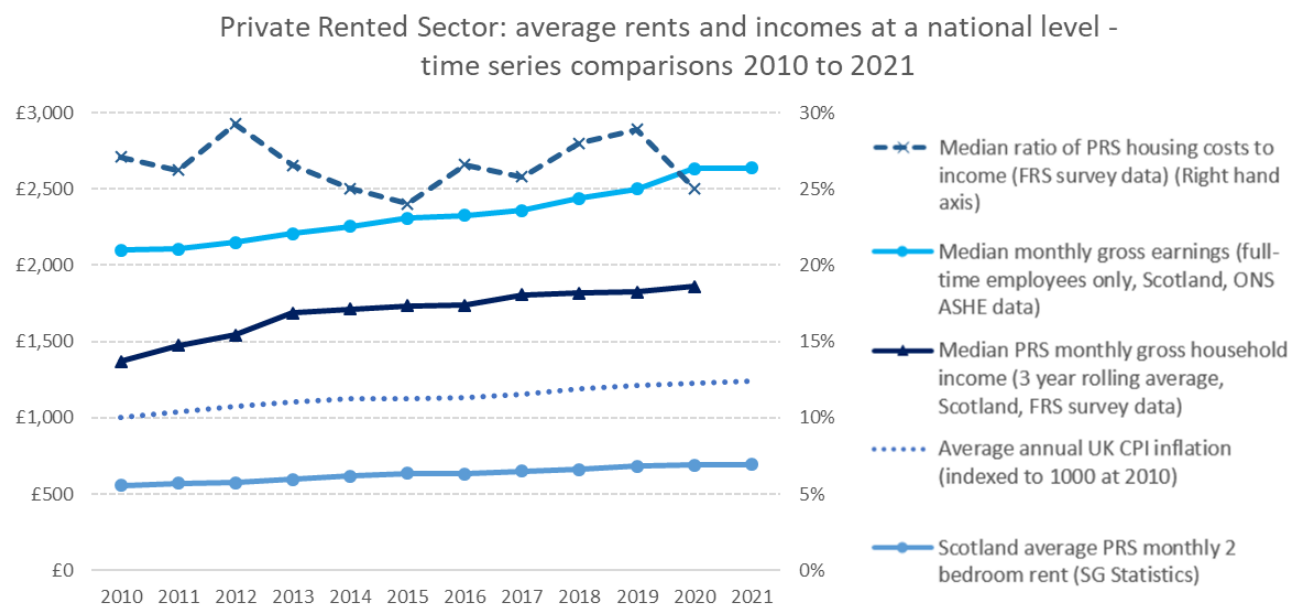
substantially above both the rate of inflation and the increase in median private rented sector household incomes across the period 2010 to 2021, leading to significant financial pressure being placed on those tenants.

Conversely, some other areas of the country have seen average 2 bedroom rents rise below inflation. In addition, Aberdeen City and Aberdeenshire has seen some notable changes in rents across this period in which average rents increased to 2014 before dropping back down following the downturn in the oil industry.

Of course, to understand affordability we also need to consider how incomes have changed overtime in comparison to rents. The chart below provides some more detail on changes over time at a national level for average rents in comparison to earnings and income.

Median gross earnings for full-time employees in Scotland have increased by 26% between 2010 and 2021, similar to the cumulative increase in average rents (25%), although the earnings figure is based on employees across all housing tenures.

There has been an estimated increase of 36% in the median monthly household income in the private rented sector from 2010 to 2020 (3 year rolling averages for each year), although this is based on measuring total household income and is unadjusted for any changes to household sizes or composition over time.



At a national level, average 3 apartment (2 bedroom) social sector rents in Scotland have risen by 24% between 2013/14 and 2020/21³⁹, a larger percentage increase compared to the 12% increase over this period for average 2 bedroom private rents. However social rents remain much lower on average than private sector rents, with the average monthly social housing rent of £359 for a 3 apartment (2 bedroom)

³⁹ [Statistical information | Scottish Housing Regulator, Social tenants in Scotland 2017 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/social-tenants-in-scotland-2017/pages/2017-2018-statistical-information.aspx)

property in 2020/21 equating to about half (52%) of the average 2 bedroom monthly private rent of £693.

The chart below provides an illustration of variability in private rental affordability at a local level, based on a comparison of 30th percentile market rents at a broad rental market area level with separate modelled gross household income distribution estimates at a local authority level. This measure of affordability is currently used within the Housing Need and Demand Assessment (HNDA) Tool⁴⁰, when estimating future demand for housing by tenure.

For example, the 2 bedroom 30th percentile weekly rent for City of Edinburgh was £184 for the year to end September 2018, based on the average rent over the whole Lothian broad rental market area. The required weekly income so that this rent is less than 25% of the household weekly income is £736 (£184 multiplied by 4), which equates to an annual income of £38,272. The percentage of households in Edinburgh with an annual income below £38,272 in 2018 is estimated to be 60%.

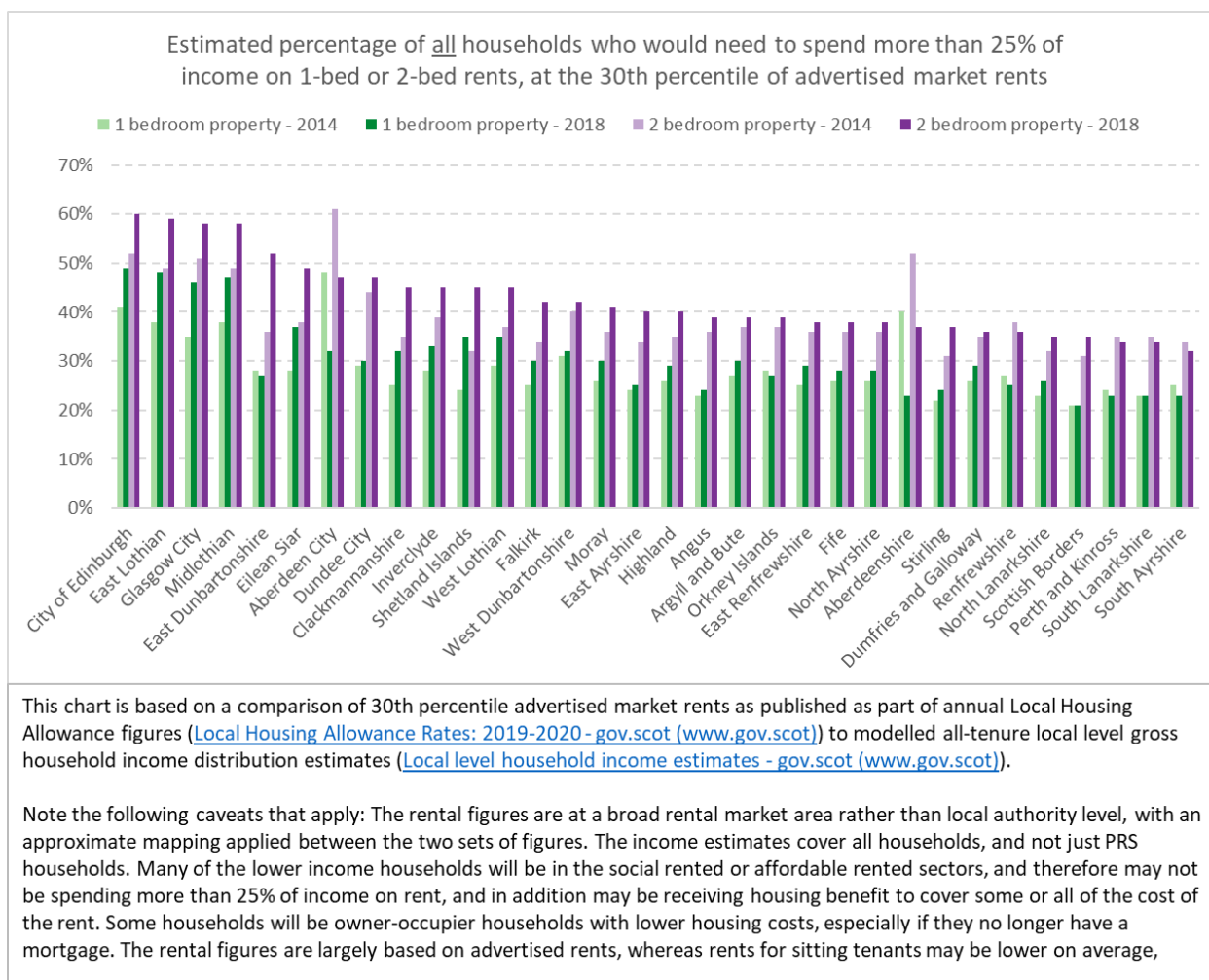
For the year 2018, the areas with the highest estimated percentage of households who would need to spend more than 25% of income on 2 bedroom rents at the 30th percentile include City of Edinburgh (60%), East Lothian (59%), Glasgow City (58%), and Midlothian (58%), whilst the areas with the lowest estimated percentage include Perth and Kinross (34%), South Lanarkshire (34%) and South Ayrshire (32%).

Figures are also presented for the year 2014, in which it can be seen that Aberdeen City and Aberdeenshire had higher percentage for this year compared to 2018, which is likely to be attributable to the drop in average market rents between 2014 and 2018 following the downturn in the oil industry.

The chart also includes figures based on 1 bedroom rents, which for the year 2018 are estimated to range from 49% for City of Edinburgh to 21% in the Scottish Borders.

Note that there are a number of caveats around this analysis, which are listed below the chart and therefore the results should be treated as illustrative examples of rental affordability.

⁴⁰ <https://www.gov.scot/publications/hnda-tool/>

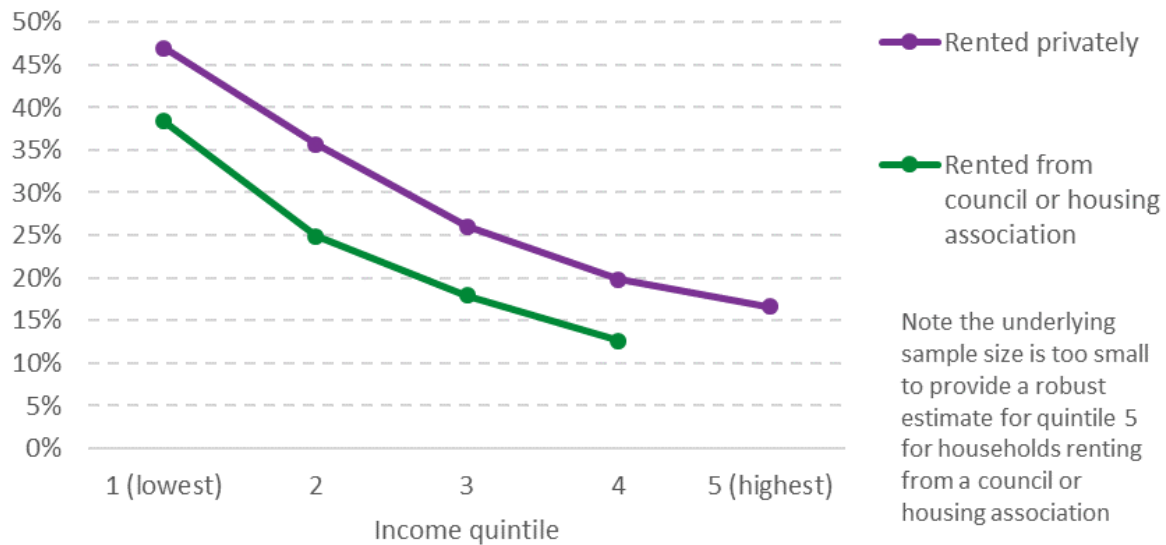


It is this spectrum of experience across the country that supports the idea of a national framework of rent regulation, which should also be capable of responding to variations in local markets.

As well as variations in average rents and affordability across different areas of the country, there are also differences in affordability by level of household income. Over the latest period 2017-20, at a national level, private rented sector households in the lowest income quintile were paying an average of almost half (47%) of their household income on housing costs with the equivalent figure for social rented households in the lowest income quintile being 38%, which are much higher than for households in higher income quintiles⁴¹.

⁴¹ [Additional poverty analysis 2021 - gov.scot \(www.gov.scot\)](http://www.gov.scot/Additional-poverty-analysis-2021)

Ratio of housing costs to income, Scotland 2017-2020 -
by tenure and income quintile



One important contextual aspect to consider when looking at trends in affordability is the changing levels of stock over the past 25 years in which the social rented sector has shrunk by 227,000 dwellings, accounting for 23% of homes in 2018 (down from 38% in 1993).

This has been mirrored by an equivalent increase of 217,000 dwellings in the size of the private rented sector (up from 7% to 14% of the stock) and which may therefore have impacted on the affordability of rented stock overall⁴².

Furthermore, as the number of households in the private rented sector has increased, the number of people in the private rented sector in relative poverty has increased and a quarter of a million (250,000) people in the private rented sector are estimated to be in poverty in the latest period 2017-20, an increase from 160,000 in 2003-06. An estimated 60,000 children were living in poverty in the private rented sector in the latest period 2017-20, up from 30,000 children in 2003-06.

In terms of support for housing costs for households in the rented sectors, in 2017 an estimated 61% of social rented households in Scotland were receiving either Housing Benefit or the Housing element of Universal Credit with the equivalent proportion for private rented households being 23%. Although it is worth reflecting that a significant number of private tenants, such as students, are not eligible for support through Universal Credit.

When looking at social rented households in Scotland in receipt of Housing Benefit across the period 2015/16 to 2017/18, the median value of the ratio of Housing Benefit to rental costs for social rented households receiving Housing Benefit was estimated to be 100% (i.e. more than half of social rented households receiving Housing Benefit were receiving an amount that covered their rent by 100%) with an

⁴² [Housing statistics: Stock by tenure - gov.scot \(www.gov.scot\)](http://www.gov.scot/housing-statistics/stock-by-tenure)

estimated 67% of social rented households receiving Housing Benefit having their rent fully covered by Housing Benefit⁴³.

These interactions between housing costs and benefits are of potential interest to note when considering potential impacts from any future reductions to housing costs that may occur.

Improving our evidence base

There is a widespread consensus around the need for more comprehensive national collection of private rental sector data in order to better understand rental levels and how they change from year to year and to inform policy development and interventions. The collection of such data is supported by both tenant and landlord stakeholders, who are calling for future policy on rent controls to be based on clear evidence.

The lack of sufficient rental data below [Broad Rental Market Area](#) (BRMA) level and on sitting tenants, as well as the challenges associated with collecting robust statistical data at a local level, have been cited by local authorities as one of the reasons why current legislation to enable the introduction of Rent Pressure Zones (RPZ) to address areas of high rents, has never been utilised.

In response to these challenges, we committed in Housing to 2040 to put in place robust data collection approaches to ensure we can gather information to the necessary standards required for statistical purposes, helping to identify issues and problem areas and ensuring evidence-based policy making. This commitment to robust data will then support our pledge to implement an effective national system of rent controls.

It is important, that in developing our approach, we do so in a way that takes account of the wider future regulatory context. For example, the commitment to create a new housing regulator for the private rented sector in order to improve standards and enforce tenants' rights and its potential future role in relation to data collection, rent controls and registration systems. This is examined in more detail in Chapter Six.

Learning from others: Private Residential Tenancies Board, Ireland

In the Republic of Ireland, they have a [Private Residential Tenancies Board](#) (RTB) that is a public body set up to support and develop a well-functioning rental housing sector.

The RTB remit includes regulating the rental sector, providing information and research to inform policy, maintaining a national register of tenancies, resolving disputes between tenants and landlords, investigation into improper conduct by landlords and providing information to the public to ensure tenancies run smoothly and no issues arise.

⁴³ [Social tenants in Scotland 2017 - gov.scot \(www.gov.scot\)](#)

As part of their information and research role they provide accurate and authoritative data on the rental sector, such as the Quarterly Rent Index, which allows them to monitor trends in the rental sector but also allows individuals to check and compare rents in particular locations.

As at 30 December 2020 the RTB operational expenditure for the year stood at around £15 million (€18,028,712). A proportion of which is funded through registration, dispute fee income.

Existing private rented sector rental data

Nationally collected rental data currently provides information on average rents across different property sizes and is published annually in November in our [Private Sector Rent Statistics in Scotland](#) publication.

[Rent Service Scotland](#), which is part of the Scottish Government, is responsible for collecting market rental evidence. This Market Evidence Database helps fulfil a number of statutory obligations placed on Rent Officers, including: determining annual Local Housing Allowance (LHA) levels; Local Reference Rent and Universal Credit Housing Entitlement monthly rates across 5 property sizes within BRMA⁴⁴; Fair Rents and rent adjudications⁴⁵; and supported accommodation referrals. Rent Service Scotland also provide data to the Office of National Statistics (ONS) and to Scottish Government Communities Analytical Division Statisticians for the publication of the Private Sector Rent Statistics in Scotland.

This market evidence data on private rents is sourced through a variety of means, including private landlord and letting agent returns, mailshot initiatives, as well as advertised rental information on internet websites. In the latest year, an estimated 90% of records were based on advertised rents, with the remainder being based on actual rents from landlord returns or where advertised rents were followed up with data suppliers to obtain further information.

Rent Service Scotland is also required to make certain information publicly available including a Fair Rent Register under the Rent Scotland Act and certain information in relation to rent adjudications.

We also get additional data and information from the existing registration systems. Landlord Registration data is gathered by local authorities and through this we get key information on the number of registered landlords and the number of registered properties by local authority.

⁴⁴ The Rent Officers Order (Housing Benefit Functions) (Scotland) 1997 (SI 1997/1995) schedule 3B, made under section 70 of the Housing (Scotland) Act 1988.

⁴⁵ Fair Rent cases under s48 of the Rent (Scotland) 1984 Act [Rent \(Scotland\) Act 1984 \(legislation.gov.uk\)](#) and the Housing Act 1988.

Rent adjudications under the Private Housing (Tenancies) (Scotland) Act 2016, read alongside SSI 2017/296 [The Private Residential Tenancies \(Information for Determining Rents and Fees for Copies of Information\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#)

However, as this only captures the landlord information, it does not provide a complete picture and there are risks of duplicated data due to errors in the imported data from the previous system and some double counting of rental properties in certain instances for joint owners.

Letting Agent data is available as part of the national letting agent register managed by the Scottish Government. The register captures the details of individuals and businesses acting as letting agents but does not hold information on landlords or properties that any individual agent provides services for. The Scottish Government also manages the national Property Factors register, which holds details of all individuals and businesses offering property factoring services, including details of all properties that individual factors manage on behalf of homeowners. This data covers all types of property and does not relate specifically to the private rented sector.

Additional data required

The Scottish Government has commenced work to assess and analyse what information we would need to collect in order to establish a meaningful and robust rental data evidence set, which could be used to inform future policy development and as part of fulfilling statutory requirements in relation to the setting of Local Housing Allowance.

In broad terms, the data required would need to cover all 340,000 private tenancies in Scotland (there are a number of unconventional tenancies such as agricultural tenancies, regulated tenancies or informal sub-let arrangements that would need further consideration about their inclusion but the numbers are small); collect the property address and actual rental cost of each property at the start of a new tenancy; and any in-tenancy rent increases. It would also need to be accompanied by additional information to make the rental data meaningful and usable enough for informing and monitoring the introduction and operation of national rent controls. Rental value, on its own, is unlikely to result in the ability to sufficiently analyse the data for policy or operational purposes.

ACTION: To ensure the evidence base on the private rented sector in Scotland is improved and can provide key evidence to support future rent control policies, we will include provisions in a Housing Bill to be introduced in 2023, that will mandate the need for private landlords to provide a range of rental data and other property information.

Whilst further work by a range of housing, analytical and IT experts is required, a list of the potential additional data that could be collected at an individual property level is set out below:

1. **Rental amount** (£) and whether this includes the value of any communal services charges or fuel bills (£) separately identified.
2. **Property address** - along with a Unique Property Reference Number to ensure every property is uniquely identified and referenced.
3. **Tenancy type** (i.e. regulated, assured, short-assured, private residential or another form of tenancy e.g. agricultural tenancies).

4. **Type of let/re-let** – we would need to know for each rental value if this relates to a property that has been rented for the first time, if it relates to a property that was previously rented and now being rented to a new tenant, or if it relates to a change to rent for an existing tenant.
5. **Date** - that the rental amount was applied.
6. **Rental period** (monthly, weekly etc) – needed so that each rental amount can be converted into a standard period e.g. monthly.
7. **Property size and age, number of bedrooms, living rooms, kitchens, bathrooms** - to allow analysis of rental changes by these key characteristics.
8. **Property type** (detached, semi-detached, terrace, flat etc) - to allow analysis of rental changes by this key characteristic.
9. **Furnished/Unfurnished** - to allow analysis of rental changes by this key characteristic.
10. **Property condition** - type of heating system, double glazing, car parking, garage, garden etc, plus details of any other property condition factors that may determine the rent.
11. **Property improvements** – we would need to know whether the rental change/increase was due to a property improvement including energy efficiency measures, and also possibly details of what type of improvement had been made.

In order to collect information on all private tenancies in Scotland, we will need an accurate and up to date register of properties and their landlords. This will also enable us to monitor the impacts of the Rented Sector Strategy on the size and structure of the sector.

We will work with Registers of Scotland, our IT partner for the Scottish Landlord Register, as well as local authority colleagues responsible for the administration of landlord registration to address known data quality issues, for example duplicate records and imported data errors from previous system, to provide this information.

Any system introduced for collecting data will also need to gather information to enable verification of the data provided, to ensure it meets necessary statistical standards and to ensure the information provided is accurate - for example, a copy of the tenancy agreement or rent increase notice.

The system will require a quality assurance facility, so any data queries can be raised with landlords. The system will also need to find a way to ensure data is provided for all properties that have had a change in rents, or a change in tenancy or other property changes that may affect the rent.

Further work from experts is needed to be clear about what data is necessary, how it will be used, processed and quality assured to stand up to public scrutiny and how it will be protected and stored. This will require a full exploration of the spectrum of different delivery mechanisms, including existing systems and the development of new ones, to decide what option would deliver best value for money.

ACTION: We are establishing a working group with IT, legal, policy, operational and statistical experts, to take this work forward. The group will aim to report to Ministers by March 2022 with proposals to procure a full

feasibility study into possible options and the best mechanism for delivering data collection required.

Consultation Question: 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.

Consultation Question: 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.

In order to ensure that landlords (and letting agents acting on their behalf) provide the data that we believe must be collected to help build an effective evidence base on the private rented sector in Scotland, there is likely to be a need for a mandate.

It is currently a criminal offence for landlords not to update their landlord registration details where there is a change in circumstances. However, in practice, we know this is not a particularly effective deterrent given police capacity - therefore, a more productive deterrent may be to consider the introduction of Rent Penalty style notices by the body who will collect the data. A Rent Penalty notice is a legal notice that suspends the rent liability of the tenant(s) of a property. Local authorities can currently use a Rent Penalty Notice where a landlord has failed to register.

In order to provide tenants with information on rents for properties they are considering renting, including rents paid by previous tenants, we also propose to make this information publicly available.

Consultation Question: What is your view on making rental and property information publicly available for tenants and others to view?

Consultation Question: 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?

Consideration of appropriate forms of rent controls

The Scottish Government has already committed to taking action so that the rented sector offers a range of high-quality homes that are affordable for those who choose to live in it, and where the affordability, accessibility and standards of the whole rented sector improve and align – and the evidence set out earlier in this Chapter provides a clear need.

Part of this action will be through introducing an effective national system of rent controls, with an appropriate mechanism to allow local authorities to introduce local measures by the end of 2025.

Existing legislation controlling Rents

Key Private Rented Sector Legislation

The Private Residential Tenancy came into force on 1 December 2017 and included new rights to help tackle increasing rents by:

- limiting rent increases to once in 12 months, with a landlord required to give three months' notice in advance of the increase;
- enabling tenants to challenge unfair rent increases via adjudication by a Rent Officer; and
- introducing the ability for local authorities to apply to Scottish Ministers to designate an area as being of Rent Pressure Zone status.

The Private Rented Tenancies introduced sweeping reforms which meant that private tenants now have more protection in Scotland than any other part of the UK. However, we have been monitoring the impacts and now is the time to strengthen the parts of it that have not worked as anticipated.

The three particular provisions (set out above) were introduced to limit landlords being able to impose unfair or multiple rent increases at short notice, and that has proved popular and successful. However, whilst all private tenants with a Private Residential Tenancy agreement do have the ability to challenge unfair rent increases, very few people have requested a rent adjudication, in fact between 1 December 2017 and 30 November 2021, only 89 applications have been made. There may be a number of reasons for this including:

- tenants being unaware of their existing rights to challenge rent increases;
- people feeling worried that by taking such action, it could have repercussions on their tenancy or relationship with their landlord;
- Rent Service Scotland (and the Tribunal, on appeal) are in principle able to increase the rent that a landlord charges – above that being requested – to bring it in line with market levels; and
- Landlords not increasing rents during a tenancy and instead increasing them between tenancies, which is not covered in the Private Residential Tenancy.

The Scottish Government have already taken action on raising awareness of all existing rights for private tenants, through awareness raising and media campaigns, but, as set out in chapter 3 and re-iterated here, we also plan to do more so people can make best use of the existing rent adjudication process.

Action: For private tenants seeking rent adjudication, we will change the legislation to only allow adjudications that either decrease or maintain it at the level proposed by the landlord.

This action would allow people to challenge in-tenancy rent increases without fear that such action could result in an increase in rent beyond that being proposed by the landlord in the rent-increase notice. It would still balance the rights of landlords and tenants, as the rent that a landlord has fully considered and set themselves, could either be maintained or reduced.

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

In relation to Rent Pressure Zones, we are aware that the lack of data has meant that they have not been established, as we would have hoped. For this reason, and because of the need to tackle high rents, the Scottish Government has instead committed to implementing an effective national system of rent controls, with an appropriate mechanism to allow local authorities to introduce local measures, by the end of 2025. The principles and approaches to this are detailed later in this chapter.

Key social rented sector legislation

There are a number of safeguards, legal requirements and checks in place in the social rented sector in relation to rent levels, rent setting and affordability. The Housing (Scotland) Act 2001 requires a social landlord to consult its tenants and have regard to their views where they are proposing to increase rents or any other charges for Scottish Secure Tenants.

The Scottish Social Housing Charter reinforces this legal duty and includes outcomes on value for money, rents and service charges and requires that social landlords set rents and service charges so that a balance is struck between levels of services provided, the cost of the services and how affordable they are to both current and prospective tenants. Social landlords also need to demonstrate transparency in how rents are calculated.

The Scottish Housing Regulator is responsible for monitoring landlords' performance against the Charter. Rent affordability is also part of the Regulators annual risk assessment of all social landlords. Its "National Report on the Charter Headline Findings 2020 – 2021" reported that despite a small reduction of 1% from the previous year, 83% of tenants are satisfied that their rent is good value for money. In addition, average planned rent increases went down to 1.2% from 2.5% last year.

The Scottish Government also considers the proposed rents for Registered Social Landlord social rented homes at the point of first let when assessing applications for grant funding through the Affordable Housing Supply Programme. At tender stage,

proposed Registered Social Landlord rents (which should be projected to the date of completion) are compared against relevant social rent benchmarks. RSLs are required to justify why a proposed rent is considered affordable if the benchmark is exceeded by more than 5%, with the approval of rents exceeding benchmark by more than 10% being given only in exceptional circumstances.

Recent statistics also suggest that between 2014 and 2021, on average rent increases have risen twice as fast in the social rented sector (24%) compared to the private rented sector. However, they still remain on average half the level of the private rented sector⁴⁶.

In Housing to 2040, we set out a vision for tenure neutral outcomes - in other words, people have a warm, comfortable home that meets their needs no matter what tenure they are in. At the moment, the social rented sector already has a number of safeguards in place to protect tenants in a meaningful and demonstrable way. In addition, the very premise of social rents mean that all money is re-invested for the good of tenants in the sector overall. This is not true in the private rented sector where approaches to rent setting can be very different between landlords, and there is a greater need to ensure there are reasonable rents and that tenants can challenge where this isn't the case.

Proposition: National rent controls only apply to the Private rented sector

However, that is not to say that the Social Rented Sector cannot be improved and we are aware of higher rents in certain areas, therefore we will continue to consider how to build on the strong work already put in place around rent setting in the social rented sector in the future.

Consultation Question: Do you agree with the proposal not to extend any national rent controls to the social rented sector?

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

Consultation Question: 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.

Vision and principles of future rent controls

Our vision is for people to have equality of outcomes no matter what tenure they live in and ensuring rent affordability in the private rented sector is an absolutely essential part of realising that vision.

Rent control policies are aimed at regulating the rental prices of properties with the objective of making rents more affordable and tenants less likely to be 'priced out' of housing due to rent increases. Rent control is a wide term that encompasses a number of differing types of interventions.

⁴⁶ Private Sector Rent Statistics, Scotland (2010 to 2021), published by Scottish Government on 16 November.

Most commonly, the research literature refers to first, second and third generations of rent controls. First generation rent controls introduce a rent freeze of nominal rents. Second generation refer to rent regulation, setting an automatic rent increase percentage based on inflation. Third generation see rent increases controlled within a tenancy but with no control between tenancies.

Taking action to ensure affordable rents aims to ensure that tenants will have stability and value for money. It will also contribute towards wider policy ambitions of reducing poverty and improving housing allowance systems. However, some have argued that the introduction of rent controls could restrict supply, should investors feel they cannot realise the levels of return which make new supply viable or attractive.

Any reduction in supply may unintentionally create increased demand for existing homes and lead to rising rents as a result. Equally, any system should not discourage investment in the management and maintenance of properties. We need a clear understanding of the interaction between rent levels, demand, and supply of both new housing for rent and the movement of existing properties in and out of the rented sector.

Consideration must therefore be given to how a workable and evidenced system of rent controls will interact with supply and quality within the sector. Regulatory intervention on rent controls must also be seen in the wider, future legislative context, whereby a Regulator for the sector will be in operation and tenants will have significantly increased rights.

We will be undertaking a separate consultation with detailed proposals for rent controls later in this Parliament, but as part of this consultation we are seeking views on the proposed underlying vision and principles that we believe should underpin future rent control regulation:

Proposition

Vision for future rent controls: *Tenants pay affordable and reasonable rent for good quality homes, helping to support efforts to reduce poverty and improve outcomes for low income tenants and their families.*

Underlying principles for national rent controls:

- They will have an appropriate mechanism to allow local authorities to introduce local measures.
- They will be evidence based.
- Their design will support and encourage the private rented sector to improve the quality of rented properties.
- Policy development on rent control legislation will seek to learn from the processes already in place for social sector tenants in relation to rent levels.
- Policy will be developed taking into consideration the views of all stakeholders but with a particular focus on giving private tenants a stronger voice.

Consultation Question: 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.

Consultation Question: 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.

Conclusion

This chapter demonstrates that the influences on rent levels are multiple and complex, with significant variations experienced across the country.

It demonstrates the clear need to improve our data collection in the private rented sector – and sets out how we intend to do so, so as to develop a sound evidence base for future policy development in this area.

However, it also acknowledges the risks that exist and the impact this could have on wider supply – an area we go on to explore further in the next chapter.

CHAPTER FIVE: SUPPLY OF RENTED HOMES

Introduction

The Scottish Household Survey 2019⁴⁷ figures show that over two-thirds of private rented households aspire to own their own home but we know that high rents and other factors including access to resources, economic circumstances and stage in life-cycle can make that very challenging to achieve for many. So, the demand for renting is linked to access to home ownership, which in turn depends on a range of factors.

However, there is clearly a strong demand for renting in its own right which may mean that renting is the right choice at any point in time. So that is why it is vital to ensure an adequate supply of homes for rent where they are needed, as this can also impact on choice and affordability.

The Affordable Housing Supply Programme seeks to increase supply primarily in the social sector but there is also an important role for private investment in the rented sector in order to keep up with rising demand and changing demographics. In the social sector we also want to consider how the available supply of social housing is used to ensure those who need it most are able to access the sector and suitable accommodation.

Increasing supply

Our long term strategy Housing to 2040 starts from the principle that everyone should have access to a good, safe, warm and secure home. Our long term commitment to deliver 110,000 homes, with at least 70 per cent for social rent and 10 per cent in our remote, rural and island communities, will be supported by £3.6 billion of Scottish Government investment.

As significant as this investment is, we recognise that on its own it will not deliver our ambitions to ensure that everyone has access to the home they need. To do that we need to continue to work in partnership with the private sector. Housing to 2040 sets out our desire to develop approaches and test new models to attract and accelerate investment into housing programmes and to transition to a decarbonised housing sector.

Housing supply affects affordability and quality across all tenures. Having an adequate supply of high quality, energy efficient housing is at the heart of ensuring that the people of Scotland can access the housing they need at a price they can afford. We need to consider the system wide interactions between demand and supply and the different challenges that this can pose across Scotland. Where there is a shortage of supply in one tenure this can manifest as an increase in demand for another.

⁴⁷ <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/>

Both private rented and social rented homes have a role to play in delivering affordable, quality housing and giving people choice and flexibility about where they live. Additional supply across the market can drive competition and lead to increases in quality.

We are determined to improve the quality and environmental performance of Scotland's housing stock. Local authorities, as the statutory housing and planning authority, are key in this process at the local level and have a responsibility for developing Local Housing Strategies, which are required to consider all housing requirements locally and set out how these requirements will be effectively met. This is in addition to local development plans which guide planning decisions locally, including the delivery of new homes.

The Scottish Government is currently consulting on National Planning Framework 4 (NPF) which sets out how our approach to planning and development will help to achieve a net zero, sustainable Scotland by 2045. NPF provides the framework for how the planning system should support the delivery of more and better homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.

The following sections highlight the important role for each different type of investment in rental properties in addressing the overall supply of housing.

Affordable Housing Supply Programme - Increasing the Supply of Social Rented Homes

Within the social rented sector, the Scottish Government's investment decisions through the Affordable Housing Supply Programme are directly informed by local housing priorities set out in Local Housing Strategies and Strategic Housing Investment Plans, including the type, location and size of housing required.

The majority of homes delivered through the programme are new build homes. However, the Affordable Housing Supply Programme has funded, and continues to be able to fund, acquisitions of existing homes that are for sale on the open market where it makes strategic sense for local authority and Registered Social Landlord partners to do so and where there are available resources. Whilst such acquisitions must make sense as part of these local strategies, there are examples where acquisition of stock provides clear opportunities. For example:

- consolidation of stock for management and improvement reasons – such as securing the remainder of a block when most flats are already socially rented, making it easier to refurbish or install energy efficiency measures⁴⁸;
- securing stock where there is limited supply and limited development opportunities; and/or
- securing stock for households with particular requirements.

Funding can also be made available to remodel/rehabilitate existing properties.

⁴⁸ Published Scottish Government guidance states that 'projects using existing properties (not new build) should maximise energy efficiency and accessibility, as far as is practicable'.

Consultation Question: 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?

Consultation Question: 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.

Attracting Investment into the Private Rented Sector

Housing to 2040, sets out our plans to continue delivering quality homes for private rent.⁴⁹ Over the next decade, we will continue to support the building of homes for private rent with a focus on maximising delivery of these homes at the affordable end of market rents, working with private sector investors and partners whose business models match our ambition to improve quality and affordability for tenants.

We have a strong track record when it comes to the development of new housing financing approaches, delivery models and ground breaking innovation. This has enabled the delivery of thousands of new homes across all tenures, positioning Scotland as a leader in this field. These initiatives are helping to create and strengthen communities, with several also contributing to our affordable homes targets and we are keen to do more.

Mid-market Rents

Mid-market rent (MMR) is a type of affordable housing aimed at assisting households on low to modest incomes to access affordable rented accommodation in the private rented sector, and helps those who have difficulty accessing social rented housing, buying their own home or renting privately on the open market. Since 1 December 2017, these homes are let under a Private Residential Tenancy.

Rents for MMR homes should be set at a level which is higher than social rents but lower than the midpoint of private rents and will vary across the country, depending on the size of property (number of bedrooms) and geographical location. It is important that prospective tenants are assessed by landlords on their ability to afford and sustain a tenancy, not just on specific income levels, and not be discriminated against as a result of the source of that income. For example, through a work or state pension or social security contributions.

Starting rent levels are generally no more than the relevant Local Housing Allowance and the most recent 30th percentile of market rent levels (as assessed by Rent Service Scotland) for the property size in question in the Broad Rental Market Area (BRMA).

⁴⁹ “[Scottish Government] will continue to support the building of homes for private rent, with a focus on maximising delivery of these homes at the affordable end of market rents, working with private sector investors and partners whose business models match our ambition to improve affordability for tenants”. [Housing to 2040](#)

In order to ensure MMR rent levels remain affordable to households on low to modest incomes, landlords in receipt of Scottish Government support are generally not permitted to increase rents above the mid-point of market rent levels for the relevant property size (in line with data collected and published by Rent Service Scotland), therefore these rents will fluctuate in line with local market conditions.

The majority of this housing is delivered by Registered Social Landlords (RSLs) using grant funding through the Affordable Housing Supply Programme. Providers have previously been supported through guarantees and Financial Transaction (FT) loans. There has also been investment through City Regional Deals that has helped unlock delivery of MMR. The Scottish National Investment Bank also has the ability to invest in housing which meets the Bank's missions which could include further MMR delivery, depending on the specific investment proposal.

We collect policy monitoring information from MMR landlords and households which is then analysed and reported by the Scottish Government. Our latest published data shows that this policy continues to meet its intended aims.

Consultation Question: Beyond the routes already available to deliver MMR homes how could new, additional investment in this be supported?

Build to Rent Sector

The Build to Rent (BtR) sector has been an established part of the housing market in many major European cities for some time, but has not traditionally been a significant driver of the Scottish rental sector's supply of new homes. BtR is recognised as a mainstream housing delivery mechanism, that can make an important contribution to the broader housing market and to the economy by boosting both investment and house building.

It offers a different financial model that can complement existing housing delivery models and help to increase the overall rate of delivery of housing. It can also contribute to the creation of well-designed, sustainable places at scale and as such is an important part of the supply landscape that can help us deliver the vision set out in Housing to 2040 and to meet the aims of the rented sector strategy of quality, affordable homes rented on fair terms.

BtR differs from traditional homes (built for sale) in a number of ways. It can be characterised by:

- single institutional ownership and professional on-site management of the entire development;
- individual units are self-contained and separately let; and
- resident access to shared, communal facilities and on-site amenities integrated as part of the development.

There is a substantial pipeline of around 9,000 BtR homes in Scotland's major cities with several developments moving to construction stage and contributing to place-making and regeneration of city sites.

While our focus in Housing to 2040 is on maximising delivery of homes in this sector at the affordable end of market rents, BtR has an important role to play both in the housing market and the economy as a whole by boosting investment and housebuilding.

Like MMR, the Scottish National Investment Bank has the ability to invest in housing which meets the Bank's missions which could include further BtR delivery, depending on the specific investment proposal.

We wish to continue to welcome investment in this sector, and to work with the private development industry to understand and, where appropriate, help to overcome any significant barriers to its continued growth in Scotland. We recognise that the BtR sector can make an important contribution to economic activity, tenant choice, place-making and driving up standards of management and maintenance in the private rented sector through the provision of professionally managed homes.

We are therefore keen to continue working constructively with this sector to consider how some of the proposals set out in this draft strategy can also encourage the BtR sector to invest and contribute to the raising of standards and regeneration which we have welcomed.

<p>Consultation Question: What measures can we put in place to help encourage BtR developments in Scotland?</p>
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Short-Term Lets and Second Homes

Short-term lets can offer people a flexible and cheaper travel option, and have contributed positively to Scotland's tourism industry and local economies across the country. However, we also know that in certain areas, particularly tourist hot spots, high numbers of lets can cause problems for neighbours and make it harder for people to find homes to live in.

Therefore regulation of short-term lets is vital to balance the needs and concerns communities have raised with wider economic and tourism interests. The new licensing scheme will help to ensure that all short-term lets are safe and that the people providing them are suitable and give local authorities powers to deal with issues faced by residents and neighbours such as noise and antisocial behaviour. It will also give local authorities greater knowledge about the prevalence and location of short-term lets in their local authority area. This will help them better understand the extent to which short-term lets are, or are not, contributing to local housing pressures.

Legislation allowing councils to establish short-term let control areas and manage numbers of short-term lets came into force in April 2021.

We have committed to working with local authorities to review levels of short-term let activity in hotspot areas in summer 2023 and this will assess how the actions are working and whether any further measures are required. If the review finds that local authorities continue to have issues managing high concentrations of short-term lets,

we could take further action to enhance their powers. We will also be legislating to increase the levels of fine in respect of some short-term let licensing offences.

As outlined in Housing to 2040, we are committed to giving local authorities the powers to manage the numbers of second homes where they see this as a problem in their area. Numbers of second homes and short-term lets are related issues and this provides a further opportunity to ensure that local authorities have the powers they need to manage numbers of both.

Social Rented Sector Allocations

Given the important role social housing plays in the overall housing market, providing secure long-term housing solutions, social housing allocations policy is important in ensuring the right provision.

For example, Housing to 2040 sets out a commitment to better understand and address the barriers people from ethnic minorities face in accessing appropriate social housing and work with social landlords and tenants to review the approach to identifying housing need and to determining housing allocations in the social rented sector. One of those barriers can be that it is a challenge for larger families to find suitable accommodation in either the social or private sectors. The 2019 Scottish House Condition Survey, shows that there are far smaller proportions of 4+ bed sized properties in the private rented sector (8.0%) and social rented sector in particular (2.7%), compared with owner occupation (25.5%).

At present, all existing social landlords have a published allocation policy and a system in place for reviewing it to ensure it is meeting the needs of applicants, tenants and local authority and third sector partners. Landlords have a duty to make and publish rules covering priority of allocation of houses, transfers and exchanges⁵⁰ and this means that any allocation policy should set out clearly how the landlord will decide on priority for housing.

This transparent approach is underpinned by a clear legal framework within which allocation policies must operate. Within these constraints, landlords have considerable discretion to develop their allocation policy and practice to meet the specific needs of the communities in which they operate. The Social Housing Allocations Practice Guide 2019 provides practical support for staff with responsibility for reviewing, monitoring and updating allocation policies and procedures to ensure the reasonable preference groups in their policy comply with those in the Housing (Scotland) Act 1987 (“the 1987 Act”), as amended by the Housing (Scotland) Act 2014.

Section 20 of the 1987 Act sets out three categories of applicants who should be given reasonable preference in an allocation policy: (1) homeless persons and persons threatened with homelessness (including those from the private rented sector), (2) people living under unsatisfactory housing conditions, and (3) under-occupying social housing tenants. Each social landlord can determine how much

⁵⁰ (section 21 of the 1987 Act, as amended by section 155 of the Leasehold Reform, Housing and Urban Development Act 1993 and the 2001 Act).

priority it wishes to give to those in each of the reasonable preference groups, although lesser preference to people facing homelessness than other groups of applicants can't be the case. This means that allocations have an important part to play in preventing homelessness.

There is generally a three to five-yearly cycle in place for reviewing an allocation policy and when reviewing their policy landlords must consult with tenants, applicants and RTOs and consider how they will ensure that they meet housing need. Landlords should monitor the operation of their policy and develop a monitoring framework along with the policy to help ensure that the right mechanisms are in place from the start.

Consultation Question: 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?

Consultation Question: What more can be done to support people with protected characteristics trying to access social rented homes?

Conclusion

The Scottish Government recognises the importance of investing in and supporting the supply of rented homes. We already invest significantly through the Affordable Housing Supply Programme and work with private sector funders and deliverers to maximise the delivery of the right homes in the right places.

We are keen to gather views on what more can be done to maximise the delivery of rented homes and ways to leverage further private sector investment and welcome your views on what more can be done to ensure that supply continues to play a key role in addressing the affordability issues we are facing in Scotland.

CHAPTER SIX: QUALITY- RAISING STANDARDS

Introduction and vision

To ensure that everyone has access to a warm, comfortable home that meets their needs, homes in the rented sector must meet a consistent minimum standard for private and social rent and landlords must understand what is expected. Tenants must know what to expect from their landlord, look after their home, raise any issues early with their landlord and have access to redress and solutions when landlords do not meet the expectations set out.

Delivering quality homes and raising standards across the sector means both ensuring that the physical buildings are suitable to be people's homes and that the services tenants receive are professional and supportive. This means active regulation and implementation of standards.

Through improving standards and regulation we aim to have tenure neutral outcomes for tenants with clear procedures, protections and rights that all tenants should benefit from and be able to rely on across both sectors. This is a key principle for a unified approach across the rented sector as a whole, whilst recognising that different methods may be needed to achieve these outcomes given the significant disparities in the scale and structure of the social and private sectors and the different legislative basis within which they operate.

Existing Housing Standards

For both the private and social rented sector there is a complex set of existing legislation that governs standards and services. These laws dictate both the minimum housing standards expected for homes in the social and private rented sectors and the standards expected from landlords. In addition to the physical standard of the property, the rent tenants pay also covers the service they receive. As a customer there is a minimum standard of service that they can expect.

For social housing Scottish Secure Tenancies are regulated by the Housing (Scotland) Act 2001. The Scottish Housing Quality Standard (SHQS) applies. Whilst not a statutory standard, it is included in the Scottish Housing Charter and the independent Scottish Housing Regulator has powers to intervene if landlords are failing to meet the standards and outcomes set out in the Charter.

In the private sector most, though not all, tenancies are Private Residential Tenancies regulated by the Private Housing (Tenancies) (Scotland) Act 2016. For most private tenancies, the Repairing Standard (RS) in section 13 of the Housing (Scotland) Act 2006 applies with a number of exceptions, including social housing.

Despite work already underway to harmonise many of the differences between the standards, for example through changes to the SHQS in 2021 and an amendment to the RS which comes into force in 2024, there remain key differences in provision between the social and private sectors with examples set out below.

	Private Sector	Social Sector
Energy Efficiency	EPC C from 2025 at change of tenancy, and all tenancies by 2028, where technically feasible and cost effective. ⁵¹ Not yet in place.	Homes must meet the Energy Efficiency Standard for Social Housing (EESH). This is already in place.
Adaptations	Scheme of Assistance funding if adaptation is assessed as required. At landlord's discretion but there must be a reason for withholding consent.	Landlord will assess and provide adaptations.
Compensation for improvements	At landlord's discretion.	Compensation for qualifying work carried out with the landlord's consent, at end of tenancy and subject to depreciation ⁵² .
Timescale for repairs	Within a reasonable time of being notified ⁵³ .	Agreed in consultation with tenants and set out in the landlords repairs policy. Some specified small repairs within a fixed number of working days, ⁵⁴ otherwise within a reasonable time of being notified ⁵⁵ . Where certain repairs are not completed by target date tenant has a right to arrange them themselves and receive compensation from the landlord.
Choice about when work is done	At landlord's discretion, though landlord must give reasonable notice.	Tenants must be given reasonable choices about when work is done ⁵⁶ Many landlords offer an appointment system.

⁵¹ [Heat in Buildings Strategy - achieving net zero emissions in Scotland's buildings - gov.scot](http://www.gov.scot/Heat-in-Buildings-Strategy-achieving-net-zero-emissions-in-Scotland's-buildings)

⁵² Housing (Scotland) Act 2001, section 30 and the Scottish Secure Tenants (Compensation for Improvements) Regulations 2002 (SSI 2002/312), see "Right to Compensation for Improvements", <http://www.gov.scot/Publications/2002/09/15486/11216>

⁵³ Housing (Scotland) Act 2006, section 14(4), <http://www.legislation.gov.uk/asp/2006/1/section/14>

⁵⁴ The Scottish Secure Tenants (Right to Repair) Regulations 2002 (SSI 2002/316), see "Right to Repair", <http://www.gov.scot/Publications/2002/09/15485/11214>

⁵⁵ Housing (Scotland) Act 2001, Schedule 4, para 3, <http://www.legislation.gov.uk/asp/2001/10/schedule/4>

⁵⁶ Scottish Social Housing Charter, outcome 5, <http://www.gov.scot/Publications/2012/03/2602/0>

	Private Sector	Social Sector
Damage caused during repair work	No statutory duty but possibly common law liability ⁵⁷ .	Right to reinstatement or compensation for damage to house or property in connection with inspections, repairs or improvements or entry ⁵⁸ .
Right of appeal	Right to apply to the Tribunal for determination whether the landlord has complied with the RS ⁵⁹ (and local authority has discretionary power to make third party applications on behalf of tenants) ⁶⁰ .	Right of complaint to landlord and escalation to Scottish Public Services Ombudsman, ⁶¹ in cases of significant performance failure can report to the Scottish Housing Regulator ⁶² .
Enforcement	Right to apply to the Tribunal (Housing and Property Chamber) for a Repairing Standard Enforcement Order, ⁶³ Rent Relief Order ⁶⁴ . The matter may be referred to the local authority to carry out work ⁶⁵ . A failure to comply with a repairing standard enforcement order is a statutory offence ⁶⁶ .	There are no formal enforcement powers for complaints or the Ombudsman, but the tenant has the right to carry out repairs if the landlord fails to do them, ⁶⁷ and the Regulator has regulatory intervention powers in cases of serious performance failure ⁶⁸ .

These are important differences and we know from our work with stakeholders that one area of concern for private sector tenants in particular can be where landlords do not make important repairs in a timely manner, for example repairs to heating systems or roof maintenance, that can cause hardship.

In the social sector the early national response to the COVID-19 pandemic had an immediate impact on social landlords' ability to undertake both responsive repairs and planned maintenance to tenants' homes. As a direct consequence of the pandemic, landlords undertook around 20% fewer repairs during 2020/21. Tenant

⁵⁷ The legal commentary on the reference in the next footnote refers to a common law duty and cites *McGreal v Wake* (1984) 128 SJ 11, see <http://www.gov.scot/Publications/2002/09/15391/10809>

⁵⁸ Model Revised Scottish Secure Tenancy Agreement, para 5.14, <http://www.gov.scot/Publications/2002/09/15391/10796>

⁵⁹ Housing (Scotland) Act 2006, section 22(1), <http://www.legislation.gov.uk/asp/2006/1/section/22>

⁶⁰ Housing (Scotland) Act 2006, section 22(1A)-(1B), inserted by Housing (Scotland) Act 2014, section 25, <http://www.legislation.gov.uk/asp/2014/14/section/25>

⁶¹ Scottish Public Services Ombudsman Act 2002, Schedule 2, paras 7 and 17, <http://www.legislation.gov.uk/asp/2002/11/schedule/2>

⁶² Housing (Scotland) Act 2010, section 47, <http://www.legislation.gov.uk/asp/2010/17/section/47>, and see <https://www.scottishhousingregulator.gov.uk/what-we-do/raising-concerns-about-landlord>

⁶³ Housing (Scotland) Act 2006, section 24(2), <http://www.legislation.gov.uk/asp/2006/1/section/24>

⁶⁴ Housing (Scotland) Act 2006, section 27, <http://www.legislation.gov.uk/asp/2006/1/section/27>

⁶⁵ Housing (Scotland) Act 2006, section 36, <http://www.legislation.gov.uk/asp/2006/1/section/36>

⁶⁶ Housing (Scotland) Act 2006, section 28(1), <http://www.legislation.gov.uk/asp/2006/1/section/28>

⁶⁷ See footnote 58, para 5.19

⁶⁸ Housing (Scotland) Act 2010, section 52, <http://www.legislation.gov.uk/asp/2010/17/section/52>

satisfaction with repairs and maintenance reduced slightly during 2020/21 to 90% and performance on repairs completed right first time remained at 92%⁶⁹. However, in some individual cases tenants feel there is room for improvement.

Consultation Question: What is the best way to ensure that landlords undertake essential repairs in a timely fashion?

Other tenancies

There are a number of situations where tenancies or occupancy agreements fall out with the main private and social rented sectors and can be complex. For example, there are different standards and rights associated with agricultural tenancies and pitch agreements for residential mobile homes or Gypsy/Traveller sites which are not tenancies as such, but agreements under the Residential Mobile Homes Act 1983. Separate standards also apply, for example model standards to mobile home sites and minimum standards to Gypsy/Traveller sites. Residential mobile homes may also be rented as a main home.

The number of people living in this type of accommodation is relatively small but they may also be more vulnerable, for example due to age, income or lack of choice in the local market. As non-housing accommodation is out with the mainstream mechanisms for improvement across the rented sector, there is potential for standards to fall behind, resulting in inequalities and undermining the idea that outcomes should be the same irrespective of tenure. Our commitment to a single housing standard will bring all accommodation types into line, making it easier to ensure that standards keep pace across all types of housing and accommodation.

Registration Systems in the Private Rented Sector

The existing statutory housing registration systems were brought in to improve levels of service and professionalism in the private rented sector and to provide additional protection for tenants through strengthening the regulation of the industry.

There are currently three statutory housing registration systems that support the private rented sector specifically. These systems place requirements on any individual or business carrying out specific activities related to the private rental of residential property. The systems cover the registration of:

- Private landlords, as required under the Antisocial Behaviour etc. (Scotland) Act 2004
- Houses in Multiple Occupation (HMO's), as required under Part 5 of the Housing (Scotland) Act 2006
- Letting Agents, as required under Part 4 of the Housing (Scotland) Act 2014

The registration systems focus on ensuring that any individual or business that is registered has been assessed as being fit and proper and meets the specific requirements that have been laid out.

⁶⁹ [National Report on the Scottish Social Housing Charter - Headline Findings - 2020-21 | Scottish Housing Regulator](#)

Under both the landlord and letting agent registration systems, anyone who considers that their landlord or letting agent has not met the requirements can apply, free of charge, directly to the Tribunal to have their case considered. The Tribunal can issue Enforcement Orders that give a direction in terms of the actions the landlord or letting agent must take to remedy the situation.

Since introduction, these systems have been subject to incremental changes that have expanded the range of considerations and requirements that form part of the assessment. In particular, landlord registration has been strengthened, through the introduction of additional requirements as part of the fit and proper person test and an increased penalty for operating as an unregistered landlord. The powers available to local authorities have also been strengthened, for example introducing powers to obtain information, including criminal record certificates, in specified circumstances.

The options available to support compliance vary across the regimes. Landlord registration is delivered by local authorities and they have powers to refuse landlords entry to, or remove landlords from, the register, as well as a range of discretionary powers that they can use to encourage compliance and target breaches, such as issuing rent penalty notices. However, it remains a self-declaration process so there is scope for dishonesty and where a landlord may confirm they meet all responsibilities when in fact they do not.

HMO licensing is also delivered by local authorities that are able to place conditions on the licence to ensure that required standards are met and the property is suitable for use. These sit alongside wider powers local authorities have, for example in relation to environmental health, addressing antisocial behaviour and noise.

The letting agent register is delivered by Scottish Ministers who have powers to refuse applications if the agent is not considered to be a fit and proper person. Operating as an unregistered letting agent is a criminal offence that can be reported to Police Scotland although stakeholders (both landlords and tenants) have concerns that few, if any, prosecutions happen in practice.

ACTION: We will undertake a review of the existing registration regimes to identify lessons and opportunities for strengthening them.

As part of work to address standards in the private rented sector, including establishing a new regulator and improving quality and levels of professional service, it is important that we understand and evaluate the strengths and weaknesses of the current systems. Therefore, we intend to undertake a review of those regimes to identify where they could be strengthened.

We will work with local authority partners and the rented sector more widely to understand how the existing requirements are operating and how well the existing mechanisms and penalties are working. This work will also aim to identify opportunities to make these existing requirements more effective and encourage compliance with those requirements.

This scope will include looking at where additional requirements may be appropriate to improve understanding of these regulatory regimes and help drive up the standards of service to tenants such as through qualifications and training or whether it would be beneficial to incorporate some requirements that are currently included within Codes of Practice, for instance, into primary legislation.

We will consider whether additional sanctions for non-compliance with requirements, such as financial penalties, could make a contribution to driving up standards. This would be in addition to the current criminal offences, where there are concerns that few prosecutions happen in practice. This could, for example, include the introduction of new fines for landlords and letting agents who fail to comply with requirements in relation to the information that should be included in adverts for rental properties. We will also look at the potential benefit of expanding the scope for use of existing penalties, such as Rental Penalty Notices which local authorities can issue to landlords who fail to meet requirements.

Consultation Question: 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?

Tackling low quality rented homes

A new housing standard for Scotland

The Scottish Government manifesto commits to the introduction of a new Housing Standard, to be set in law by 2025. This will cover all homes, rented and owner occupied, new and existing, including agricultural properties, mobile homes and tied accommodation and will go beyond a minimum standard to include aspects such as repairing and safety standards, minimum space standards, digital connectivity, future proofing of homes and the energy efficiency and heating standards committed to within the Heat in Buildings Strategy⁷⁰.

The vision articulated in Housing to 2040 is a shift away from the existing Tolerable Standard towards the underlying principle that good quality housing is a human right, that all tenures across new and existing homes of all types will be subject to the same common high standards with appropriate ways of enforcement, compliance and redress and affordability is balanced with quality improvement.

We aim to ensure that there will be no margins of tolerance, no exemptions and no “acceptable levels” of sub-standard homes in urban, rural or island communities, deprived communities or in tenements. This will mean our existing homes will keep pace with new homes with no one left behind.

ACTION: The Scottish Government will publish a consultation on the principles underlying a new housing standard. Following the analysis and review of the responses to the consultation, we propose to publish a draft standard in 2023 and introduce legislation in 2024/25, for a phased

⁷⁰ [Heat in Buildings Strategy - achieving net zero emissions in Scotland's buildings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/heat-in-buildings-strategy-achieving-net-zero-emissions-in-scotland-s-buildings/pages/10.aspx)

implementation of the new housing standard from 2025 to 2030. This will incorporate energy efficiency standards set out in the Heat in Buildings Strategy.

It is essential that property owners accept responsibility for their share of the cost of work needed to look after their property and to preserve it as a sustainable asset for the future. This is especially true for landlords who are charging tenants money for a property. As with other regulated businesses, minimum standards are necessary to ensure people can always enjoy a safe, warm and secure home.

However, we also recognise that for some communities and types of property and tenancy there may be significant challenges both with the costs and accessibility. For example, we recognise that complex situations and interdependencies exist with some rural or tied tenancies and this may mean it takes longer to achieve a higher standard but we also know that these are some of the homes most in need of improved standards.

Therefore, we will also develop a new help-to-improve policy approach, working with stakeholders to design new support for repairs and improvement which work alongside support for energy efficiency and zero emissions heating systems delivered under the Heat in Buildings Strategy, allowing us to take a whole-house approach where possible.

Energy Efficiency and Zero Emissions heating in the Rented Sector

The Scottish Government's Heat in Buildings Strategy⁷¹, published in October 2021, builds on the policies and actions set out in the Climate Change Plan Update and sets out a pathway to zero emissions buildings by 2045. It outlines the steps we will take to reduce greenhouse gas emissions from Scotland's homes, workplaces and community buildings and to ensure that we remove poor energy performance as a driver of fuel poverty.

As many tenants across the rented sector are already on low incomes the positive impact of improvements to the warmth of their homes is likely to have wider benefits to those families, including reducing fuel bills and improving health outcomes, in addition to the environmental benefits.

Social sector

The Energy Efficiency Standard for Social Housing (ESSH) has helped to improve the energy efficiency of the social housing stock in Scotland. Energy efficiency measures installed in all types of housing, continue to help reduce energy consumption and remove energy efficiency as a driver for fuel poverty. ESSH will reduce GHG emissions and contribute towards the Scottish Government's ambitious climate change emissions reductions targets. This supports the Housing to 2040 ambition for everyone to have a safe, good quality and affordable home.

⁷¹ [Heat in Buildings Strategy - achieving net zero emissions in Scotland's buildings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/heat-in-buildings-strategy-achieving-net-zero-emissions-in-scotland-s-buildings/pages/10.aspx)

The first EESSH milestone is based on minimum Energy Performance Certificate (EPC) Energy Efficiency (EE) ratings which vary depending on the type of property and the fuel used to heat it (broadly EPC Band C or D). The Scottish Housing Regulator (SHR), who has responsibility for monitoring social landlord's performance with EESSH, reports that 89% of social rented homes met the 2020 milestone. We suspect that Covid-19 affected some further projects that landlords planned to carry out to meet the first milestone during 2020.

In June 2019, Ministers agreed the new EESSH2 milestone for all social housing to meet, or be treated as meeting, EPC Band B (Energy Efficiency rating), or be as energy efficient as practically possible, by the end of December 2032 and within the limits of cost, technology and necessary consent.

In Housing to 2040, Ministers committed to bring forward the review of EESSH2 from 2025 to 2023. The Zero Emissions Social Housing Task Force (ZEST), an independent stakeholder group set up to consider and provide practical recommendations to Ministers on what is required to achieve a just transition towards the Scottish Government's ambitious net zero heating targets, published its report in August 2021.

The ZEST Report recommends that in order to help the Scottish Government and landlords work together to plan ahead with certainty, and to ensure there is a just transition, we should bring forward our review of EESSH2, currently planned for 2023, and issue interim guidance for landlords. In addition it recommends that there should be a "Fabric First" approach, as an essential first step on the road to net zero. We recognise the value of this to support the effective use of innovative technology and renewable energy sources, and also to make potentially more expensive fuel sources more affordable. Along with the other recommendations in the report, we are considering these proposals carefully and issue a response in due course.

Private sector

The Heat in Buildings (HiB) Strategy reiterated the role that the private rented sector has to play and the ways in which our commitments, as set out in the HiB Strategy, can help make the heating costs for those living in such homes more affordable while improving the energy performance of the buildings in question.

We have proposed to underpin this by introducing new mandatory standards for energy efficiency and zero emissions heating for all homes during this term of Parliament, including the private rented sector. These standards will help provide certainty, build confidence in the supply chain and reduce the costs of the transition.

We confirmed in our HiB Strategy that we are no longer intending to introduce a minimum energy efficiency standard for the private rented sector to be achieved by 2025; this recognised and responded to the pressures facing the sector as a result of the pandemic. Instead, we will introduce regulations in 2025 which require all private rented properties to reach a minimum standard equivalent to EPC C, where technically feasible and cost-effective. This is in line with the direction provided by the Climate Change Committee. We have said that it will apply at change of tenancy

from 2025, with a backstop date of 2028 for all remaining existing private rented sector properties.

These new standards will be introduced fairly and in a way that considers the health and wellbeing of Scotland's people, recognising the role of improved energy efficiency as a means of reducing fuel poverty. We also recognise that building owners will want certainty and sufficient notice concerning the way in which these standards will be framed and applied. That's why we have made clear our intention to design the standards in a way that recognises the challenges and costs involved, and only requires changes that are technically feasible and cost effective. We will be providing more information on these aspects and what they mean as part of a detailed consultation during 2022.

At the same time we will bring forward legislation which will require the installation of zero or very near zero emissions heating in existing buildings. This legislation will support our commitment to phasing out the need to install new or replacement fossil fuel boilers in off-gas properties from 2025, and in on-gas areas from 2030, with all buildings needing to meet this standard no later than 2045. In creating this legislation we will bear in mind the need to balance the rights of landlords and tenants and the limits of the devolution settlement.

We will support people to switch to low-carbon heating, so we can all play a part in tackling the climate emergency. Our support will help people to convert their heating systems to zero emissions ones, targeting that help at those least able to pay. This includes stepping up our investment to accelerate deployment of heat and energy efficiency measures and to support those least able to pay, allocating at least £1.8bn over the next 5 years.

Consultation Question: 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?

Disability and the Rented Sector

Housing to 2040 sets out action we will take so that our homes support those with long-term conditions and disabilities and everyone, who can and wants to, is enabled to live independently in a home of their own. This means homes in the rented sector need to become increasingly accessible for people with disabilities. We recognise that accessing appropriate, warm homes for people with accessibility requirements and complex health needs can be challenging and ensuring people in the rented sector can source a suitably accessible home or adapt their current home, as their needs change, is vital.

Since the integration of health and social care, Integration Joint Boards (IJBs) have been responsible for the planning and commissioning of adaptations services for people who require such support. In practice, local authorities continue to deliver adaptations, through the Scheme of Assistance for home owners and private tenants, as well as directly to local authority owned properties. Registered Social Landlords largely operate out with these arrangements, providing adaptations for their own tenants.

The existing funding arrangements for adaptations are complex, tied to housing tenure and do not support ease or equality of access for everyone who needs an adaptation. We have already committed to undertaking a fundamental review of the adaptations system, seeking to streamline and accelerate the adaptations system, whilst also taking into account the needs of ethnic minority communities and other groups with protected characteristics. The review will develop recommendations on how best to improve the system so that it will be fit and capable of dealing with the increased demand that an ageing population will drive.

The Scottish Government is also undertaking a review of aids and equipment guidance and this will contribute to the adaptations review. In addition, we are considering the potential implications for the delivery of adaptations and other delegated housing services arising from the establishment of a new National Care Service and the replacement of IJBs by Community Health & Social Care Boards.

Consultation Question: 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?

Housing for Varying Needs offers guidance on good practice in the design of all homes in order to help them achieve a degree of flexibility, suit people of different abilities, be convenient to use and be fit for purpose. Specifically, new build homes which are delivered directly by Registered Social Landlords and local authorities with the aid of grant funding through the Affordable Housing Supply Programme, should meet, as a minimum, the “basic” design criteria outlined within Housing for Varying Needs. The design criteria indicated as “desirable” should also be included where possible. “Off the shelf” purchases of new build stock from developers should also aim to incorporate these standards.

The commitment to review the Housing for Varying Needs Design Guide, which is over 20 years old but still recognised as a good standard, began in April 2021 and is expected to take up to two years to complete. As well as influencing the design of homes delivered through the Affordable Housing Supply Programme, the review will also feed into the review of Building Standards (from 2025-26) to underpin a Scottish Accessible Homes Standard which all new homes must achieve.

We will increase the supply of accessible and adapted homes providing greater choice to tenants as well as homeowners. This will include establishing an inclusive programme of retrofitting social homes and the introduction of new building standards to underpin a Scottish Accessible Homes standard, which all new homes including those built by private builders must achieve. In the longer term these measures will also raise accessibility within private rented stock.

Wherever possible all new affordable homes are designed to be flexible to meet people’s needs as they change over time, including people with disabilities. We have issued guidance for local authorities to support the delivery of more wheelchair-accessible housing, and councils are required to report annually on targets for how many accessible homes delivered across all tenures.

Driving up Standards of Management

Enhancing the role of the Scottish Housing Regulator

The social sector is regulated by the Scottish Housing Regulator (SHR), a Non-Ministerial Department, established under the Housing (Scotland) Act 2010 to operate independently of Scottish Ministers and be accountable to Parliament. It has a single statutory objective: to safeguard and promote the interests of current and future tenants of social landlords, other users of social landlords' services and those who may become homeless. Its main duties are to regulate the performance of the housing services of all social landlords, particularly monitoring and reporting on landlords' performance against the standards and outcomes in the Scottish Social Housing Charter, and to regulate the financial health and governance of RSLs. The SHR has an annual budget of £5.1 million, it covers around 600,000 tenants who live in homes provided by social landlords.

ACTION: We will develop a greater improvement role for the Scottish Housing Regulator similar to that of Healthcare Improvement Scotland⁷²

Housing to 2040 sets out the importance of the Scottish Housing Regulator and commitment to continuous improvement across the social housing sector, including more consideration of how learning in the social sector can be applied across other tenures.

With that in mind, we intend to expand the regulator's role to build on their current thematic studies improvement work and lessons learned from statutory interventions to further improve standards across the social housing sector. We would expect this work to lead to the production of recommended practice guidance for social landlords to improve practice and service standards.

A vision for cross-rented sector regulation – what we want to achieve

The Scottish Government and Scottish Green Party's Shared Policy Programme sets out a commitment to *“create a new housing regulator for the private rented sector to improve standards and enforce tenants' rights.”*

Existing approaches to regulation in the Private Rented Sector have relied on the Tribunal and enforcement of illegal activities by the police (for example failure of a landlord to register). In addition to acting as the legal decision maker, for example in cases where a landlord is seeking repossession of a property, the Tribunal also provides a route of redress where it is considered that requirements have not been met, with affected individuals able to apply directly to the Tribunal to have their case considered.

There is much to learn from the existing social housing regulator but we recognise that it would be extremely challenging and probably undesirable to simply apply the type of regulation undertaken by the Scottish Housing Regulator to the private rented

⁷² [About us - Healthcare Improvement Scotland](#)

sector given the high number of diverse landlords in the sector where communication and regulatory approaches will need to be very different.

Our vision for regulation is that defined outcomes and standards will apply across the rented sector as a whole, whilst recognising that different approaches may be needed to achieve these outcomes given the significant differences in scale, structure and the legislative basis within which the sectors operate. This is consistent with the overall values and aims of Housing to 2040.

This means setting out clear outcomes and standards that landlords in both the private and social rented sector would be assessed against, for example implementing in the private rented sector something similar to the Scottish Social Housing Charter, helping to better empower all tenants who will also need to understand those standards.

Vision for Regulation: Regulation should seek tenure neutral outcomes for tenants in both sectors, empowering tenants through routes to redress failures and supporting good standards across the rented sector.

Underlying principles:

- Development of a private rented sector regulator will build on the strengths, experience and learning from the Scottish Housing Regulator (SHR) and existing approaches.
- Private rented sector regulation will be based on clearly defined standards of quality, affordability and fairness that reflect the aim of tenure neutral outcomes.
- The approach to regulation will be developed taking account of evidence, views of stakeholders and value for money.
- The approach to regulation will reflect the overall ambitions of the Rented Sector Strategy as a whole.

Consultation Question: Do you consider the vision and principles for the private rented sector Regulator to be the right ones? Are there any additional principles that you think are important? Please explain your answer.

Timeline towards establishment of a regulator for the private rented sector

At this stage we are consulting only on the vision and principles to underpin regulation but a full and detailed consultation on specific proposals for a private rented sector regulator will be undertaken later in the parliament. This is because we are considering all options and there are a number of operational models that could be adopted. These options also need to consider the overall structure of regulation in the rented sector, including the existing Scottish Housing Regulator. All options will be examined in terms of technical feasibility, efficiency and value for money.

There are also a wide range of issues that will require detailed consideration, for example: what are the priorities for tenants? What can be learnt from the existing Scottish Housing Regulator and where might it fit into a broader rented sector regulatory approach? How should the existing regulatory systems be incorporated?

Primary legislation will also be required to establish a new regulator so a further consultation will examine these details.

ACTION: Given the range and complexity of the issues to be considered as part of establishing a Regulator, we propose bringing together a range of stakeholders and experts to inform development of the options.

Throughout the policy development work we want tenant participation to be at the heart of the decision making process. The expert group will be established in early 2022 and its recommendations, along with wider feasibility, cost and delivery studies and a further consultation on detailed proposals, will inform the legislation needed. We expect to introduce such legislation later in this Parliament.

Conclusion

Establishing and maintaining good standards of homes and services now will safeguard our properties for future generations and it is right that property owners maintain these assets for the years to come.

Through their rents, tenants pay for and deserve a professional service and minimum standard for their homes that supports positive health and life outcomes, without being pushed into fuel poverty because heating bills are much higher than they need to be.

We must be able to ensure that people's rights are not just available in law but also in practice with easy routes to redress and dispute resolution and a new regulator will support that aim.

CHAPTER SEVEN: NEXT STEPS AND TIMEFRAME

The consultation on the Draft Rented Sector Strategy was launched on 20 December 2021 and will run until 15th April 2022. Following the closing date, all responses will be analysed and considered along with any other available evidence to develop and publish a final strategy, by the end of 2022, which will benefit from the input of a wide range of views and interests, including tenants.

Please note that a consultation on proposals for new duties to prevent homelessness was launched in December 2021, and will run until 31st March 2022. That consultation also includes questions on the role of private and social landlords.

Next Steps: A phased approach to implementing improvements

The final version of the strategy in 2022 will set out our updated policy position and a timeline for delivery. This will include a timeline for delivering the legislative elements of the Strategy through the course of this Parliament, which will need to be carefully considered and worked through. Many of the issues related to enhancing tenants' rights set out primarily in Chapter 3 are expected to be delivered in a Housing Bill, which we aim to introduce in the second year of this parliament.

Many other policy proposals contained in this consultation will also require legislation, for example establishing rent controls and a regulator for the private rented sector. We intend for legislation on these areas to be brought forward later in the Parliament with implementation of rent controls by the end of 2025. These will be subject to separate and detailed consultation activities and research.

It is important also to note that this Draft Strategy forms a key part of delivering the vision set out in Housing to 2040 and as such should be considered alongside wider, longer term commitments, such as delivering a further 110,000 affordable and energy efficient homes and introducing new housing standard (by 2025) which is applicable across all tenures.

The scale and ambition of this Strategy means that some proposals will take longer and will benefit from more detailed consideration, engagement and planning. That is why this Draft Strategy takes a high level and longer-term approach in some areas with a view to further input being invited from a range of stakeholders.

Responding to this consultation

You can submit a response at any time before the closing date. To give us your views, please access and respond to this consultation online at: <https://consult.gov.scot/housing-and-social-justice/draft-rented-sector-strategy>. There are no restrictions on who can respond to the consultation. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send to:

Private Housing Services and Legislation Team
4th Floor,
4 Atlantic Quay
150 Broomielaw
Glasgow G2 8LU

Or email to: rentedstrategyconsultation@gov.scot

Respondent Information Form

The Respondent Information Form can be found within the supporting documents section.

Handling your response

If you respond using the <https://consult.gov.scot/>, you will be directed to the *About You* page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. (see supporting files)

To find out how we handle your personal data, please see our [privacy policy](#).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at [Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to: rentedstrategyconsultation@gov.scot.



Consultation on A New Deal for Tenants – Draft Strategy

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again

in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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