

# **A New Deal for Tenants**

**Analysis of responses to the consultation exercise**

**Analysis report**

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# Executive Summary

This summary covers a number of the key findings from the analysis of responses to the Scottish Government's consultation on the the draft rented sector strategy [A New Deal for Tenants](#).

In total 8,346 responses were available for analysis. Organisations accounted for 172 responses, with 756 responses from individual members of the public. In addition, 7,508 respondents made a campaign-type submission.

## **Ensuring tenants' voices are heard with an equalities led approach**

In terms of particular barriers people with protected characteristics face in the rented sector, some respondents commented that the principal barrier is being able to afford the rent. In relation to groups that may be particularly disadvantaged by higher rental costs in the private rented sector (PRS), there was reference to women, young and single parents, and those from ethnic minorities. It was reported that disabled people not only face barriers associated with affordability and housing-related benefits, but also in relation to the accessibility of the housing stock.

Many respondents welcomed the focus on embedding tenant participation in the PRS, although some did note that the fragmented nature of the sector will bring challenges. Others did not agree that embedding meaningful tenant participation is needed or should be a focus. It was suggested that what tenants need is an effective route for remedy when things go wrong, and that the Private Residential Tenancy (PRT) regime already provides this.

A number of respondents either noted their support for tenants' unions having a role in supporting tenants to participate in decision-making or welcomed the potential of tenants' unions being considered and explored. It was suggested that tenants' unions could be supported by a 'right to unionise'.

## **Enhancing rights within the existing tenancy framework**

### **Potential reforms to the current grounds for repossession under the Private Residential Tenancy**

The PRT has been in place since December 2017 and, as the consultation paper notes, the Scottish Government made a commitment to review the 18 grounds for eviction after the tenancy had been in operation for five years.

Respondents were asked how well they thought the existing grounds are working. Some simply noted that they thought the current grounds work well or that the current arrangements do not need to be changed. Others suggested that the grounds, along with how they are operating, need to be reviewed.

A commonly-raised issue was around the balance between mandatory and discretionary grounds. It was noted that all grounds for evictions became discretionary during the COVID-19 pandemic and a frequently expressed view was that it is vital that all eviction grounds remain discretionary. An alternative

perspective was that the mandatory status of some grounds should be reinstated, including to avoid risking lender, institutional, and private investment confidence.

Respondents were also asked if there were any additional specific grounds for ending a tenancy that should be added, and a very substantial majority – 94% of those answering the question – thought that additional grounds should be added. The most frequently suggested were: ending a perpetrator’s interest in a tenancy or joint tenancy in cases of domestic abuse; ending a tenancy to comply with a planning enforcement notice which prevents the property from being used in its current manner; and recovery of possession where the property is required to house an employee.

General comments about pre-action requirements included that a tenure-neutral approach would seem sensible. It was also suggested that tenants should be supported to maintain tenancies wherever possible and that this should be the vision guiding all measures considered.

A frequent suggestion was that pre-action requirements should be extended to all grounds for eviction.

### **Rented sector and gender-based violence**

There was a view that supporting people involved in sex work should not be a responsibility of the private landlord or agent community, including because they will generally not have the expertise to make informed decisions. However, others noted that they were pleased to see recognition that, for PRS tenants, housing influences involvement in commercial sexual exploitation and can present barriers to women exiting from it. Reflecting comments about the complexity of the issues, there were a number of calls for partnership-driven and holistic interventions.

A number of respondents noted that they agreed with the consultation paper’s suggestion that the references in the model Scottish Secure Tenancy Agreement and Private Residential Tenancy: Model Agreement to ‘immoral purposes’ and ‘brothel keeping’ should be reviewed. Some suggested that they should be removed, with further comments including that the wording does not reflect a trauma-informed approach.

### **Joint tenants**

Respondents were asked whether they agreed that the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) should be amended to ensure that all joint tenants can terminate their interest in a private residential tenancy without the agreement of other joint tenant(s). A very substantial majority – 94% of those answering the question – thought that the 2016 Act should be amended as proposed.

Some respondents simply stated their support for the proposed changes, which were described as a sensible, practical approach that brings the PRS in line with the social sector and reinstates the position prior to the 2016 Act. The ability to terminate an interest in a joint tenancy was seen as both an issue of individual

choice for all tenants, but also as an important protection for victim-survivors of domestic abuse.

An alternative view was that those who jointly sign a lease should remain jointly and severally liable for the rent, with some respondents drawing analogies to mortgage arrangements. It was noted that a landlord's decision to let a property to a group of tenants is based on an assessment of their collective ability to afford the rent and that, if one leaves, the remaining tenants may be unable to cover the rent and other outgoings such as Council Tax.

With respect to safeguards for remaining joint tenants, respondents highlighted the importance of access to, and awareness of, housing advice and support, with early intervention seen as a key factor in preventing homelessness.

Respondents were asked if a ground should be introduced to enable private landlords to initiate eviction proceedings to end a perpetrator's interest in a joint tenancy and transfer the tenancy to the tenant who was subject to domestic abuse. A very substantial majority – 95% of those answering the question – thought such a ground should be introduced. Enabling private landlords to initiate eviction proceedings to end a perpetrator's interest in a joint tenancy was also seen as sensible, fair and reasonable, and as providing greater protection and security to victim-survivors of abuse.

The most frequent reasons for thinking the proposed ground should not be introduced were that this is not an appropriate matter for landlords to initiate, or that private landlords are unlikely to have appropriate experience or sufficient information and evidence to intervene in such cases.

Some respondents noted their agreement that the role of the Tribunal should be expanded to consider transfer of tenancy in relation to cases of domestic abuse and/or expressed their support for greater protection for victim-survivors of domestic abuse. However, concerns were raised with respect to the capacity of the Tribunal system.

A very substantial majority – 98% of those answering the question – thought the eviction process should be streamlined where there has been a criminal conviction relating to abuse of another person living with them in the let property (joint tenant or cohabitee) which is punishable by imprisonment in the previous 12 months.

## **Greater flexibility to personalise a rented home**

### **Allowing people to keep pets**

The most frequently-made point was that, to achieve 'tenure blind' housing outcomes and enshrine tenants' rights to housing, private tenants should have the right to keep pets in their home. Comments often focused on the importance of pets to people's emotional life as well as mental health.

Other respondents raised significant concerns, including that pets can and have caused problems, including some respondents reporting that they have experienced such problems as landlords. There was particular reference to damage

to the property. A frequently-expressed view was that, rather than a blanket right, each situation must be assessed on its merits.

Those who supported a right to keep pets generally suggested it should be a statutory right, and there was a suggestion that it should be written into the Model Tenancy Agreement.

If 'consent being the default position' were to be the preferred option, there was a call for it to be supported by appropriate guidance for landlords on how to put the changes into practice. There were also suggestions relating to the types of incentives or assurances that could be offered to landlords to encourage them to rent to people with pets. These included increasing the maximum deposit that landlords are permitted to take and/or requiring tenants to take out pet damage insurance.

A very substantial majority – 94% of those answering the question – thought that the right to keep pets should also be introduced as a right in the social sector. The most frequently-made point was that the approach should be tenure-neutral.

### **Allow people to personalise their home by internal decoration**

The most frequently-made point with respect to personalising internal decoration was that, to achieve 'tenure blind' housing outcomes and enshrine tenants' rights to housing, tenants should be able to redecorate their homes. A number of those who referred to tenants having a right or entitlement to personalise their rented homes did go on to comment that landlords should be able to insist that the property is reinstated to its original condition or to a condition agreed at the initial point of let. Some also noted that, if this is not done, landlords should be entitled to claim on the tenant's deposit to cover works required.

Other respondents raised concerns about a right to personalise being introduced. It was noted that properties need to be let in good condition for a new tenant coming in and, in general, this is done in neutral paint tones in order to appeal to as broad a market as possible. An associated concern was that the landlord has no way of enforcing a requirement to return the property to the original state when the tenant moves out. It was also noted that to do so may cost well in excess of the deposit, and in any case the deposit may be needed to cover other losses.

An overarching observation was that, if the right to personalise a privately rented home were to be introduced, a clear set of guidance and obligations would need to be created to inform and protect both tenants and landlords.

### **Reform to the eviction process**

#### **Winter Evictions**

A substantial majority – 90% of those answering the question – thought that additional protections against the ending of tenancies during the winter period are needed. The most frequent suggestion was that no eviction order should be enforceable during the winter period. Reasons given included that winter evictions can be even more stressful and damaging to a tenant's emotional, physical and

mental health, and that local authority and other homelessness services are most stretched during the winter.

Although most respondents did support the introduction of additional protections, some questioned whether the case for them has been made. The most frequently-made point by those who did not support additional measures was that the time of year is not, and should not, be relevant, including because the Scottish climate can be challenging at any time of year.

Many of those who did not think additional protections are needed identified risks associated with their introduction or highlighted possible unintended consequences. The financial risk to landlords was the most frequently-raised concern, with further comments including that a landlord evicting a tenant for rent arrears already suffers huge financial losses due to the amount of arrears tenants owe at the point of being evicted. In terms of the PRS, it was suggested that investors will be deterred and will question the viability of their letting businesses if further obstacles are placed in the way of ending tenancies, particularly in cases of rent arrears.

There was a query as to whether any financial assistance would be offered to assist landlords. It was suggested that to expect PRS landlords to provide housing effectively free of charge during winter months to tenants who are often in significant rent arrears is wholly unreasonable unless grant funding is provided from the public purse to reimburse them.

### **Illegal evictions**

A very substantial majority – 94% of those answering the question – agreed that the current calculation of civil damages for unlawful eviction should be reformed and simplified.

Some respondents noted that the minimum and maximum levels suggested by Legal Services Authority (a minimum of 6 times and a maximum of 36 times the monthly rent) seem reasonable or that the sum involved needs to act as a deterrent to illegal evictions.

With respect to the maximum multiplier of the rent that the Tribunal could award, alternative values ranging from one month to no limit were proposed. By some margin the most frequently suggested alternative value was six times the monthly rental, followed by 12 times.

It was also suggested that in addition to monetary compensation for tenants there could be other penalties, including that a landlord should be stripped of their licence or disbarred from being a landlord or a letting agent.

The importance of raising tenants' awareness of their rights in relation to illegal evictions was highlighted, with suggestions that this could be done via the tenancy agreement or could involve a media/social media campaign.

## **Supporting Students**

With respect to whether students living in Purpose Built Student Accommodation (PBSA) should be offered similar rights to students who rent from a private landlord, a substantial majority of respondents – 96% of those who answered the question – thought they should. In particular, it was argued that students living in PBSA should be able to give 28 days' notice to end their tenancy. It was also argued that students who wish to stay in PBSA throughout the summer should have the right to do so.

Other respondents were clear that PBSA is a different type of accommodation, more like extended serviced accommodation or short term let provision. The different letting cycle and the scale of investment needed were both highlighted. It was argued that allowing students in PBSA the right to terminate a lease at 28 days' notice would have a serious impact on the supply of student accommodation.

In terms of particular aspects of the PRT that are not working for the student market, many respondents focused on the absence of a fixed term contract and the ability of a tenant to give 28 days' notice of their intention to leave. It was argued that this combination of an open-ended tenancy and short notice periods do not work well for the student market and the academic year and that landlords are leaving the student market.

Respondents also identified a number of other concerns regarding high rental costs. It was suggested both that rent controls could help to address this issue but also that the introduction of further regulations, including rent controls, may cause more landlords to exit the student market. Poor accommodation quality, difficulties in getting repairs carried out, poor energy efficiency standards and high energy bills were also cited with respect to student tenancies.

## **Rent Guarantor Scheme**

General observations included that an effective guarantor scheme should alleviate risks for landlords or should encourage landlords to rent to more vulnerable, or higher risk, tenants. However, there were also views that widespread use of rent guarantor schemes could exclude people from disadvantaged backgrounds from accessing the PRS or that it would be better for households that are likely to be required to provide a guarantor to be housed in the social sector.

From the perspective of the tenant, the most frequently-identified features of a scheme were that access should be universal, the application process should be quick, easy and tenant-friendly and it should be free to use.

The need to raise awareness that schemes exist, or to promote schemes to landlords, letting agents, students and other tenants was also highlighted.

## **Gypsy/Traveller Communities**

Some respondents saw a need for improvement in the volume and quality of accommodation for Gypsy/Travellers, noting a shortage of site accommodation across many parts of Scotland, and citing quality and condition issues for existing sites. It was argued that the responsibility to provide Gypsy/Traveller site

accommodation should be equal to the responsibility to provide housing for settled populations.

Respondents also cited evidence of very significant inequality of outcomes between Gypsy/Travellers and the general population, including specific reference to physical and mental health, education, employment, homelessness and experience of discrimination.

For some respondents, standardising pitch agreements and aligning them with social tenancies, was seen as a means of ensuring equality of security and protections for Gypsy/Traveller site residents.

### **Agricultural/Crofting/Tied Worker Tenancies**

Lack of security of tenure was confirmed as a key issue particularly, but not exclusively, in relation to tied tenancies. This was sometimes connected to the absence of a residential type of Tenancy Agreement. Respondents highlighted that concerns about potential consequences for both accommodation and employment mean tenants are likely to worry about raising quality issues.

There were a number of references to the importance of tenant farmers, crofters or employees living on site in order to either run a business or perform their role. There was a concern that any restriction on the landlord or employer regaining possession of the property at the end of the farm tenancy, or period of employment, will have severe implications for incoming workers and tenant farmers.

Many comments focused on the importance of the early provision of advice and support. The other main theme raised related to priority for social housing. There was broad agreement that those facing the loss of tied accommodation should have priority for social housing, and it was noted that this is a particular issue in remote, rural and island communities.

### **Affordable Rents**

#### **A shared understanding of housing affordability**

Many respondents highlighted the importance of affordable rents in enabling people to access housing, citing evidence of the scale of affordability pressures for social and private renters in particular. This included a view that the scale of the challenge is such that PRS policy and rent controls need to be part of a wider approach to improve affordability. There were also calls for a rights-based approach to affordability, to support a person's right to an adequate home.

There were a number of comments that, while there is no single agreed measure of affordability, most existing measures are based on housing cost-to-income ratios, or residual incomes. Affordability measures based on residual income – whether a household's residual income after living expenses is enough to meet their housing costs – were the most commonly supported. Specific rent affordability considerations suggested by respondents included ensuring that affordability measures are based on 'total' housing costs and consider property type, size, energy efficiency, quality and location.

A shared understanding of affordability was seen as essential in identifying how rent increases and associated affordability pressures are impacting households and informing the wider policy approach to reducing poverty. In terms of practical applications, the most common suggestion was that a shared understanding of affordability should be used to underpin some form of rent benchmarking or control measures to ensure that rents are genuinely affordable.

Respondents also suggested a role for a shared understanding of affordability across other aspects of housing policy, including in relation to housing market interventions and affordable housing supply.

### **Consideration of appropriate forms of rent controls**

The consultation paper notes that, despite all private tenants with a PRT having the right to challenge unfair rent increases, very few people have requested a rent adjudication. Many respondents supported proposals to remove the potential for the adjudication process to lead to a larger rent increase than that proposed by the landlord. Some respondents noted that current rules mean that those requesting adjudication risk being penalised for using provisions intended to increase protections for private tenants. It was argued that rebalancing of the adjudication process is required with a greater focus on protecting tenants, while ensuring clear evidence-based outcomes.

Other respondents disagreed with the proposals, and some questioned the robustness of evidence on the reasons for tenants choosing not to use adjudication procedures. It was argued that the proposed changes would result in adjudication being unfairly balanced against the landlord, and that current rules should remain unchanged to ensure fairness to landlords and to prevent 'speculative' rent appeals. There was a view that some form of counterbalance is required to prevent tenants choosing to appeal all rent increases, with some respondents of the view that the proposed changes risk a significant increase in 'frivolous' appeals.

### **Rent setting in the social rented sector**

Given the range of safeguards already in place to protect social rented sector tenants, it is proposed that national rent controls should only apply to the PRS. A very substantial majority of respondents – 96% of those answering the question – disagreed with the proposal. Among respondents who disagreed were some who were opposed to any form of rent controls but who suggested that, if any such controls are to be introduced, then they should apply across both social and private rented housing.

Reasons for thinking rent controls should also be extended to social rented housing included that, as set out in the consultation paper, social rents have risen at twice the rate of rents in the PRS. Some respondents saw a need for a more effective mechanism to ensure social rents are affordable and questioned why a consistent approach to ensuring affordability of rents would not apply across both sectors.

However, it was also suggested that a single system of rent controls may not be appropriate given the differences between social and private rented housing. Some

respondents referred to differences in how the sectors function, for example noting that social housing is more heavily regulated and therefore more homogenous in terms of housing quality, and that social landlords receive public subsidy and operate on a not-for-profit basis.

### **Vision and principles of future rent controls**

Many responses were informed by opposition to any form of rent controls, raising concerns that rent controls have the potential to result in unintended consequences that could reduce supply.

There was also a view that, while the proposals are welcome, rent controls alone cannot solve the inadequate supply of affordable homes and that increasing the supply of social housing is the most important change needed to support the right to adequate housing.

It was argued that the overall vision for the sector should be reflected in any future rent control system, including detail on how rent controls will balance protection for tenants with the risk of encouraging disinvestment by existing landlords. There was some concern that the vision and principles set out in the consultation paper do not consider the potential impact and risks associated with rent controls for the PRS.

The need to ensure that policy design anticipates potential adverse impacts, incorporates appropriate enforcement, and can respond to local variation in market pressures was highlighted.

### **Supply of Rented Homes**

#### **Affordable Housing Supply Programme**

Most of those commenting agreed that acquisition of existing properties should be part of the approach to meeting housing need across Scotland. A range of possible benefits was identified, including the potential to rapidly increase available social rented housing and to target acquisition to address specific unmet housing needs, such as accessible homes or properties for larger families.

The need for a strategic approach and due diligence was also highlighted. In terms of due diligence, the importance of ensuring that that acquisition of existing properties does not leave social landlords owning properties that are not fit-for-purpose and/or are not suitable for local housing need was highlighted.

Other comments were primarily concerned with the overall volume of affordable housing supply. It was suggested that landlords' focus should be on delivering against housing supply requirements identified by Local Development Plans and Strategic Housing Investment Plans. This included a view that an appropriate balance between new development and existing properties must be set at a local level.

There were a number of concerns about the scale and scope of the investment required to deliver the affordable housing needed. Some respondents were of the view that limited funding support and increasing construction costs mean that

targets for new affordable housing cannot be met without unaffordable rent increases. In this context, there were calls for increased Scottish Government investment.

## **Social Rented Sector Allocations**

Those who commented were most likely to believe that the current approach is not achieving the right balance between supporting existing social tenants and those who are seeking a home within the social sector. Reflecting some of the themes covered at the previous questions, there was a view that the crux of the issue is a lack of supply, and quite simply that there are not enough socially rented homes to meet demand.

Comments made by those who thought that the right balance is generally being achieved included that allocation policies are underpinned by a clear legal framework, subject to regular review and informed by consultation with stakeholders. It was also suggested that the current allocations framework works well in ensuring those assessed with the greatest housing need are prioritised. However, it was recognised that, particularly within a pressured housing system, allocations based on housing need mean that, generally, only those that are vulnerable either through homelessness, serious health-related conditions or extreme need will be offered social housing.

A number of respondents commented on the importance of having a clear understanding of the barriers people with protected characteristics face in trying to access social housing. In terms of how this understanding could or should be achieved, comments included that improved data collection is needed to accurately analyse and predict housing need, determine supply and assess the impact on different groups.

## **Quality – Raising Standards**

### **Existing Housing Standards**

In relation to ensuring that landlords undertake essential repairs in a timely fashion, some expressed a view that issues are more significant in the PRS, and that while there can be problems in social housing, standards and performance are generally expected to be better.

A frequently-raised issue concerned how landlords can be held accountable by tenants when they fail to meet the Repairing Standard, particularly in relation to essential repairs. Although some respondents had concerns, others were of the view that current legislation and regulations are sufficient to ensure appropriate standards of repair in the PRS, and that the vast majority of landlords do undertake both essential and non-essential repairs in a timely fashion.

Many referred to the importance of clear standards, and of greater parity in the standards that apply across the rented sector. There was a call for further guidance to set out clearly what a Repairing Standard for the PRS would mean in practice, both for tenants and landlords.

However, some concerns were raised around the application of a single standard across Scotland, for example, in relation to varying availability of contractors and materials, with particular difficulties in rural areas.

Many respondents thought that better enforcement of current standards, and effective enforcement of any future approach, will be key to driving improvement. In terms of key features of an effective enforcement regime, there was reference to clearer and easier recourse for tenants where repairs are not delivered to standard and to landlords being more accountable for addressing issues around undelivered repairs.

There was also support for the use of penalties where landlords fail to provide an adequate response to outstanding repair issues. However, it was also suggested that legislation and/or regulation may be required and that local authorities would need to be resourced if they are expected to be responsible for taking enforcement action.

### **A new housing standard for Scotland**

A number of respondents commented on the general principle of a tenure-neutral Housing Standard and considered how it could or should align with other strategy and policy. Although some welcomed the commitment to consult on the principles underlying a proposed new Housing Standard, it was also suggested that it is difficult to comment on the barriers and required support without further detail.

Respondents also commented on how a Housing Standard would align with other policies and strategies. It was noted that, historically, social housing has been held to higher standards than other tenures and that there is already a complex set of existing legislation that governs standards and services. In terms of alignment, there was reference to the existing Energy Efficiency Standard for Social Housing and the Heat in Buildings and Fuel Poverty Strategies.

In terms of delivery, it was thought that achieving lasting change across the rented sector will require tax, regulatory and other policy reforms and that the exact nature of these will depend on the Scottish Government's ambition, on how the scope for alignment across the whole rented sector is defined and on developing a collective understanding on the case for alignment of standards and services.

In terms of the breadth of the proposed Housing Standard, one understanding was that it will relate solely to physical property standards, but that it would be good to know whether it will cover energy efficiency and zero emissions heating alone or whether it would be broader – for example covering relet standards, space standards and other design issues. Another perspective was that there could be opportunities for alignment of tenants' rights, customer service, affordability and regulation.

However, it was also suggested that standards across the tenures will never really be comparable without a uniform system of regulation across all housing tenures, and that this will not be possible.

## **A vision for cross-rented sector regulation**

The consultation paper sets out the Scottish Government's vision that 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.

Comments in support of this vision included agreement with the focus on tenure-neutral outcomes for tenants in both sectors, and with ensuring the right to adequate housing applies across all tenures. A PRS regulator was also seen as having a key role to play in empowering tenants, with a call for more effective enforcement of standards in the sector. While some felt that existing legislation provides private tenants with relatively strong rights, others saw a need for better mechanisms to ensure that private tenants can assert their rights, and access redress where their rights are not upheld. Reference was also made to potential for a regulator to improve awareness of rights among private tenants.

However, others felt that the vision and principles are too heavily weighted in favour of tenants; they wanted to ensure that any regulator balances support for tenants' rights with the rights of landlords and the need to achieve a high quality PRS.

Concerns were also raised that the PRS regulator may become another layer of administration that unduly increases the regulatory burden on landlords, or that adds to confusion around accountability for tenants. It was argued that a proportionate approach to regulation should not disadvantage the majority of landlords and tenants in order to address the shortcomings of a minority.

With respect to the role of a PRS regulator, there were views that this will ensure a more consistent approach to administration and enforcement. It was suggested that the efficacy of a regulator will depend on the structure, scope and powers of the role, and there was a view that it is not possible to reach any conclusion about the vision and principles without these details.

# Introduction

## Background to the analysis

This report presents the analysis of responses to the Scottish Government's consultation on the the draft rented sector strategy [A New Deal for Tenants](#).

The Scottish Government consultation paper invited views on delivering A New Deal for Tenants, which 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.

The consultation asked 61 questions. It was launched on 20 December 2021 and closed on 15 April 2022.

## Profile of main consultation respondents

In total 8,346 responses were available for analysis. Where consent has been given to publish the response, it can be found on the Scottish Government's website.

Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Organisations accounted for 172 responses, with 756 responses from individual members of the public.

In addition, 7,508 respondents made a campaign-type submission, with:

- 6,118 email or postcard responses all endorsing the response made by Living Rent, Scotland's Tenants' Union
- 1,390 email responses in support of a Cats Protection campaign

Organisational respondents were allocated to one of 12 groups by the analysis team and the Scottish Government.

A breakdown of the number of responses received by respondent type is set out in Table 1 below and a full list of organisational respondents can be found in Annex 1.

**Table 1: Respondents by type**

Type of respondent	Number
Organisations:	
Academic or research group	3
Housing, legal or advice agency or professional or representative body	8
Local authorities and their representative bodies	23
Other private sector	3
Other professional or representative body	5
Private landlord, letting agent or their representative bodies	55
Public body or agency	8
Religious group or body	4
Social landlords and their representative bodies	12
Tenants' and residents' groups and their representative bodies	9
Third sector organisation	22
Union, student or campaign group	18
<b>Organisations</b>	<b>170</b>
<b>Individuals</b>	<b>756</b>
<b>Campaign</b>	<b>7508</b>
<b>All respondents</b>	<b>8434</b>

Among the organisations, the 'Private landlord, letting agent or their representative bodies' respondents were the largest group, followed by 'Local authorities and their representative bodies'.

Within both the 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents groups, a number of respondents had drawn on standard text at some or all questions. Respondents using this text often referred to supporting the position taken by the Scottish Association of Landlords. Around 70 respondents drew on this text, with the considerable majority of them being 'Individual' respondents.

Analysis of all comments made by the 756 'Individual' respondents found that around 3 in 5 (or around 450 respondents) identified themselves as being a private landlord.<sup>1</sup> Overall, therefore, more than half of the 926 non-campaign respondents (around 450 'Individual' respondents and most of the 'Private landlord, letting agent or their representative bodies' respondents, are private landlords.

Around 1 in 20 'Individual' respondents identified themselves as being a tenant, with most reporting that they were a private tenant.

<sup>1</sup> Their comments suggest that a number of the remaining Individual respondents may also be private landlords although they did not make a clear statement to that effect.

In addition to inviting responses to the consultation, the Scottish Government commissioned The Tenants Information Service (TIS) and Tenant Participation Advisory Service (TPAS) to facilitate additional tenant participation. Focus groups with Private Rented Sector (PRS) tenants were held in April 2022, with eight PRS tenants participating. A further nine participants took part in a focus group that was focused on the experiences and views of students. There were also groups for PRS tenants living in rural areas and for those living in mid-market rent (MMR) homes.

## **Analysis and reporting**

A number of respondents did not make their submission on the consultation questionnaire but submitted their comments in a statement-style format. This content was analysed under the most directly relevant consultation question, as were the themes raised by focus group participants.

The remainder of this report presents a question-by-question analysis of answered to both the closed and open questions.

The number of non-campaign respondents who made a comment is noted at each open question. Living Rent made a comment at all but Questions 22 and 36-39 and in each case this was endorsed by the 6,118 respondents to their campaign. This means that comments or suggestions by Living Rent were the most frequently-made points at these questions. The Cats Protection campaign respondents answered Questions 19 and 20.

As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area and the views they express cannot be seen as representative of wider public opinion.

# Part One: A New Deal for Tenants

## Chapter 1 - Ensuring tenants' voices are heard with an equalities led approach

The consultation paper 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. It states that, as we work towards ensuring people can realise the right to an adequate home 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.

### **Question 1 – What particular barriers do people with protected characteristics face in their experience of the rented sector?**

Around 410 non-campaign respondents made a comment at Question 1. A number of these respondents noted that they did not know what was being referred to and that it would have been helpful to explain what is meant by protected characteristics in the consultation document.

The most frequent view was either that people do not face particular barriers, or that non-campaign respondents were not aware of there being any barriers. This included a number of private landlords who noted that they themselves do not discriminate against anyone when letting their property. It was also suggested that existing PRS laws already provide protections for tenants with protected characteristics.

Another view was that there is a lack of robust national data and information around the challenges faced by people with protected characteristics in accessing or sustaining accommodation in the rented sector. There was also a specific call for more data on existing specialist housing within the PRS, along with information on demand.

The differences between the social sector and PRS were noted, and it was suggested that there should be no inherent barriers in social rented housing in relation to protected characteristics for example, with safeguards provided through legislation and duties in terms of equitable access to housing. However, it was acknowledged that there can be barriers in meeting specific housing needs, particularly where there is high demand and/or when many existing homes are not fully accessible.

There was also a general point that the Scottish Government will be able to effectively address many of the barriers which people with protected characteristics face in the rented sector by ensuring that enough social homes are built to meet housing need. It was suggested that many people with protected characteristics would benefit from being able to access a social home.

## **Affordability and benefits**

Some respondents commented that the principal barrier – and one which could apply to anyone – is being able to afford the rent. In terms of groups that may be particularly disadvantaged by higher rental costs in the PRS, there was reference to women, young and single parents, and those from ethnic minorities being more likely to live in poverty and to be grappling with unaffordable housing and other costs. It was also recognised that many older or disabled people may also be living in poverty, and struggling to meet their housing costs, but that these groups are more likely to be living in either the owner occupied homes or in the social sector.

In relation to younger single people, it was reported that the shared room rate of Local Housing allowance (LHA), which applies to single people under the age of 35, is a barrier to young people on low incomes accessing and sustaining private rented accommodation.

With regards to women, there was reference to the gender pay gap and to a higher proportion of women in receipt of Housing Benefit. Connected to this was the suggestion that one of the main barriers people face is discrimination on the basis that they are receiving housing-related benefits. This included reports, including from people who commented based on their own experience, that some private landlords will not rent properties to people who are in receipt of welfare benefits.

In relation to the social sector, it was reported that the way in which some social landlords require rent to be paid can also lead to additional barriers. It was explained that with Housing Benefit being paid in arrears, some people can be in technical 'arrears' if their rent is charged ahead of this payment. It was reported that some housing associations issue their tenants with late rent letters in response to this, which can cause significant distress for some people.

## **Accessible housing for disabled or older people**

It was reported that disabled people not only face barriers associated with affordability and housing-related benefits, but also in relation to the accessibility of the housing stock. It was suggested that this can be an issue across the rented sector but is particularly the case for the PRS.

It was reported that, while Scotland's older population are most typically represented within the owner occupied tenure, they also account for a significant proportion of tenants within the social rented sector and a small, but growing, group in the PRS. It was suggested that some of the most common housing challenges facing Scotland's older population are not specific to tenure, but relate to difficulties accessing a warm, energy efficient, accessible and affordable home. It was reported that recent research has shown that only 5% of Scotland's housing stock is fit for purpose for the over 65 population.

In terms of the social sector, it was reported that accessibility standards have increased significantly over recent decades, with all new social rented homes built to Housing for Varying Needs Standards. However, there remains a shortfall of homes which meet the needs of people with disabilities, and especially wheelchair

users. It was reported that research with local authority housing practitioners and disabled housing applicants has found that disabled applicants for social rented housing received inappropriate housing offers, or no offers at all, throughout the 18 months of the study.

In relation to accessible supply overall, there was reference to the upcoming National Planning Framework 4 (NPF4), and it was suggested that without planning policy creating the appropriate framework to deliver specialist housing in the private sector, barriers are created to those with protected characteristics accessing housing. It was also suggested that a focus on accessibility should not only consider the access and internal features of the home but should also assess accessibility of the external environment and the opportunities for people to maintain local support networks.

Other comments addressed adaptation of the existing stock and included that the processes for getting a property adapted can be complex and can vary from area to area. It was also reported that the lack of a cross tenure approach to adaptations can lead to different waiting times.

With specific reference to the PRS, it was reported that private landlords often lack the knowledge and support on how to access appropriate adaptations to help their tenant. However, there was also a view that some private landlords may be less willing to agree to their property being adapted. It was reported that research of adaptation services with the PRS is limited but that anecdotal evidence often highlights that private landlords are reluctant or refuse to undertake necessary adaptations to a property, often leaving vulnerable tenants forced to find an alternative property that may better suit their needs.

### **Ethnic minority households**

The other frequently-referenced group was ethnic minority households. It was reported that ethnic minority households are more likely to be living in the PRS, and may experience barriers in relation to affordability of housing options, restricted access to some private renting options and may also be over-represented in some of the more deprived areas. Further comments included that:

- The higher prevalence of minority ethnic households in the PRS, combined with higher rates of disrepair in the PRS, can impact on health, wellbeing and life opportunities.
- Evidence suggests that people from minority ethnic groups face appreciable levels of discrimination and harassment. The fear or experience of discrimination can influence housing decisions and present a barrier in accessing housing options.

It was also suggested that the accessibility of information and low levels of awareness of available options can be an issue. It was noted that this can be a barrier for ethnic minority households and also for disabled people. Further comments included that while social housing providers are usually well placed to provide information in different formats and languages, the same may not be true for smaller and individual private sector landlords.

Connected to possible language barriers was a concern that they may stop people from understanding their rights. It was reported that experience would suggest that people from minority groups, including those from ethnic minorities, can often end up in poorer quality properties and may be unaware of their rights or of the minimum standards required in the PRS.

Other barriers identified included that:

- Non-UK guarantors are not accepted as part of the application process, putting constraints on migrants and students who may have a support system in another country.
- Those from an ethnic minority background and foreign nationals may be more likely to have no recourse to public funds due to their immigration status and right to reside in the UK. This will mean they are less likely to access social housing and welfare.

## **Women**

With specific reference to the social sector, it was suggested that one of the key barriers is that housing legislation, strategy, policy, planning and budgeting remains ungendered, with a complete absence of any intersectional analysis of women's housing and homelessness. There was support for plans to undertake a comprehensive audit of current housing and homelessness legislation, 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 was noted that in the draft strategy, the only gendered proposals relate either to women experiencing domestic abuse or to women subject to commercial sexual exploitation. It was suggested that there are a number of other highly gendered issues, including affordability, housing standards and security which require a gendered analysis.

With specific reference to women and children experiencing domestic abuse, there was reference to unaffordable rents, unreasonable costs to furnish and set up a home and being forced to move to new areas where they lack family and friendship networks being among the most prominent barriers.

It was noted that there is no reference within the draft rented strategy to Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls. It was reported that Equally Safe recognises gender inequality as the root cause of violence against women and girls and makes specific links between gendered abuse, violence and housing. It underlines the requirement for work on violence against women to be interlinked with other Scottish Government strategies, programmes and frameworks.

## **Other groups facing barriers**

There were also a number of suggestions around particular groups of people who may face particular barriers. These suggestions included:

- Single parent families.

- Larger families. This was connected to the lack of supply of larger properties referenced above.
- Older people. There was again reference to lack of supply, especially in the PRS.
- Those suffering with mental health issues. It was suggested, for example, that people with mental health issues may experience additional difficulties when trying to negotiate with a landlord over a dispute.
- People with dementia. There was connection to challenges with having a home adapted was referenced here.
- The LGBTQI+ community, and same-sex couples specifically. It was reported that people who identify as LGBTQI+ face additional barriers to renting, as well as being over-represented in the homeless population. It was also noted that disclosing their identity may make them feel more vulnerable.
- People needing culturally appropriate accommodation. This was connected to there being a limited supply of suitable homes.
- Gypsy/Travellers, which may result in members of the community being unable to live their lives in a way that recognises and respects their culture and beliefs. There was specific reference to many Roma families being accommodated in the PRS and to their accommodation often being unaffordable, over-crowded and of poor quality.
- European Economic Area nationals who have got into housing difficulty. It was reported that their eligibility for housing and homelessness assistance is often tied to immigration law and that this means the process of determining eligibility and accessing support is complex and takes a significant amount of time.

In relation to students, it was reported that while being a student is not a protected characteristic, there is considerable anecdotal evidence around students facing a range of barriers to accessing rented accommodation. It was suggested that the best quality housing is often not accessible to students, who either have to move further away from their place of study or accept lower quality housing.

Other points made in relation to students included that:

- There are specific issues with the applicability and enforcement of equality law for student tenants. Equality law does not currently apply to private student accommodation providers in the same way it does to public sector funded student accommodation.
- Disabled students are often paying a premium to access student accommodation. Accessible rooms are usually offered in newer, generally more expensive accommodation and providers charge rates for adapted rooms that are higher than the normal (average) room rate for that development. As a result, disabled students are often unable to access either the cheapest developments or the cheapest room rates in the more accessible higher-specification developments.

- Particular consideration should be given to the housing needs of care-experienced students and estranged students. Students who are care leavers, or estranged from their parents may not have relationships with their families which would enable them to ask them to act as a guarantor for a rented property, making them disproportionately vulnerable to poverty and homelessness.

Finally, it was suggested that it is important to consider intersectionality, with some groups, for example women from ethnic minority communities facing increased barriers and risks. It was also reported that those with intersectional marginality are over-represented in the homeless population.

### **Other systemic and societal barriers**

In terms of the other barriers people can face, some were structural, and some were societal. In terms of systemic barriers there was reference to:

- An insufficient supply larger family homes, and especially those with 4 bedrooms or more. This was said to be an issue across the rental sector. In terms of the groups most affected, there was reference to multi-generational families, and it was noted that these families are more likely to be ethnic minority families.
- Lack of supply in locations which would allow people easy access to the formal or informal support they rely on.
- Digital exclusion, both in terms of having the necessary devices and internet access, and also around being able to find and understand information in a format that is accessible.
- Some agents and landlords in the PRS not identifying protected characteristics correctly and not making reasonable adjustments to support their tenants. It was suggested that a Regulator could provide guidance to agents and landlords and develop a level of best practice across the industry.

In terms of societal barriers there was reference to people encountering prejudice, judgement, preconceptions, hostility, condescension, discrimination, and misunderstanding. Connected to this was a concern that people with protected characteristics may be reluctant to self-identify and that this may mean they do not access appropriate support and advice.

### **Ensuring that we understand tenants' experiences and priorities for change to inform effective policy interventions**

The consultation paper notes that, while tenant participation and tenant scrutiny in the social sector is well established and developed, tenant participation in the PRS is less well developed.

It suggests that a tenant participation panel would provide a forum in which a wide range of PRS 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.

**Question 2 – 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?**

Around 390 non-campaign respondents made a comment at Question 2. Those responding to the Living Rent campaign also endorsed its comments at this question.

Opening observations included that there is a lack of consumer voice in the PRS, and that at present tenants have very few routes to come together to discuss and act upon the issues that affect them. Many non-campaign respondents went on to welcome the focus on embedding tenant participation in the PRS, including by providing opportunities to shape the development of national policy.

However, some non-campaign respondents did note that embedding tenant participation within the PRS will not come without its challenges. There was reference to the fragmented nature of the sector, with a significant component structured around contracts between single tenants and single property landlords. It was suggested that this situation limits current opportunities for participation involving multiple tenants and multiple landlords as interests are contractually exclusive. It was also noted that there is no clear history and culture of tenant participation in the PRS.

Some non-campaign respondents, including a number of 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents did not agree that embedding meaningful tenant participation is needed or should be a focus. It was suggested that what tenants need is an effective route for remedy when things go wrong, and that the Private Residential Tenancy (PRT) regime already provides this.

There was also a view that the Scottish Government is already engaging sufficiently with tenants; the connection was made to this consultation, with a suggestion that the 'New Deal for Tenants' exemplifies the tenant-centred approach being taken to reforming the PRS. It was also noted that PRS tenants have other routes through which they can raise issues, such as by contacting their MSP or MP.

An alternative suggestion was that, while there would be benefits to having enhanced tenant participation in the PRS, in the first instance there is more of a need to provide greater assurances on rights and responsibilities for tenants and landlords. It was suggested that these assurances could be made as part of the development of a PRS Charter which would be based on the principles of the Scottish Social Housing Charter.

## **Experience and learning**

Non-campaign respondents who did support embedding tenant participation within the PRS sometimes went on to note that there is a range of learning and practice that can be drawn on to inform the approach to be taken. It was seen as important that recent models of tenant participation are enhanced and expanded. There was reference to current initiatives being evaluated and good practice shared and encouraged. It was suggested that this work could be done in conjunction with public and voluntary sector bodies.

It was also suggested that lessons and skills around tenant participation from the social housing sector would be very relevant within the PRS, albeit that the challenge will be how to manage and centralise the activity.

A specific suggestion was to review how the Scottish Housing Regulator (SHR) currently structures its participation. Engaging with the TPAS and the TIS was also proposed, as was learning the lessons from the experience of having participation included within the housing legislation and the Scottish Social Housing Charter.

There was also reference to the Joseph Rowntree Foundation's (JRF's) Tenant Insight programme, including that JRF has sought to learn from other organisations who have used tenant participation approaches in the PRS, such from Shelter Scotland's private rented sector panel.

## **Principles and rights underpinning tenant participation**

An overarching comment was that developing a legislative framework and guidance for participation would help ensure that any process was transparent, accountable and open to all. Associated to this was the suggestion that meaningful representation may require a formal mechanism which is recognised within a regulatory regime and has defined roles in terms of addressing standards and operations.

Giving tenants a statutory 'right to unionise' was also seen as key. It was suggested that this could be similar to the rights of tenants to set up Registered Tenant Organisations (RTOs). The theme of tenants' unions is picked up again at the next question.

There were a range of suggestions for key principles that could help support successful tenant participation. These included:

- Making sure all voices can be heard and that all tenants, including those with protected characteristics, have opportunities.
- Building strong, trusted relationships and helping people find commonality.
- Ensuring that tenants can get involved without fear of any repercussions about voicing an opinion.
- Valuing people's time and ensuring the relationship is not wholly extractive. There was reference to paying people for their time and expertise where possible.

The importance of developing an approach that is inclusive to both tenants and landlords was also highlighted.

In relation to the types of issues that tenants should be able to influence, there was reference to a 'Tenants First' approach to decisions, based on fundamental rights to home and quality of life.

### **Overall approaches**

There was a view that a national rather than local approach is likely to be the most successful and that a larger body to represent the interests of private tenants may be the simplest solution. It was recognised that this approach would not help address issues that were specific to a particular area, but it was noted that it could allow tenants to be involved in wider policy decisions. There was reference to working in partnership with the Scottish Government and supporting agencies to deliver the Rented Sector Strategy and oversee the delivery of Housing to 2040.

However, it was also suggested that local level, tenant-led panels should also be established to work in partnership with local authorities and supporting agencies to ensure national and local level policy is delivered appropriately.

A number of non-campaign respondents, from across a range of respondent types, noted their support for the establishment of a PRS tenant participation panel. Reasons given for supporting this approach included that it would seek input from both landlords and tenants.

Some went on to make suggestion about how the panel approach should be taken forward, including that the necessary funding and support should be made available for this to be done meaningfully. It was also noted that three tenant-focused organisations are referred to in the consultation paper – TIS, TPAS and Living Rent. It was suggested that these organisations should be used to develop any tenant participation panel rather than establishing a new group which will only replicate work already being undertaken.

More generally, it was noted that there are a number of consumer groups and bodies that provide support and advice for consumers, such as Shelter Scotland, the Scottish Public Services Ombudsman (SPSO) and Citizen Advice Scotland, could help embed tenant participation within PRS. It was also reported that The Property Ombudsman holds regular Consumer Forums to provide a platform to help address consumer detriment and increase consumer education and awareness.

In terms of other overall approaches, there was reference to:

- Looking at the arrangements for The Resident Panel for the social housing sector in England. It was reported that it provides opportunities for residents of member landlords to be involved in the development of services, as well as giving the Housing Ombudsman feedback on their experience using those services. Membership is made up of residents appointed by the Ombudsman from a cross-section of landlords in the Housing Ombudsman Scheme,

ensuring that residents with different types, sizes and locations of landlords are represented.

- Adopting a community organising<sup>2</sup> model could help establish trust and relationships within communities. Community organising tools that could be used to increase tenant participation might include: conversation cafes held in community spaces; setting up stalls at community events and spaces to discuss tenant participation; and skill-building training aimed at empowering tenants to galvanise the participation of other tenants.
- Engaging with groups and organisations that are already established and who are already working with and/or supporting people. It was suggested that this approach could be particularly useful in terms of engaging with tenants with protected characteristics.
- Local authorities encouraging the use of existing mechanisms, such as local Tenants and Resident's Federations or Organisations.

### **Engaging with tenants, including those with protected characteristics**

With specific reference to ensuring that the views of tenants with protected characteristics are taken into account, it was suggested that establishing trust and a two-way relationship is crucial for reaching out to those most marginalised.

Developing processes that reflect what tenants want was also seen as key to sustained and meaningful engagement. There was a call for specific work with tenants, including those with protected characteristics, to better understand what they want by way of involvement and consultation and how best to meet those needs. Working with existing community and support organisations was one of the ways in which respondents thought that a range of different types of people could be involved.

There was specific reference to students, single parents, key workers, migrants, working families with children, older and disabled people and those from ethnic minorities, students, and those working in agriculture with tied worker tenancies. It was also suggested that any initiatives should explicitly aim to include:

- Those with experience of homelessness who have moved into a PRT.
- Families at most risk of living in poverty in Scotland (disabled families, lone parents, Black, Asian and minority ethnic groups, larger families, families with a child under one and families where the mother is under 25).
- Students. It was suggested that students are often forgotten, despite being a significant proportion of those renting in the PRS. It was reported that they have particular housing needs, and that any panel or other models proposed should take these into account.

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<sup>2</sup> Community organising is the process of building an individual or communities' skills, tools and agency to be able to assert their rights and tackle the social injustices affecting them.

There were also a number of references to ensuring that the necessary support is available, including to enable people to access training and develop new skills. It was suggested that:

- Resourcing and working through trusted partner organisations – often smaller, locally based organisations close to the communities we hear from least often – will be important.
- Tenant participation groups should have active involvement from duly qualified persons, such as chairs to the First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal).

### **Specific approaches**

Other general suggestions included that online engagement can be very effective, especially now we can draw on learning from moving activities online during the COVID-19 pandemic. It was suggested that it can be more inclusive, including for people who may have been less comfortable in a more traditional meeting setting, or faced barriers to participation if having to travel. However, it was also noted that:

- Using the new technology, and getting the best out of it for participants, does require new facilitation skills and a different approach.
- Offering different ways to engage is key. It was reported that some people will prefer quick, fast paced engagement, for example digital surveys and instant feedback mechanisms; whereas some will prefer in person discussion and workshop events.
- It must be recognised that reliance on digital options may restrict access by certain protected characteristic groups, including based on age, ethnicity or disability. One respondent reported that their tenant survey has indicated that some tenants prefer written rather than electronic communication.

There were also a number of other specific suggestions, including around making initial contact with PRS tenants. These included:

- Utilising existing community hubs, such as schools and libraries, to share information.
- Using social media platforms and relevant apps to help reach a wider demographic.
- Supporting landlords and letting agents to promote tenant participation channels.
- Requiring landlords to inform tenants about how they can be involved in wider policy decision making as part of the sign-up process.
- Landlords obtaining permission to pass on a tenant's contact details to allow local authorities to interact and communicate directly with tenants. It was suggested that a question could be added on to the model tenancy agreement – 'Can your email address be passed to the local authority for consultation purposes'?
- Allowing access to tenant contact details through deposit schemes.

- Considering the potential of using the Scottish Government’s Private Landlord Register to alert private tenants of Scottish Government policy consultations affecting the PRS.

With specific reference to people who have experienced homelessness, it was suggested that access schemes, like the Help to Rent scheme Crisis delivers in Edinburgh, can provide a route through which to engage with tenants.

### **Potential challenges or notes of caution**

In terms of general notes of caution, a frequently-made point was it will be important that tenant participation groups share accurate information in terms of current law or best practice. It was reported that this not always the case at present, and that information provided by third sector advice agencies can also be misapplied or misunderstood. It was suggested that any advisory board set up needs to be accurate and consistent in the information it provides.

There was also a concern about the resources required to support tenant participation in the PRS and it was suggested that local authorities lack the necessary resources. There was a call for the Scottish Government to provide the essential tools which allow local authorities to engage with their local private renter population.

### **The role of tenants’ unions in tenant participation and influencing decision making processes and policies**

**Question 3 – 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?**

Around 490 non-campaign respondents made a comment at Question 3.

### **Challenges and considerations**

Some of these comments highlighted issues that respondents saw as problematic around some of the current approaches to tenant participation. They included views that much current tenant participation involves self-selected representatives, or individuals brought together into forums by charities or government. It was suggested that this is often quite unrepresentative, and it can be a flawed and undemocratic process. There were specific concerns about the current imbalance of power between social landlords and RTOs.

Moving forward, and at Question 2, it was noted that there are challenges associated with creating effective engagement mechanisms for a more transient PRS population. It was suggested that consideration needs to be given to enabling opportunities for PRS tenants to not only become involved but to maintain and sustain involvement.

In terms of possible pitfalls or challenges that will need to be addressed if taking forward a tenants’ union-type approach, comments included that:

- It could lead to a greater focus on the needs of those tenants with the time and capacity to form unions, potentially leaving more vulnerable people behind.
- There is a risk that it could act as a barrier, with a union considered as being representative of all tenants and becoming seen as the only way to be heard.

It was also noted that there is currently a network of mechanisms for tenant involvement in the social sector, including RTOs and Regional Networks, and it was reported that social landlords devote considerable resources to engaging with their tenants. There was reference to tenant groups, tenant scrutiny panels, consultation meetings and housing officer surgeries. It was also noted that tenants play a key role in the governance of housing associations, with the vast majority having at least one tenant representative on their governing body. It was suggested that the potential of tenants' unions needs to be understood and considered within this context.

For some, these existing mechanisms are already sufficient. With specific reference to the PRS, it was reported that the Tribunal is a powerful tool for tenants, and it was thought to be unclear how a tenants' union would assist further.

Those raising reservations sometimes went on to suggest alternative ways forward including that it may be more worthwhile to expand consultation and participation opportunities in more diverse and different ways to reach different sections within the sector.

Some of those raising concerns expressed their clear disagreement with tenants' unions having a greater and/or formalised role. These non-campaign respondents tended to be either 'Private landlord, letting agent or their representative bodies' or 'Individuals'. Further comments included that tenants already have too much power compared to landlords, or that they would avoid renting to union members.

Also from a private landlord perspective, it was suggested that initiatives to support tenants in understanding and exercising their rights are welcomed but that it is important that those advocating for tenants commit to operating in a constructive and reasonable way. It was also suggested that if a union did not act objectively and reasonably, they should be held accountable for any losses a landlord suffers as a result.

Some 'Private landlord, letting agent or their representative bodies' respondents reported that their experience of existing tenants' unions had not been positive, with reports of unrealistic and unreasonable demands being made.

### **Potential of the tenants' union approach**

A number of respondents either noted their support for tenants' unions having a role in supporting tenants to participate in decision-making or welcomed the potential of tenants' unions being considered and explored.

In terms of that consideration, it was suggested that a wider review of representative organisations already in place across sectors, and also across countries, should be

undertaken. It could look at any gaps and consider options. It was also suggested that the social sector could be used as a baseline, noting the differences between the role and nature of social and private landlords.

Further comments included that anything which encourages participation is a positive thing and it was also noted that there is scope for improvement in relation to awareness of rights and responsibilities amongst tenants, particularly in the PRS. It was also suggested that:

- Tenants' unions appear to work well in various European Countries, USA and Australia, particularly in relation to affordable rent levels. However, there was also a note of caution that, while the consultation paper suggestions that the Swedish model of tenants' unions might be something that could be replicated in Scotland, it is important to caveat comparisons with the differences in the housing systems.
- They are generally membership organisations that bring together tenants and their associations in a far more democratic and accountable manner than many other forms of tenant participation.

Respondents also considered the focus and function of tenants' unions, with suggestions including that they could or should:

- Represent the views of tenants in national discussions and local strategy development. A 'Tenants' and residents' groups and their representative bodies' respondent also reported that they have national forums where delegates create, discuss, and vote upon policy as well as discussing how to respond to consultations such as this one.
- Act as expert bodies who can help advise and advocate for tenants who are experiencing issues with their landlord and who need help and support to exercise their rights. A 'Tenants' and residents' groups and their representative bodies' respondent reported that they respond to tenant issues in their own homes on an independent basis.

Specific suggestions included that they could represent tenants in referrals to the Housing and Property Chamber, engage with the Regulator on conditions in the PRS, and challenge poor and illegal practice.

### **Key features of a tenants' union approach**

Respondents also pointed to issues that will need to be considered if the tenants' unions are to play a greater, or more significant, role in the future. These included that meaningful representation may require a formal mechanism which is recognised within a regulatory regime and has defined roles in terms of addressing standards and operations. As at Question 2, it was suggested that tenants' unions could be supported by a 'right to unionise'.

Other comments or suggestions about the overall approach included that:

- Any process to determine formal mechanisms for tenants' unions should involve existing organisations.

- How tenants' unions would be structured, supported and funded will need to be considered, along with ensuring there is a diversity of participation structures and arrangements.
- They should be wholly independent organisations. It was also suggested that they should be apolitical.
- The onus should be on a bottom-up approach and particularly developing tenant involvement at a local neighbourhood level.
- Tenants' unions should follow a model similar to industrial relations regarding consultation.

Other comments included that there would need to be safeguards to ensure that tenants are not discriminated against for being members. People should not have to disclose that they are members of a tenants' union unless as part of a formal process involving a tenants' union.

The issue of membership fees was also raised. It was reported that tenants' unions typically charge around £10 a month for membership. There was a concern that this would be unaffordable for many, and more generally would discourage tenants from joining a tenants' union. It was also suggested that any charge for tenant participation would simply not be viable for the majority of social tenants.

In terms of the resource implications for landlords, it was suggested that any requirements on individual private landlords to undertake more engagement with tenants would need to be proportionate.

## **Awareness of rights and support to exercise them.**

**Question 4 – 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?**

Around 560 non-campaign respondents made a comment at Question 4a, with around 225 commenting at 4b. A number of the comments were general to both sectors, and some respondents cross-referenced between their responses to parts a) and b).

A general observation about awareness raising was that it works best when it taps into existing networks, where they already exist, rather than try to create new ones. There was reference to local authorities, and particularly services, housing associations, private landlords, third sector organisations, lenders and Community Planning partners, as well as locally-based groups offering information, advice and referral services within communities. However, it was also suggested that organisations must be fully engaged and resourced to cope with any resultant increases in demands placed on their services.

There was also a call for housing education to be embedded into the education curriculum, ensuring that young people are aware of how the housing system works, and their rights in regard to it, before potentially taking on a tenancy of their own.

Another general observation that applied to both the PRS and social sector was that many older people have difficulty understanding their housing options and are often unsure where to get information and advice. It was noted that they may rely on non-digital means of getting support and information and that a high degree of digital exclusion among older people in Scotland should be remembered and considered.

### **Private rented sector**

A number of non-campaign respondents commented on experience and evidence that points to low levels of awareness of their rights among PRS tenants in particular. There was specific reference to the RentBetter research programme's findings that people are not aware of what tenancy they are on, what rights this brings or how to exercise them.

However, there was also a view that there is ample information available on tenants' rights and how to exercise them for those who wish to understand them. It was noted that they are covered in the PRT model lease (in both summary form and full detail), PRT guidance notes, pre-action requirement letters, on mygov.scot, Shelter Scotland and Citizen's Advice websites to name but a few. It was also noted that the Scottish Government has also recently launched a new website which sets out tenants' rights in a clear and simple manner.

A frequently-made point was that even if tenants know their rights, they may struggle to have these enforced, partly due to a lack of resources compared to their landlord, and partly because they fear potential repercussions. There were also reports that those who have used the Tribunal find it to be inaccessible and intimidating. It was also reported that people on low incomes and with limited financial power are unlikely to exercise their rights due to the limited supply of housing, limited choices of affordable alternatives and the fear that challenge may result in the loss of their current housing.

A number of non-campaign respondents identified a range of ways of approaches or actions that might help ensure that PRS tenants are better aware of their rights and how to exercise them. An overarching observation was that multiple bodies must be involved in promoting rights awareness including the Scottish Government, local authorities, bodies which come into frequent contact with tenants such as tenancy deposit schemes (TDS), as well as independent advice organisations such as the Citizens Advice network. It was suggested that the package of work should be joined up centrally, with clear and consistent information provided to all tenants.

### **Tenants' unions and tenant participation**

The most frequently-made point, reflecting some of the themes raised at the previous question, was that supporting tenants through tenants' unions is essential for achieving both awareness and the ability to exercise rights.

Further comments were that tenants' unions would be a suitable forum to expand on the awareness of tenancy rights as well as what the current legal requirements and expectations are for landlords.

The potential of existing local and national tenant participation structures and vehicles was also highlighted.

### **Accessible information and advice**

Non-campaign respondents were most likely to refer to the importance of ensuring that tenants are provided with the necessary information from the outset, with further comments including that landlords should provide this information to tenants at the start of their tenancy. One suggestion was that this information could be part of the standard PRT, for example by using a QR code which links to an online resource(s).

It was noted that every tenant must be provided with a Tenant Information Pack (TIP) which provides all relevant information and that there could be a requirement to ensure that the information on rights is prominent. Non-campaign respondents also referenced providing a summary of rights at tenancy sign-up, and annual follow-ups to ensure people were aware of their rights.

Non-campaign respondents also commented on the need for accessible, free, and independent information and advice. Specific comments included that:

- Independent advice agencies need greater capacity, which will require more funding. It was also suggested that there needs to be training for advice providers and a focus on capacity building for organisations that provide housing advice and support. There was a particular concern that there is currently a lack of training for providers in how to support tenants through the Tribunal system.
- The advice that local authorities can provide through Landlord Registration Services could be more widely promoted.

A 'Local authority' respondent reported that their PRS Housing and Welfare team provides support to PRS tenants in relation to their rights and also signposts to relevant agencies, such as law centres. There was also reference to student associations often playing a key role in educating students on their rights as tenants.

Other comments or suggestions around awareness raising and access to information included:

- Making use of the national landlord register. It was suggested that the Scottish Government should be promoting and supporting local authorities to communicate with private tenants on their rights, via their details recorded in the register.
- Running both national and localised publicity campaigns. These could utilise a range of methods, recognising that digital exclusion can affect access to information. There was reference to both television and radio campaigns.

- Providing a PRS-focused website. It was also noted, however, that there is already good information on a number of online sites including those of Shelter, mygov.uk and some local authorities. It was suggested that all social housing providers could include links to these sites on their own websites.
- Providing summaries of key information in different languages and formats that are downloadable and can be accessed by both landlords and tenants.
- Using targeted approaches for certain groups, including for those who share a protected characteristic or who face particular challenges or disadvantage.
- Regular updates and information briefings could be sent to those who are privately renting via the new regulatory body.

It was also suggested that there could be a requirement to signpost to independent agencies as part of any pre-action requirements.

### **Enabling people to exercise their rights**

As noted above, many respondents raised concerns that tenants may struggle to exercise their rights. In terms of enabling them to do so, it was suggested that we need processes and services which recognise the clear power imbalances between tenants and landlords.

One suggestion was that, to provide clarity in relation to service delivery and expectations, consideration could be given to the development of a statement of rights, to complement the model PRT agreement, in which tenant and landlord rights and responsibilities could be summarised. It was also suggested that streamlining legislation could also help tenants keep track of their rights and avoid them having to deal with multiple pieces of legislation.

There was also reference to improving tenants' access to justice. Specific suggestions included:

- Introducing clear minimum penalties and compensation for breaches of housing standards, housing law or other housing-related regulations.
- Funding to support tenants' access to justice. There was a specific suggestion around supporting tenants at the Tribunal. Tools which may help tenants actively participate and put forward their case using the Tribunal system, such as a digital tool or advice pre-hearing, were also proposed.
- Reversal of the burden of proof, especially in relation to grounds for eviction.
- Well-resourced enforcement teams in each local council.

It was also suggested the data routinely recorded and published by the Tribunal should be expanded, making information more freely available and allowing for better analysis of the Tribunal process and a deeper understanding of tenants' experiences.

## **Landlord-focused suggestions**

There were also comments related specifically to sharing information with landlords, including that local authorities could include relevant information in newsletters or other communications for registered landlords.

There was reference to working with private landlords, via local landlord registration and private sector housing teams, to develop forums and networks which encourage and support good awareness amongst landlords of tenants' rights and how they can support tenants through high quality service and information provision.

It was also suggested that organisations, such as Landlord Accreditation Scotland, and representative bodies, such as The Scottish Association of Landlords, could continue to play a role in promoting good practice among private landlords.

## **Social rented sector**

It was noted that the context and challenges for the social sector are very different to that of the PRS, including a view that there are already robust processes to ensure that social tenants are aware of their rights. Examples given included the provision of advice and information at tenancy sign up, initially through a new tenant video, and then through tenancy newsletters and ongoing tenancy visits. There was also reference to tenants' handbooks and guides to policies and processes being available online. The importance of information being accessible and up to date, the use of plain language and a range of formats were also highlighted.

Other mechanisms or approaches noted included:

- Tenant participation strategies.
- Housing scrutiny initiatives.
- Existing tenants and residents' associations.
- The work of housing officers and welfare or money advice services, including support services provided by third sector providers.

The role of the SHR in safeguarding and promoting the interests of social tenants was also highlighted, as was the role of the SPSO. It was also noted that many housing associations have a Complaints Policy and Procedure that is based on the SPSO's model complaints handling procedures.

It was also reported that social landlords are already required to comply with pre-action requirements before raising repossession proceedings. However it was noted that, as with the PRS, social tenants may know their rights but may struggle to have these enforced.

Non-campaign respondents identified a number of areas where they saw the potential for improvement. These included through a specific focus on improving involvement from individuals and groups who are under-represented in existing tenant participation structures.

Further comments included that the most straightforward method of communicating housing rights is through the already existing SHR and the Scottish Social Housing Charter. It was suggested that together they provide a fundamental basis for promoting and ensuring the housing rights of older and vulnerable tenants, within the social sector, are protected. A specific suggestion was that the Social Housing Charter should be updated in a future review with a new outcome focused on the Housing Needs of Older People, which could help signpost and highlight best practice for social landlords to adhere to, ensuring their services reflect the needs of older people.

In terms of general approaches that could be used to help raise awareness or enable people to exercise their rights, many of the suggestions included:

- Using a range of approaches, but always keeping a focus on the accessibility of the information that is being shared.
- Having clear and accessible processes and services which recognise the power imbalances between tenants and landlords. This would mean supporting tenants to raise issues with housing officers, clear lines of accountability and clear fines for landlords who fail to comply with their obligations.
- Training and information provision to partner organisations, third and independent sector organisations may also be beneficial in developing a greater awareness amongst wider sectors in relation to tenants' rights.
- The use of Neighbourhood Coaches, an approach that can be proactive in making tenants aware of their rights and how to access them.

Specific suggestions included that:

- Tenants should be given clear information, or should be signposted to information, on the repairing standards, tenancy rights, refurbishment rights and any other relevant housing rights. This should include how to raise any issues with their landlord.
- If tenants raise an issue, they should be informed of when they can expect a response, and what to do if the issue is not addressed satisfactorily.
- Those accessing homeless assistance should be made aware of their rights to temporary accommodation, that is suitable in terms of the Unsuitable Accommodation Order and any revised standards, by making information available on websites and as part of case management.

## Chapter 2 - Enhancing rights within the existing tenancy framework

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

The PRT has been in place since December 2017 and, as the consultation paper notes, the Scottish Government made a commitment to review the 18 grounds for eviction after the tenancy had been in operation for five years.

#### Grounds for eviction

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

**Question 5 – 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).**

Around 640 non-campaign respondents made a comment at Question 5.

Some of these non-campaign respondents simply noted that they thought the current grounds work well or that the current arrangements do not need to be changed. Further comments included that the grounds for eviction strike the right balance in terms of the rights of tenants with regards to security of tenure, and the rights of landlords to use their property as they wish. It was also suggested that having grounds which are mandatory or discretionary makes it easier to understand what is required.

Others suggested that the grounds, along with how they are operating, need to be reviewed. Further comments included that any review should be human rights-led and could also look at the process for eviction to ensure that spurious evictions do not take place. There was specific reference to looking at the use of grounds 4 and 5.

There was also thought to be a need to collect additional data to help understand the potentially complex issues that lead to eviction more generally, and specifically the impact of COVID-19. There was specific reference to looking both at the personal and circumstantial information often detailed in the decisions of the Tribunal but also to looking at the wider socio-economic reasons behind evictions.

### **Mandatory or discretionary**

A commonly-raised issue was around the balance between mandatory or discretionary grounds.

It was noted that all grounds for evictions became discretionary during the COVID-19 pandemic (under the Coronavirus (Scotland) (No. 2) Act 2020), giving the Tribunal greater ability to rule on eviction cases and a chance to consider the impacts of an eviction on tenants. A frequently-expressed view was that it is vital that all eviction grounds remain as discretionary.

Further comments included that keeping the grounds discretionary would allow the Tribunal to take a full range of factors into account in their decision making, balancing the needs of the tenant and the landlord in each individual case. It was also suggested that making these temporary measures permanent will improve standards for tenants and landlords. The ability to exercise discretion was seen to be of particular importance for the rent arrears ground (ground 12) which, it was suggested, should be considered within the context of adherence to the pre-action requirements and whether it is reasonable and fair to evict following these steps.

An alternative perspective was that the mandatory status of some grounds should be reinstated, including to avoid risking lender, institutional, and private investment confidence. It was also noted that if all the grounds become discretionary, many more cases will go to the Tribunal; there was a concern that it would not have the resources to cope with the additional workload and cases, leading to delays.

There was again reference to the rent arrears ground (ground 12) but in this case that it being discretionary could lead to tenants being in a property they cannot afford, and accumulating large debts, rather than getting help from the local authority to find something more affordable.

### **Removal of some grounds**

Some respondents also commented on the current list of grounds overall, including suggesting that it is too wide and that many of the current grounds do not relate to the effective management of rented housing. One perspective was that they are underpinned by a desire to support landlord and property rights at the expense of the right to adequate housing. An associated point was that grounds which relate to aspects of business change or failure should be removed. It was suggested that this applies to grounds 1 to 9 and 16 to 19. The most frequent suggestion was that grounds 1 to 6 should be removed.

Other general comments or suggestions included that:

- The Scottish Government may wish to give further consideration to introducing a minimum term for certain grounds, but with careful consideration of whether there would be an impact on landlords' willingness to enter into the sector.
- Landlords should be required to give tenants four months' notice for all the no-fault grounds.
- The current legal structure places the responsibility on the evicted tenant to identify that the landlord misled the Tribunal. Responsibility should instead be placed on other parties, including the Tribunal, local authorities or the proposed regulator.

## **Specific grounds**

### **1. Landlord intends to sell**

Ground 1 was one of the more frequently-commented on, with points including that, it should be removed. If it is not removed, there were calls for tenants to be able to stay in the property through:

- Measures to enable landlords to sell with sitting tenant(s) or to sell to the existing tenant(s). It was reported that there are letting agencies which specialise in the sale of properties of sitting tenants and that opportunities for sharing and demonstrating best practice on this should be encouraged by the Scottish Government.
- Local authorities and local housing associations having a first right of refusal to purchase the property. It was suggested that this approach would allow them to assess whether buying the property would serve their goals of providing genuinely affordable housing locally.
- Developing a national scheme to assist in the purchase of properties where there is a sitting tenant.

It was also suggested that if selling with sitting tenants is not possible, the landlord should provide relocation compensation to the tenant.

A different perspective was that landlords need the ability to sell with vacant possession for reasons including, for example, releasing a capital sum for retirement or paying off debt. It was suggested that restricting the ability to recover possession for vacant sale might deter some from letting in the first place. It was also reported that the capital value of a property is going to be significantly impacted if a landlord cannot sell a property with vacant possession.

Other comments focused on the potential misuse of this ground. There was reference to tenants being evicted using this ground, with the property then not being sold, or it not being possible to sell. It was suggested that ground 1 may need to be investigated further as it may be an 'easy' way to end a tenancy.

In terms of strengthening ground 1, or ways of ensuring it is not misused, there was reference to:

- Ground 1 remaining discretionary (as under the Coronavirus (Scotland) (No. 2) Act 2020) and it should not be used within the first two years of the tenancy.
- The need for good evidence to show that there is an intention to sell the property. One option suggested was that the landlord must be actively marketing the property for sale at an appropriate market price in accordance with professional advice. Mandating the provision of a recent home report was also suggestion.
- A condition could be inserted whereby the tenant must have secured suitable alternative accommodation before the landlord can take back the property.

## **2. Property to be sold by lender**

As in relation to ground 1, there was a suggestion that the Scottish Government should consider measures that would ensure that the home continues to be occupied by the current tenants. This included that lenders could be required to offer to sell property to the sitting tenant first.

A different view was that ground 2 should be disposed of without a hearing. It was suggested that offering the option to apply to the court for accelerated possession, and having the case decided based upon what the landlord, tenant, and lender have provided in writing, will likely lead to swifter decisions.

## **3. Landlord intends to refurbish**

There was a concern that ground 3 incentivises landlords to evict tenants if they ask for large repairs or refurbishment work and there were calls for it to be removed.

In terms of working being carried out, a temporary move into alternative accommodation, with the tenant's agreement, was seen as preferable. However, it was suggested that this should only be necessary if the refurbishment limits access to necessary cooking and washing facilities or will cause unreasonable disruption to the tenant. It was noted that the tenant should not incur any costs resulting from a temporary move.

If evictions were still to be permitted using ground 3, it was suggested that the landlord should update the Tribunal three months after the eviction date, with evidence documenting refurbishment works. If this was not forthcoming, the landlord should be required to pay compensation to the tenant based on monthly rent.

## **4. Landlord intends to live in property & 5. Family member intends to live in property**

Comments often referenced grounds 4 and 5 and included that, if a landlord or a member of their family intended to move into the property, this should be evidenced by the submission of proof of occupancy within a reasonable time after the eviction. It was suggested that failure to do so should result in compensation being paid to the evicted tenant.

Suggestions specifically about ground 5 included that:

- The definition of family member should be amended to include ex-husband/ex-wife.
- The minimum period of residency for the family member should be increased from 3 to 6 months.
- There should be an extended notice period if there is no other issue with the tenancy.

## **6. Landlord intends to use for non-residential purpose**

Clarification around what is covered under non-residential was requested. It was also suggested that the evidence required to use this ground should be strong enough to prevent it being used improperly.

## **7. Property required for religious purpose**

A small number of non-campaign respondents raised concerns that ground 7 is not operating as intended and is not giving due regard to the legitimate requirement of religious organisations to regain vacant possession of a property.

The first of two main problems cited was that religious organisations' ability to recover possession of tenanted houses, in the event of these being required for use by a religious worker, now only applies to properties which had previously been occupied by a religious worker. It was suggested that an appropriate balance of interests has not been achieved and that ground 7, as currently drafted, removes the possibility of flexibility, which can operate to suit both landlord and tenant in many situations.

The second concern related to the removal of this ground as a mandatory ground of eviction and the proposal to make this change, brought into force as a result of the pandemic, permanent. It was suggested that there is no good policy reason to prioritise a tenant's right to remain in a manse, or other house acquired for the sole purpose of housing a religious worker, over the right of the religious organisation to recover possession so as to meet that purpose. There was a call for ground 7 to remain a mandatory ground of eviction.

The only other point raised was whether a property would require planning permission if it was to be used for religious purposes? It was suggested that, if that is the case, planning permission should be acquired first before an eviction notice can be served.

## **8. Not an employee**

Comments in relation to ground 8 included that it is important it remains a mandatory ground.

Further comments echoed some of those made at Question 6 relating to the importance to rural businesses of being able to make accommodations available for employees. It was suggested that the ability to recover a house from a former employee can be essential to being able to recruit another. It was suggested that

this could have serious repercussions for the functioning of some businesses which could impact on animal welfare and other health and safety issues.

## **9. No longer in need of supported accommodation**

There were no specific comments about ground 9.

## **10. Not occupying let property**

Comments that ground 10 has helped landlords in difficult situations where tenants leave.

It was also noted that there are many reasons why a tenant may have a second home and that, if the property is vacant for long periods but the tenant is paying rent and ensuring the upkeep of the property, they should be allowed to remain. An associated point was that where it is believed that illegal activity is being conducted in the empty property, grounds 11, 13 and 15 can be used.

## **11. Breach of tenancy agreement**

Comments on ground 11 included that it should be considered for removal. It was suggested that the only breaches of a tenancy agreement which should lead to the risk of eviction are non-payment of rent or serious anti-social or criminal behaviour, and that these are covered sufficiently by grounds 12 and 13.

Another suggestion was that the landlord and tenant should provide proof relating to how the breach in tenancy has impacted on the property, neighbours and/or the tenant. An example given was that keeping a pet may be against the tenancy agreement, but if the tenant would be allowed to prove that the pet has acted as a mental support to keep them in a job, pay rent and that the pet has not caused any detrimental damage to the property, then eviction should be reconsidered by the Tribunal.

## **12. Rent arrears**

Ground 12 was the most frequently commented on, including by a number of 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents.

A number of them commented that, when the PRT was being developed, landlords were assured that it would provide them with a quicker way to end a tenancy where the tenant was not paying their rent. This included being allowed to serve a Notice to Leave for rent arrears as soon as a tenant fell into rent arrears then apply to the Tribunal for an eviction order once the tenant had owed some rent for three months.

However, it was reported that the Upper Tribunal has ruled in two separate judgements that this is not the case and that Notice to Leave cannot be served until the tenant has owed some rent for three months. There were concerns that these delays can be very costly for landlords, as the entire process can take around 8 months. There was a call for the legislation to be amended to allow a landlord to serve notice once a tenant has owed some rent for one month and landlords

enabled to apply to the Tribunal for an eviction on ground 12 once the tenant has owed some rent for two months.

Other comments or suggestions included that:

- Allowing rent arrears to accrue places tenants in more debt, which may affect their chances of securing a follow-on tenancy. Ideally, as soon as a tenant is in financial difficulties, they would receive support to rectify this.
- It is essential that ground 12 ties in directly with the Prevention of Homelessness Duties. It was suggested that landlords should be making efforts to prevent rent arrears and prevent the ending of tenancy at various stages, prior to taking a case to the Tribunal.
- Rent arrears should be a mandatory ground, provided the landlord can demonstrate that they have tried to work with the tenant in relation to payment plans.

### **13. Criminal behaviour**

The most frequent comment was that ground 13 should be removed in the light of ensuring everyone has an equal right to housing. It was noted that, if a homeowner is judged for criminal behaviour, they do not lose their home and it was suggested that when someone commits a criminal offence, this is and should be dealt with within the criminal system and should be kept independent of their housing status.

### **14. Anti-social behaviour**

It was suggested that it should be possible for landlords and neighbours to gather evidence to satisfy ground 14. This was connected to a report that local authority anti-social behaviour teams will often not engage with the issue.

### **15. Association with person who has relevant conviction or engaged in relevant anti-social behaviour**

Comments on ground 15 included that it should be discretionary and should only be considered if there is significant input from public protection agencies. It was noted that there are a range of reasons why an individual may be associating with people with convictions or who engage in anti-social behaviour, and that possibility of coercive control, domestic abuse or cuckooing all need to be considered. It was suggested that, in the first instance, the Prevention of Homelessness Duties must be used to ensure that all necessary support has been offered to the tenant prior to any eviction.

However, it was also suggested that other members of the community need to be protected from anti-social behaviour and that a more streamlined court process needs to be in place for evictions being raised as a consequence of criminal or anti-social behaviour.

## **16. Landlord has ceased to be registered & 17. HMO licence has been revoked**

There was a view that grounds 16 and 17 should be considered for removal as they are not the fault of the tenant. Suggested alternatives to a tenant being evicted were:

- If a landlord fails to meet their obligations regarding registration or Houses in Multiple Occupation (HMO) licensing, the landlord should be responsible for re-housing the tenant, covering all relocation costs and paying compensation.
- If a local authority refuses a landlord's registration request when there is a sitting tenant, they should assess whether buying the property from the landlord is an option.
- The tenancy could be taken over and managed by a local authority or housing association while any registration or licencing issues are resolved. A specific suggestion was the use of a private sector leasing scheme.
- Exploring whether the property could be sold with a sitting tenant.

It was suggested that the grounds should be revised to outline that evictions should be a last resort and tenants' welfare and needs prioritised.

It was also suggested that local authorities should review their enforcement mechanisms and increase the funding for enforcement teams to ensure rigorous enforcement of the registration and HMO licensing.

## **18. Overcrowding statutory notice**

As in relation to grounds 16 and 17, it was suggested that ground 18 should be considered for removal as it is not the fault of the tenant.

There were also process-related related comments, including:

- A query about the status of the overcrowding statutory notice, given that it is contained within legislation which has not been enacted (Part 3 of the Private Rented Housing (Scotland) Act 2011).
- That procedures should be put into place to help rehousing. It was reported that occupiers can apply for an overcrowding license under the Housing (Scotland) 1987 Act but that it is at the discretion of the local authority. It was suggested that it is unclear whether and how provisions have been applied in the past.

## **Delivery issues**

A small number of non-campaign respondents also commented on the processes and resources connected to eviction proceedings.

There was a view that, while the grounds for evictions are adequate, the way they are applied in practice has been challenging due to resource constraints within the Tribunal. It was reported that this has created backlogs and delays to considering cases, which has resulted in further losses to landlords and reduced confidence in legislation being balanced and applied fairly. Other comments included that to

ensure that the Tribunal system works fairly for tenants, there must also be improved access to advice and legal aid.

The Scottish Courts and Tribunals Service made a general observation that what is proposed in terms of the existing grounds for repossession, illegal evictions and new restrictions to evictions in winter will impact on them in terms of: Court and Tribunal time and programming; associated staff training and accommodation resources; and costs involved in relevant information and communication technologies (ICT) changes.

**Question 6 – Are there any additional specific grounds for ending a tenancy that you think should be added?**

**Please explain your answer.**

Responses to Question 6 by respondent type are set out in Table 2 below.

**Table 2**

<b>Q6: Are there any additional specific grounds for ending a tenancy that you think should be added?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group		1		2	3
Housing, legal or advice agency or professional or representative body		5		3	8
Local authorities and their representative bodies	2	17	1	3	23
Other private sector		1		2	3
Other professional or representative body	2	2		1	5
Private landlord, letting agent or their representative bodies	27	16	2	10	55
Public body or agency			1	7	8
Religious group or body	3			1	4
Social landlords and their representative bodies	2	4	3	3	12
Tenants' and residents' groups and their representative bodies	1	1	4	3	9
Third sector organisation	1		1	20	22
Union, student or campaign group	1	8		9	18
<b>Total organisations</b>	<b>39</b>	<b>55</b>	<b>12</b>	<b>64</b>	<b>170</b>
<b>% of organisations answering</b>	<b>37%</b>	<b>52%</b>	<b>11%</b>		
Individuals	226	177	129	224	756
<b>% of individuals answering</b>	<b>42%</b>	<b>33%</b>	<b>24%</b>		
Total non-campaign respondents	265	232	141	288	926
% of all non-campaign respondents	29%	25%	15%	31%	
<b>% of all non-campaign respondents answering</b>	<b>42%</b>	<b>36%</b>	<b>22%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6383	232	141	1678	8434
% of all respondents	76%	3%	2%	20%	
<b>% of all those answering</b>	<b>94%</b>	<b>3%</b>	<b>2%</b>		

A very substantial majority – 94% of those answering the question – thought that additional grounds should be added. The proportion of non-campaign respondents thinking that additional grounds are required dropped to 42% overall, with 37% of organisations and 42% of individual respondents identifying a requirement for additional grounds.

Around 410 non-campaign respondents made a comment at Question 6. Those who did not think any additional specific grounds should be added tended to note simply that they agreed with the current 18 grounds, or that they did not think

further grounds were necessary if their views on mandatory or discretionary grounds (covered at Question 5) are taken into account.

In terms of other suggestions for additional grounds, the most frequently-made were:

- **In the case of domestic abuse, ending a perpetrator's interest in a tenancy or joint tenancy.** The most frequent suggestion was that, to enable equal outcomes across tenures, the Scottish Government should introduce a similar ground to the one existing in the social sector to enable victim-survivors of domestic abuse to end a perpetrator's interest in a tenancy or joint tenancy, in order for victim-survivors to be able to remain in the family home if they wish to do so. This issue is picked up again at subsequent questions, and at Questions 14-17 in particular.
- **Ending a tenancy to comply with a planning enforcement notice which prevents the property from being used in its current manner** e.g. as an HMO. It was reported that some local authorities require landlords to apply for planning permission as well as a licence to operate HMOs but often the two schemes are operated separately so it would be possible to obtain an HMO licence whilst being in breach of planning policy. The potential for a renewal application to not be submitted before an existing HMO licence ends, meaning that the property cannot lawfully be operated as an HMO but would be occupied by existing tenants as an HMO, was also highlighted.
- **Recovery of possession where the property is required to house an employee.** There was also reference to needing a property for tied housing. Further comments included that with limited convenient housing in rural areas, it is important for rural businesses and farms, in particular, to be able to regain possession to house an employee. It was suggested that, for the rural economy to thrive and support employment, businesses need to retain flexibility.

Other suggestions included:

- **Conforming to planning restrictions.** The example given was that if a property has an 'agricultural tie', then it is a requirement that the person living in the property works in either agriculture or forestry. If the occupant ceases to work in those sectors, then it should be grounds for eviction due to the need to meet planning requirements.
- **For Required Works.** It was noted that where a house does not meet standards it should be improved but that, if significant works are required, it will sometimes be necessary to regain possession.
- **Landlord intends to develop.** This was described as important to encouraging landlords to renew old housing stock.
- **Antisocial behaviour that has not proceeded to a criminal conviction, but grounds can be demonstrated to the Tribunal.** Examples given included damage to working farm buildings and children on off-road bikes at high speed.

- **Damage by pets and or pets unsuitable to the property.** Examples given were dogs being shut in the house all day and substantial damage being caused to a property.
- **Additional people staying in the property.**
- **Using the property for short-term or holiday lets without landlord consent.**<sup>3</sup> There was specific reference to mid-market and affordable rent properties.
- **Not communicating with the agent or landlord.**
- **Refusal to give access to the landlord for annual inspections.**
- **The tenant in applying for the tenancy, or in their communications with the landlord, has lied or dealt dishonestly with the landlord.** It was suggested that no-one should be held to a contract that was entered into on the basis of inaccurate information supplied by the other party.

There were also suggestions relating to existing grounds including that ground 14 (Anti-social behaviour) should be extended to specifically protect the landlord and their staff from abusive and threatening behaviour.

Finally, some non-campaign respondents also raised issues relating to the statutory requirements relating to evictions, including looking for further legislative changes needed to the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). These included:

- Amending statutory term no. 4 (notification of other residents) to make it clear that this clause can only be relied on if the other residents are members of the tenant's family, with the family member definition being the same as is used in eviction ground 5.
- The Notice to Leave template should be amended to remove the star (\*) before the section in part 3 which is worded [state particulars...]. The Notice to Leave template should be further amended to state in part 3 that evidence should be attached to support the eviction "where available/applicable".
- Clause 54(2)(b) is being interpreted by the Tribunal as not allowing a landlord to give more than 28/84 days' notice. It was assumed that it was not the government's intention to prohibit a landlord from giving a tenant more than the minimum amount of notice, but it was reported that in some Tribunal cases eviction applications have been rejected because the landlord gave too much notice.
- Regarding Clause 54(3), clarification is needed on how much notice is required for grounds unrelated to tenant behaviour where one tenant has been entitled to occupy the property for more than 6 months and one has been living there for less than six months.

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<sup>3</sup> It is a requirement of Short-term let (STL) licencing that consent is provided from owners where tenants wish to sublet as a STL. Tenants operating a STL without a licence would be committing an offence and liable to a fine currently not exceeding £2,500 and which is due to be increased during the term of the current parliament.

It was also suggested that the landlord having the option to end the tenancy after a time period would often remove the need for landlords to use the eviction grounds set out.

## Ground 6

The consultation paper refers to stakeholder feedback suggesting that there has been some confusion regarding whether a landlord could use 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). It was noted that this is contrary to the original policy intention and that the Scottish Government is considering 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.

### **Question 7 – 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'?**

Around 555 non-campaign respondents made a comment at Question 7.

The most frequently-made point was that ground 6 should not be used to evict a tenant in order to use the property as a short-term holiday let. Others noted they supported the intention of ground 6 being clarified, including by makes it clear that short-term lets (including Airbnbs) are not included in the definition of 'non-residential purpose'.

Supporting comments included that the growth of short-term lets has come at the expense of housing supply and the housing needs of local residents and tenants. There was particular reference to in the Highlands and Islands, Arran and Edinburgh.

Others suggested that, while they agreed that ground 6 should not be used routinely to evict tenants in order to operate short-term holiday lets, there could be occasions when this might be necessary. The two scenarios given were that:

- If a short-term holiday let has been used as a temporary home for PRS tenant while repair works are done at their home. It was reported that experience points to tenants occasionally failing to move back into their home once the repair works are complete.
- Tenants occasionally move in to short-term let due to a change of circumstances, misunderstanding or deliberate deceit with the landlord believing they are there for a holiday whereas in fact they are occupying it as their main residence.

The connection was made to upcoming regulation of short-term lets, including a requirement to obtain planning permission in some areas of Scotland; it was noted that it will be even more important to be able to change the use of properties back to residential accommodation as the property may be in a use class that only allows it to be used for short-term holiday lets and not as a dwelling.

Others commented simply that clarification is not required or that as a discretionary ground it cannot be used to convert a property to a short-term let, unless there is a demonstrable need to do so, which is entirely at the Tribunal's discretion. It was also suggested that the regulation of short-term lets, and the introduction of Planning Control Areas, will help resolve any issue.

Some suggested that landlords should not be prevented from moving a property between the residential and holiday sectors and that they should be free to choose what they do with their property. It was also noted that, particularly where a PRS property needs significant financial expenditure to meet future standards, it may be that the landlord would want to alter its use. There was also reference to property owners and rural businesses needing to generate income, as well as short-term lets being vital in ensuring there is sufficient tourism infrastructure in rural communities.

There was also a note of caution regarding lets to students then being used for holiday accommodation over the summer period. There was a query around whether clarifying ground 6 as proposed would drive more landlords out of the student let market, further reducing the number of private lets available.

## **Introduce pre-action protocols on a permanent basis in the private rented sector and revise pre-action requirements in the social rented sector**

**Question 8 – 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?**

Around 510 non-campaign respondents commented at Question 8.

General comments about pre-action requirements included that a tenure-neutral approach would seem sensible. It was also suggested that tenants should be supported to maintain tenancies as much as possible and that this should be the vision guiding all measures considered.

In terms of tenure-neutral refinements or changes, taking into account when rent arrears having accrued following a change of circumstance related to Universal Credit and the impact of domestic abuse was suggested.

Others simply suggested that no changes or further refinements are required.

### **Private rented sector**

#### **Current arrangements**

In terms of how the current pre-action requirements operate, there was a concern from a number of 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents that it is rare for landlords to see evidence of their benefit. It was reported that, in the vast majority of cases, tenants choose not to engage in communications with their landlord in response to the pre-action requirements.

An alternative perspective was that, although private landlords are required by law to send a section 11 notice to the local authority when they start eviction proceedings, this may not always be done. If pre-action requirements are not actioned, it was noted that a valuable opportunity for people to be linked up with independent advice and support services will be lost. This would include ensuring that households are accessing all benefits they are entitled to, which may help to address any arrears. An associated point was a lack of published data makes it difficult to understand the extent of any issues or patterns around non-compliance. There was a call for publication of section 11 data to be restarted, as well as standardised data collection and publication from the Tribunal.

Other comments echoed some of the issues raised at previous questions, and at Question 5 in particular. They included that, as contained within the draft Coronavirus (Recovery and Reform) (Scotland) Bill, the pre-action requirements for eviction proceedings on the rent arrears ground (ground 12) should be made permanent. It was reported that the pre-action requirements encourage landlords to help their tenants access support and advice on rent arrears management before any eviction action is taken, thus helping them to manage their debt and remain in their home.

However, others took a different view and did not consider that the pre-action requirements introduced due to the public health crisis would be beneficial on a permanent basis. It was noted that as Scotland lifts COVID-19 restrictions, the financial support available to tenants to address rent arrears, such as the Tenant Grant Fund has been withdrawn and there was a call for emergency measures applied to the PRS to also be rescinded.

### **Section 11 and point of issue**

One suggestion was that there should be a concerted effort to improve the effectiveness of section 11, using learning from the social sector. However, there were some concerns that local authorities have limited capacity to investigate cases, with their resources focused on prioritising their duty to investigate and assess current homelessness presentations.

There were calls for a section 11 notice to be served earlier than is currently required.<sup>4</sup> A specific proposal was to require the section 11 notice to be served at the point when a notice to quit, notice to leave or notice of proceedings is being served, or at least 28 days prior to an application for eviction being granted. It was hoped that this would give adequate time for the local authority to help the tenant find a new home before they get into a situation where they have accrued significant unpaid debt that will impact on their future ability to move home.

However, it was also suggested that 'upstreaming homelessness prevention' and including the PRS within a prevention duty, would need to come with significant

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<sup>4</sup> This proposal was part of the consultation on Prevention of Homelessness Duties, which ended in April. An analysis of consultation responses is due to be published in September 2022.

additional financial support from central government for it to be effective and impactful.

Others did not think that it would be sensible to bring forward the section 11 notice requirement so that it is issued at the point the landlord issues a tenant with a Notice to Leave. Instead, it was suggested that the templates for these documents should be amended to add a prompt, reminding the landlord to issue the section 11 notice at this stage, so that it is not overlooked. Further suggestions were that:

- The section 11 notice should also be amended to require the landlord to enter the reason for the eviction so that the local authority has visibility of what this is.
- Guidance should be issued to local authorities on the steps the government would expect them to take when they receive a section 11 notice. It was suggested that the section 11 notice could set out what a local authority should do for tenants on receipt of the notice – including the provision of advice/assistance to tenants in sourcing alternative accommodation.

Finally, it was suggested that the Scottish Government should work with relevant partners to consider the potential use of Section 11 data to inform local evidence bases and to revise Local Housing Strategy (LHS) guidance. There was particular reference to strengthening links between housing options and wider advice and support approaches at a local level.

### **Reach and focus of pre-action requirements**

A frequent suggestion was that pre-action requirements should be extended to all grounds for eviction. There was also reference to the recent consultation on Prevention of Homelessness Duties<sup>5</sup>, and to welcoming a requirement on private landlords to consider the future housing needs of existing tenants. Other suggestions were that:

- The existing pre-action requirements should be amended to take account of issues affecting those who share certain protected characteristics.
- A new pre-action requirement should require landlords to ensure that they have fully considered domestic abuse before commencing legal action to recover possession of a property. Guidance should specify what constitutes full consideration of domestic abuse and the actions required by a landlord to investigate, and to respond to, and support, victim-survivors of domestic abuse.
- More generally, the pre-action protocols would benefit from greater detail as to what is expected of a landlord. There would be merit in standardising the information landlords are to provide to tenants in compliance with the pre-action requirements to ensure that this is consistent across the board. This would also assist individual private landlords to ensure compliance with their obligations.

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<sup>5</sup> Further information can be found at: <https://www.gov.scot/publications/prevention-homelessness-duties-joint-scottish-government-cosla-consultation/>

It was also suggested that landlords should be offered training to ensure that they are aware of their obligations, with the Landlord Accreditation Scheme promoted by all agencies at every opportunity.

Other suggestions were that the pre-action requirements could be strengthened if the Scottish Government provided a pre-action requirement checklist, which was incorporated into the Notice to Leave. In terms of actions to be required, suggestions included:

- Clear guidance on General Data Protection Regulation (GDPR) should be produced to ensure that information can be shared appropriately between landlords and the local authority.
- With the tenant's consent, a homelessness prevention referral to the local authority should be part of the pre-action protocol. The pre-action requirement checklist (referenced above) could include a prompt for the landlords to have a conversation with the tenant about whether they would like to be referred to the local authority housing assistance service.
- Signposting to the local tenants' union should be required. More generally, landlords must be required to demonstrate where they have attempted to communicate and/or support their tenants prior to seeking eviction.
- There should be greater practical support for a tenant and landlord to reach an agreed repayment plan. Letting agencies and landlords should not be able to add interest or legal costs to repayment plans.

It was also suggested that the Scottish government should consider extending access to emergency grants for tenants in arrears; funding should be easy to access and should be managed by local authorities.

In relation to ensuring that landlords adhere to the legislation, including any pre-action requirements, it was suggested that the Tribunal has a key role to play. One proposal was that the Tribunal should have discretion under all grounds of repossession if pre-action requirements cannot be evidenced. It was also suggested that there is always room for improved enforcement, and that the Tribunal should play a strong role in actively interrogating and enforcing the fulfilment of pre-action requirements.

### **Social rented sector**

There were relatively few comments relating to the social rented sector. Those that did comment tended to suggest that the current requirements are sufficient or satisfactory. However, there was support for amending social sector's pre-action requirements to take account of the issues around Universal Credit and the impact of domestic abuse on rent arrears.

There was also a call for amendments to The Housing (Scotland) Act 2001 and 2010 statutory repossession guidance for social landlords to include a new pre-action requirement for social landlords to ensure that they have fully considered domestic abuse before commencing legal action to recover possession of a property. It was suggested that a similar requirement could be placed on the court

to be satisfied that social landlords have fulfilled this pre-action requirement. Guidance should specify what constitutes full consideration of domestic abuse and the actions required by a social landlord to investigate, and to respond to and support victim-survivors of domestic abuse.

Other comments about the focus going forward included suggestions that:

- Training staff and learning from good practice should continue.
- There should be a minimum requirement for housing officers and other agreed professionals to complete a course on pre-action requirements (and sources of current advice).
- Appropriate support for tenants for whom English is not their first language, those with mental health issues or learning disabilities, is vital.

There was also reference to the importance of early engagement and support as particularly important in addressing rent arrears. In particular, the importance of information and support to access independent advice and advocacy was stressed and there was a call for a specific reference to provision of information on how to access legal representation, including legal aid in specific situations.

There was again reference to the Homelessness Prevention Duties proposals and the potential for a form of pre-action requirements for tenants facing court proceedings not related to rent arrears and not, therefore, covered by existing pre-action requirements. There was support for such an approach.

**Question 9 – Can you provide any examples/case studies of where the pre-action requirements have worked well in practice?**

Around 200 non-campaign respondents commented at Question 9, albeit many simply noted that they either had no experience of using the pre-action requirements or had no examples to put forward. Others noted that they do not think that the pre-action requirements have worked well. This was often connected with tenants not engaging.

General comments included that there are many examples of the pre-action early intervention working in the social sector, including in relation to rent arrears. There was reference to effective and early intervention through providing income maximisation advice, tenancy sustainment services and signposting/referral to other services. A number of 'Local authority' respondents referred to the work of their homelessness prevention teams. There was also reference to the range of tenancy sustainment work undertaken by housing associations. This included: tenant engagement or advocacy arrangements to discuss how to reduce arrears; tackling disrepair; and dealing with neighbour disputes.

There was reference to the pre-action requirements providing a positive template for practice to be embedded within policy and procedures and to social landlords only undertaking eviction action as a last resort. A connected point was that the

pre-action requirements can help codify the actions to be taken. There were also a number of references to the crucial role of independent advice services.

With specific reference to measures taken in the social sector, there was reference to:

- Tenants on Universal Credit being allowed to clear the initial 5-week wait arrears incrementally.
- Applying for Alternative payment Arrangements in most cases rather than going to court.

Examples of PRS-related approaches that have worked well included:

- Private landlords working with tenants, especially with regard to rent arrears. A number of 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents reported that they have agreed to payment plans and/or see taking a case to the Tribunal as a last resort.
- The use of Tenant Grant Funding, with cases identified by landlords who are carrying out pre-action work and working with tenants to address arrears that threaten a tenancy.
- Positive engagement with PRS landlords, including the local authority attending local landlord forums and raising awareness about the importance and effectiveness of pre-action requirements in the prevention of homelessness.

Specific examples of prevention and/or pre-action requirements working well in practice included:

- Shelter Scotland's service to respond to section 11 referrals in Dundee. The service was commissioned by Dundee City Council and has achieved significantly higher levels of engagement from tenants than had been the case for the local authority.
- The work of Glasgow City Council's PRS Housing and Welfare team. A case study related to a tenant presented with a notice to leave on the grounds that the landlord required vacant possession of the property to carry out essential repairs. Household members required wheelchair accessible accommodation. Actions included support to make housing applications and referrals to other partners, including the local law centre. The case went to the Tribunal, which found in the tenant's favour. The landlord was issued with an enforcement order to carry out the necessary repairs whilst the tenant remains in the property.
- Glasgow's Housing Options approach and work with partner housing associations.
- When the requirement to use pre-action protocols was put in place, Lowther (a member of the Wheatley Group providing property factoring and mid- and full-market rentals) drew on the established model already used by the social landlords in the group. It was reported that this has worked well in helping to structure engagement with tenants around arrears prior to issuing a Notice.

- The work of Kingdom Housing Association’s money advice team, including in connection with Universal Credit for rent and arrears. There was specific reference to backdated Housing Benefit to cover an Under Occupancy Charge, applications for Hardship Loans and engagement with social work services.
- The Neighbourhood Coach approach taken in East Ayrshire. It was reported that it has helped residents interact with the local authority in new ways and has enabled and empowered people to make their own choices and come to their own solutions. It was reported that the neighbourhood coach assists individuals with a range of issues, including rent arrears and neighbour disputes. It was suggested that this proactive approach to empowering tenants reduces the need for enforcement action in the future.

## Rented sector and gender-based violence

The consultation paper stresses that having safe accommodation is fundamental for women’s safety and wellbeing, but that violence against women (VAW) in all forms can have a significant impact on housing needs and experiences. It also explains that 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 PRS.

### **Question 10 – What measures could be implemented to support people involved in sex work, including women subject to commercial sexual exploitation in the rented sector?**

Around 355 non-campaign respondents made a comment at Question 10. Some of these respondents noted that they have no knowledge or experience of the issue and/or did not feel able to make an informed comment.

There was a view that supporting people involved in sex work should not be a responsibility of the private landlord or agent community, including because they will generally not have the expertise to make informed decisions. A slightly different perspective was that qualified agents and experienced property managers know the signs of potential exploitation in a rented property, but that Individual or inexperienced landlords may be less aware.

However, others noted that they were pleased to see recognition that housing, for PRS tenants, influences involvement in CSE and can present barriers to women exiting from it.

## Complexity of the issue

A number of 'Third sector organisations' were amongst those highlighting the complexity of the issues raised by Question 10, with comments including that these issues cannot be addressed through a single question.<sup>6</sup>

It was seen as disappointing that Equally Safe (Scotland's strategy for preventing and eradicating violence against women and girls), is not interlinked with the proposals set out in A New Deal for Tenants. It was also reported that this is the first time that a consultation has specifically included a question about the housing needs of women who sell or exchange sex. This was seen as both encouraging but problematic, in the latter case because it points to the lack of a gendered lens when designing a housing strategy for Scotland.

It was suggested that this consultation is an opportunity for the Scottish Government to design a housing strategy with a gender-based violence (GBV) lens, which aligns with the Equally Safe strategy, and which explores and addresses the specific situation for women who sell or exchange sex. However, there were also questions as to whether a strategy and consultation focused on improving tenants' rights is the right place to consider such an important, complex and potentially cross tenure issue.

In relation to wider housing issues, it was noted that women's needs in the rented sector cannot be separated from their housing needs in general and that housing needs and GBV, including CSE, are closely interrelated. Further comments included that:

- Women's access to and ability to retain housing, their risk of homelessness, and routes in and out of homelessness are affected by violence against women and girls, economic instability, and caring responsibilities. In order to fully understand and address these issues, it is critical that the Scottish Government fulfils its commitment made in the Ending Homelessness Together action plan (2020) to 'Apply a gendered analysis to our actions, ensuring the homelessness system meets the needs of diverse groups of women.'
- Lack of access to adequate housing is not only a factor that can push women to sell or exchange sex, but also remains a huge issue while they are involved, and it often prevents them from moving on.
- Women who sell or exchange sex are not a homogenous group and so their housing needs differ based on their individual circumstances.

In terms of other issues to be considered there was also reference to human trafficking and people with 'no recourse to public funds'.

Overall, it was stressed that women in CSE are not only entitled to have their housing rights fulfilled but need this in order to make choices in their lives and

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<sup>6</sup> There were a small number of very detailed responses, including from an organising working to raise awareness around violence against women and girls and to improve services for those affected, including people affected by commercial sexual exploitation.

achieve safety and stability. As part of a wider progress to enshrine housing as a human right for everyone in Scotland, women in CSE need to be considered throughout.

Further comments included that the Scottish Government should align any terminology describing sex work in this strategy with that used in Equally Safe. For example, it was suggested that A New Deal for Tenants should refer to CSE or to women who sell or exchange sex, and the term 'sex worker' should be avoided.

### **Multi-agency working and support**

Reflecting comments about the complexity of the issues, there were a number of calls for partnership-driven and holistic interventions. Multi-agency working was seen as essential to tackling a range of issues such as the right to work, assistance with drug and alcohol misuse, homelessness, debt, poverty, poor mental and physical health, poor education, uncertain immigration status, lack of social support from family or other social networks, abusive relationships and escaping exploiters.

In terms of the range of agencies involved, there was reference to all community planning partners and to Multi-agency public protection arrangements. Suggestions for ensuring appropriate and effective multi-agency working included that:

- The Scottish Government should work with local authorities and Health and Social Care Partnerships (HSCPs) to develop operational strategies to ensure that women involved in sex work and people subject to sexual exploitation have access to support and services.
- Scottish Government, local authorities and HSCPs should also work with colleagues within the criminal justice system to ensure effective enforcement action whilst protecting women victims.
- Local agencies should work together, via a shared Prostitution Strategy, to support women to exit.
- Any operational response needs to reflect the natures of the private rented and social housing sectors and work with a wide range of stakeholders to ensure that women who are reluctant to engage or difficult to reach can access advice and support.

In terms of the support that should be available, it was argued that a package of specialist support should be tailored to the specific needs of each woman. A number of non-campaign respondents referred to specialist services and providers having a key role to play, including reference to Women's Aid, rape crisis centres and law centres.

It was also reported that there are excellent examples of models of practice which have been shown to transform women's situations. The importance of tailoring approaches to each area, and co-developing approaches with women with lived experience was highlighted. In terms of some of the key principles that could underpin effective support, there was reference to the Encompass Network's work on [support and exiting services for women involved in prostitution](#). The principles they identified – including being in it for the long term – were seen as transferable

to other issues such as housing, as part of a multiagency approach with services working to provide continuity of care. There were also references to:

- Naming the problem, with local strategies, and the agencies delivering them, recognising the issue, for example in the case of prostitution, as violence against women.
- Being flexible and accessible to enable women living in chaotic circumstances to engage with them.
- The importance of monitoring and evaluation, which then inform the development of future strategies and approaches.
- Addressing on-street and off-street commercial sexual exploitation.

Specific suggestions relating to the type of support that should be available included:

- Providing safe accommodation, potentially involving a move to another area. A 'Local authority' respondent referred to a project which supports women rescued from sex trafficking, with the local authority providing accommodation and a partner organisation with specialist expertise providing support.
- The option of transitional housing for those needing safe and affordable accommodation, and possibly 'breathing space' in terms of rent if they want to exit CSE. Also, providing aftercare to sustain tenancies and support tenants to develop skills to budget, pay bills and claim benefits.
- Ensuring that information is available in understandable formats is vital, particularly for those with poor literacy skills. Information should be available in places where vulnerable women might present or seek assistance such as hospitals, police, homelessness services, addiction support, shelters, volunteer-run community services, and via cultural or ethnic minority groups.

Other comments addressed issues beyond specialist services and the importance that all sectors within housing have an awareness of CSE. In terms of the social sector, a 'Housing association' respondent referred to the specialist training they have developed to enhance the knowledge and understanding of their staff in this area. It was also suggested that public bodies must be given adequate training and resources to spot the signs and to understand and respond to sex work in a trauma-informed manner. Training and understanding were seen as key to ensuring the need for support can be identified quickly and support given at the right time. The importance of creating a culture in which women will not feel stigmatised or judged was also highlighted.

It was also noted that, while women who wish to leave sex work should be supported, it cannot be assumed that every person will want to leave this line of work. There was a concern that the New Deal for Tenants appears to focus only on supporting women who wish to leave. It was suggested that support should not only be established for women wishing to exit sex work but also for women who do not wish to exit. It was acknowledged that the type of support needed will be different, but it was stressed that all women should have access to housing and be given choices and options.

A specific issue raised was that people involved in CSE may have difficulty in providing employment information and references, making them vulnerable to exploitation due to not having a legal tenancy agreement. It was suggested that women without references and looking for a PRS tenancy could be eligible to access a rent guarantor scheme.

### **Protection from eviction**

A number of non-campaign respondents noted that they agreed with the consultation paper's suggestion that the references in the model Scottish Secure Tenancy Agreement and Private Residential Tenancy: Model Agreement to 'immoral purposes' and 'brothel keeping' should be reviewed. Some suggested that they should be removed, with further comments including that the wording does not reflect a trauma-informed approach.

Further comments included that the effect of the morality clause is to leave sex workers in social housing in a more precarious situation and less able to access their rights. The example given was that an abusive partner could use this morality clause to threaten to have his partner evicted if she tries to end the relationship. It could mean that a woman who sells or exchanges sex feels unable to report violence she has experienced, for fear that this will impact on her tenancy.

It was suggested that the Housing (Scotland) Act 2014 urgently needs updating to remove the morality clause. There were also general calls for the protections for people involved in sex work to be strengthened as part of the pre-action requirements and evictions protocols. Specifically, there was a call for clarification that sex work – including sex work which involves criminal convictions for soliciting or loitering – cannot be, in itself, grounds for an eviction from social housing or from the PRS.

### **Sex for rent**

There were also a number of comments about 'sex for rent', which was described as a phenomenon created by the housing crisis. A frequently made point was that, with rents continuing to rise and a shortage of affordable social housing, more tenants are vulnerable to being exploited by unscrupulous landlords through the abhorrent practice of 'sex for rent'. Addressing the lack of genuinely affordable and quality housing through effective rent controls and greater protections for tenants was seen as crucial for all tenants in Scotland, but particularly for those vulnerable to exploitation.

There were mixed views on whether the Scottish Government should look to legislate that 'sex for rent' is illegal in Scotland. Some non-campaign respondents thought it should be, although it was noted that there would also need to be safeguarding measures to support people wanting to leave the current situation.

Others thought the focus should be on additional measures to prevent exploitation through 'sex for rent' arrangements. The concern was that, although men who seek out 'sex for rent' arrangements as the 'landlord' are exploitative and abusive, criminalisation risks making this bad situation worse.

In particular, it was suggested that women or LGBTQ people who are street-homeless and/or drug-using are likely to have experienced criminalisation in the past and risk further criminalisation even if they are the victim of the 'sex for rent' situation that is being investigated. Criminalising 'sex for rent' was seen as risking bringing more police contact into the lives of vulnerable people who may already have had extremely negative experiences with the police.

In terms approaches that should be taken, it was suggested that women who exchange sex for rent, and find themselves in precarious accommodation, need to be protected in the same way as victims of domestic abuse.

### **Landlord Registration and enforcement**

Other comments addressed the potential for strong enforcement action against landlords involved in CSE. In terms of the PRS, there was reference to criminal charges and the swift removal of their registration. It was noted that removal of registration already happens where the local authority becomes aware of any criminal charges, but that the period between registration and renewal is 3 years, and checks are not likely during this period. It was suggested that greater information sharing between relevant partners and agencies may provide earlier intervention and enforcement.

Other comments or suggestions relating to landlord registration included that:

- Additional criminal record checks, increased background checking and the need for references could be considered. However, it was noted that such enhanced checks would have resource implications.
- There could be closer liaison with Police Scotland to tackle links to organised crime.

### **Joint tenants**

The consultation paper explains that previous stakeholder engagement has highlighted two specific tenancy issues that need to be addressed – allowing joint tenants experiencing domestic abuse to end a joint tenancy in the PRS and, where appropriate, enabling them to remain in the family home as a sole tenant.

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

The consultation paper suggests that there is a need to make legislative changes to the operation of the PRT to ensure that a joint tenant can end their interest in the tenancy without the agreement of the other joint tenant(s). It suggests that this change will be of particular benefit to those experiencing domestic abuse.

**Question 11 – 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)?**

**Please explain your answer.**

Responses to Question 11 by respondent type are set out in Table 3 below.

**Table 3**

<b>Q11: 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)?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group			1	2	3
Housing, legal or advice agency or professional or representative body	6		2		8
Local authorities and their representative bodies	20		1	2	23
Other private sector		1		2	3
Other professional or representative body	1	1	1	2	5
Private landlord, letting agent or their representative bodies	12	30	8	5	55
Public body or agency	4		1	3	8
Religious group or body	2			2	4
Social Landlords and their representative bodies	8	1		3	12
Tenants' and residents' groups and their representative bodies	7		1	1	9
Third sector organisation	2		1	19	22
Union, student or campaign group	10		1	7	18
<b>Total organisations</b>	<b>72</b>	<b>33</b>	<b>17</b>	<b>48</b>	<b>170</b>
<b>% of organisations answering</b>	<b>59%</b>	<b>27%</b>	<b>14%</b>		
Individuals	211	257	110	178	756
<b>% of individuals answering</b>	<b>37%</b>	<b>44%</b>	<b>19%</b>		
<b>Total non-campaign respondents</b>	<b>283</b>	<b>290</b>	<b>127</b>	<b>226</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>31%</b>	<b>31%</b>	<b>14%</b>	<b>24%</b>	
<b>% of all non-campaign respondents answering</b>	<b>40%</b>	<b>41%</b>	<b>18%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
<b>All respondents</b>	<b>6401</b>	<b>290</b>	<b>127</b>	<b>1616</b>	<b>8434</b>
<b>% of all respondents</b>	<b>76%</b>	<b>3%</b>	<b>2%</b>	<b>19%</b>	
<b>% of all those answering</b>	<b>94%</b>	<b>4%</b>	<b>2%</b>		

A very substantial majority – 94% of those answering the question – thought that the 2016 Act should be amended to ensure that all joint tenants can terminate their interest in a PRT without the agreement of other joint tenants. The proportion of non-campaign respondents who agreed that the 2016 Act should be amended dropped to just 40%, with 59% of organisations and 37% of individuals in agreement. Among organisations, a large majority of those who disagreed were from the 'Private landlord, letting agent or their representative bodies' group.

Around 545 non-campaign respondents went on to make a comment at Question 11.

There was support for the proposed changes, which were described as a sensible, practical approach that brings the PRS in line with the social sector and reinstates the position prior to the 2016 Act. The ability to terminate an interest in a joint tenancy was seen as both an issue of individual choice for all tenants, but also as an important protection for victim-survivors of domestic abuse.

In the latter case it was argued that allowing a joint tenant to terminate their tenancy without the agreement of other joint tenants would remove an element of control currently available to perpetrators, and some respondents included case studies to illustrate situations that are currently possible. However, there was a note of concern that a perpetrator could use the proposed change to their advantage, for example by removing themselves from the tenancy and avoiding liability for rent while continuing to live at the property.

Other reasons given for supporting the proposed amendment included that:

- It would provide flexibility where one tenant wants to leave but others do not and will avoid trapping tenants in tenancies. It was reported that the current situation can lead to emotional and mental distress for tenants if landlords will not allow a tenancy changeover.
- It would be particularly helpful for students, who tend to be a highly mobile population that can find their personal circumstances changing at short notice. It was reported that there are regular instances where students are prevented from ending a joint tenancy even when they have experienced harassment or bullying from flatmates.

An alternative view was that those who jointly sign a lease should remain jointly and severally liable for the rent, with some non-campaign respondents drawing analogies to mortgage arrangements. The importance of honouring a contract was emphasised and it was argued that:

- Allowing one tenant to exit a joint tenancy should only be permitted in exceptional circumstances and that, while important, domestic abuse is only an issue in very small proportion of tenancies.
- Relationship issues should not be the concern of landlords or letting agents, including because they are not suitably informed to decide when a person needs to be removed from a joint tenancy.
- The proposed amendment will cause considerable confusion and add additional complexity. It may also make landlords more cautious when letting to joint tenants, including through seeking to ensure that the other tenant(s) would be able to cover the rent if one of their number leaves. It was suggested that this could disadvantage lower earning tenants, especially if landlords make different decisions when looking at credit risk profiles.

However, it was also acknowledged that the issue can be complex, and a number of issues were raised both by respondents who supported the proposed change

and those who did not. They included whether the remaining tenants are liable jointly for the full liabilities, including existing rent; the length of notice periods; and whether the existing tenancy continues or a new tenancy would begin.

### **Affordability for remaining tenants**

It was noted that a landlord's decision to let a property to a group of tenants is based on an assessment of their collective ability to afford the rent and that, if one leaves, the remaining tenants may be unable to cover the rent and other outgoings such as Council Tax. Concerns were raised that allowing one joint tenant to leave could have a serious impact on their fellow tenants, potentially leaving them at risk of losing their home. It was argued that there should be a study into the impact of the proposed change on remaining tenants, and that it should consider those in a range of circumstances and should include Equality Impact Assessment.

It was also noted that there would be a financial risk for landlords if rent arrears accrue. An associated point was that lenders may need to take the proposed amendment into consideration in their Buy to Let mortgage underwriting. Additionally, it was suggested that rent guarantee insurance policies taken out by some landlords and letting agents are based on affordability, referencing and credit checks of the incoming tenants; it was reported that these would become invalid in the event a joint tenant leaves the tenancy.

Various arguments were made with respect to liability for rent if a tenant is allowed to exit a lease without the agreement of fellow tenants, including that the departing tenant should continue to have joint responsibility for the rent unless this liability is accepted by other tenants, and this is agreed by the landlord.

An alternative perspective was that the remaining tenant(s) should be liable for the full rent. Connected to this was a suggestion that, on a practical level, landlords would not be able to trace tenants who had moved on in order to collect a share of the rent.

### **Deposits and arrears**

Some non-campaign respondents raised issues in relation to the deposit paid by a departing joint tenant. Points included that the deposit for a property would normally be a set amount, regardless of how many tenants are living there and, for the landlord, it would not be desirable for any part of this deposit to be released until all tenants depart.

One perspective was that a departing tenant should have to wait until the tenancy ends to receive their share of the deposit unless the remaining tenants or any replacement tenant can cover the difference. Another view was that, since the departing tenant could reasonably expect their share of the deposit to be returned, the remaining tenants would have to cover this amount.

Other suggestions included that a segmented deposit scheme would allow a deposit to be split and returned following an inspection at the time of an individual's departure.

A final suggestion was that the original entry inspection should continue into a new lease if any tenants have remained in the property. However, it was noted that this would mean that an incoming tenant would be left with the burden of paying for any breach of the outgoing tenant's obligations as set out in the PRT.

Some non-campaign respondents raised issues in relation to any rent arrears if one tenant leaves. It was reported that arrears would normally be the responsibility of all the individuals who were named as tenants during the period over which they arose; the connected concern was that they could have an adverse effect on the ability of the remaining tenants to sustain the tenancy or on the willingness of the landlord to offer a new tenancy to those who wish to stay on in the property. It was suggested that:

- A departing tenant should understand that they are jointly and severally responsible for any arrears at the point they left.
- In the event of rent arrears across the joint tenancy, an agreement between landlord and tenant would need to be made prior to ending the tenancy. Alternatively, any outstanding rent must be settled prior to releasing an outgoing tenant.

### **Student rental market**

Although some non-campaign respondents saw benefits in allowing students to exit from a joint tenancy in the PRS, others argued that the proposal does not make sense for the student market. It was argued that the remaining students in a jointly rented property could be forced to end their lease if unable to find a replacement or make up the remaining rent themselves. It was also suggested that it is likely to be difficult to find a replacement tenant during an academic year.

There was a concern that risks associated with the frequent breakdown of joint tenancy agreements could leave some housing providers unwilling to rent to students and may leave students vulnerable to increased costs.

### **Proposed conditions**

Many respondents identified elements that they thought would be important if the 2016 Act is to be amended as proposed. These suggestions came from both those who supported the proposed amendment, and those who did not.

### **Clear procedures and responsibilities**

There was said to be a degree of confusion regarding some of the conditions of the current joint tenancy. It was suggested that moving forward:

- Rules around exiting a joint tenancy should be flexible and easy to understand.
- Setting out clear responsibilities for tenants, and the appointment of a 'lead tenant', could avoid confusion.
- The Model Tenancy Agreement or Easy Read notes could be amended to clearly explain the responsibilities of those tenants who remain, including in relation to the rent.

## **Notice periods**

Comments in relation to notice periods included that all parties must be informed of a tenant's wish to leave, and that a tenant wishing to leave could be required to serve both the landlord and their co-tenant(s) notice so that all parties are aware of the situation.

Notice Periods are covered in more detail at Question 12.

## **Individual tenancies**

A frequently-made suggestion was that, rather than a joint tenancy, each tenant should have their own tenancy agreement. This would mean that an individual tenant would be able to give notice of their intention to move out, as under the current PRT, and that one tenant moving on would not have an impact on those who remained.

## **Replacement tenants and new leases**

There were differing views on who should find replacement tenants, and who should approve them. Points raised included that:

- The remaining tenant(s) should be given first option to enter into a new rental contract with the same conditions as the previous lease. It was reported that there have been cases where the landlord/letting agent has used drawing up a new tenancy agreement for remaining tenants as an opportunity to increase the rent.
- Tenants should be given the option to find a replacement tenant themselves, who the landlord should accept if all the required documents are submitted. Landlords should not be able to reject a potential replacement tenant without good reason.
- Tenants should be given an incentive to find a replacement that they are happy to live with, but should not be forced to do so, leaving the onus mainly on the landlord. If the landlord locates a potential tenant, the current tenants should have the opportunity to meet with them and to approve or reject them.
- The landlord should have the right to assess the suitability of the remaining tenant(s) to ensure the rent is affordable. They should also have the right to assess the suitability of any new tenant in terms of ability to cover the cost of rent and look after the property.
- If a new lease is needed, any administration fee should be the responsibility of the tenants.
- To protect the position of the landlord a new mandatory ground of eviction could be introduced of rent arrears of two or more months' following termination by a joint tenant.

## **Proposals focused on abusive or coercive relationships**

Some non-campaign respondents proposed alternative or additional provisions, often with respect to situations involving abusive or coercive relationships. These included that:

- A more targeted and specific ground for eviction is required. However, it was also suggested that The Domestic Abuse (Protection) (Scotland) Act 2021 might be used to evict the perpetrator of abuse from a tenancy.
- Private landlords should be given the powers to seek the eviction of a tenant who has been convicted of abuse if the other party wishes to retain the tenancy. However, the case should go to Tribunal to mirror arrangements in social housing.
- The Tribunal should be given new powers to decide when a joint tenant can exit a tenancy. It was suggested that similar procedures are in place under the Matrimonial Homes Act 1981 and Civil Partnership Act 2004, which can already be used in cases of domestic abuse.

It was also suggested that guidance and training on implementation of the legislation will be needed for PRS landlords and agents to prevent service generated risks.

**Question 12 – 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? 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? Please explain your answer.**

Responses to Question 12(a) by respondent type are set out in Table 4 below.

**Table 4**

<b>Q12a: 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group			1	2	3
Housing, legal or advice agency or professional or representative body	4	1	1	2	8
Local authorities and their representative bodies	20		1	2	23
Other private sector	1			2	3
Other professional or representative body	1	1		3	5
Private landlord, letting agent or their representative bodies	7	28	8	12	55
Public body or agency	1		1	6	8
Religious group or body	2			2	4
Social Landlords and their representative bodies	7	2		3	12
Tenants' and residents' groups and their representative bodies	7			2	9
Third sector organisation	1		1	20	22
Union, student or campaign group	9	1	1	7	18
<b>Total organisations</b>	<b>60</b>	<b>33</b>	<b>14</b>	<b>63</b>	<b>170</b>
<b>% of organisations answering</b>	<b>56%</b>	<b>31%</b>	<b>13%</b>		
Individuals	216	202	118	220	756
<b>% of individuals answering</b>	<b>40%</b>	<b>38%</b>	<b>22%</b>		
<b>Total non-campaign respondents</b>	<b>276</b>	<b>235</b>	<b>132</b>	<b>283</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>30%</b>	<b>25%</b>	<b>14%</b>	<b>31%</b>	
<b>% of all non-campaign respondents answering</b>	<b>43%</b>	<b>37%</b>	<b>21%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6394	235	132	1673	8434
<b>% of all respondents</b>	<b>76%</b>	<b>3%</b>	<b>2%</b>	<b>20%</b>	
<b>% of all those answering</b>	<b>95%</b>	<b>3%</b>	<b>2%</b>		

A very substantial majority – 95% of those answering the question – thought that a 4 weeks' notice period should apply for a joint tenant in the PRS. The proportion of non-campaign respondents who agreed that 4 weeks would be appropriate dropped to 43%, with 56% of organisations and 40% of individuals in agreement. Among organisations, a large majority of those who disagreed were from the 'Private landlord, letting agent or their representative bodies' group.

Around 435 non-campaign respondents went on to provide a comment at Question 12(a).

Some respondents who agreed that the notice period should be 4 weeks described this as sensible, reasonable or appropriate, and as long enough for the remaining tenants to consider their options or find a replacement. The importance of consistency of approach was often highlighted, primarily in terms of the PRS and social sector, but also in giving joint tenants the same rights as those in single occupancy tenancies. It was suggested that alignment can help renters understand their rights as tenants, regardless of the type of tenancy they have.

Non-campaign respondents who did not agree with a 4 weeks' notice period often restated their position from the previous question that a joint tenant should not be able to exit a tenancy without the agreement of their fellow tenants. Some expressing this view went on to add that if the proposal is enacted, the notice period should be longer than 4 weeks. Among suggestions were that the notice period should be:

- The same as that which the landlord is required to give the tenant.
- In line with the notice period agreed for the tenancy.
- Two months, giving other tenants one month to assess their options and then if they too wish to leave, serve their 28 days' notice and terminate the tenancy.
- Slightly longer for a single tenant to end their interest in a joint tenancy than for the whole group of joint tenants to end their tenancy.

Both respondents who agreed with a 4 weeks' notice period and those who did not highlighted the impact on remaining tenants and/or suggested that they should be given time to try and resolve any issues. Respondents also identified certain circumstances where additional flexibility may be required, including:

- Where requiring 4 weeks' notice may put someone experiencing violence or abuse at a higher risk of harm.
- Where all parties agree to a shorter period. It was suggested that legislation should be amended across both sectors to provide for discretion in situations where the landlord and existing joint tenants mutually agree a shorter timeframe.
- If new tenant can move in sooner.

It was also suggested that short notice periods will be important for those in receipt of Universal Credit, which does not provide for Housing Benefit to be paid on two homes at the same time. The potential impact of under occupation on LHA was also highlighted, with a suggestion that remaining tenants could be covered for up to two months to allow them time to either find a new tenant or to downsize.

Other points raised with respect to giving notice and notice periods included that:

- A landlord should be required to respond to a request to end a tenancy within 2 weeks of a tenant giving notice.
- Giving notice to a joint tenant will require careful consideration in situations involving domestic abuse and/or sex work/trafficking.

Responses to Question 12(b) by respondent type are set out in Table 5 below.

**Table 5**

<b>Q12b: 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
<b>Organisations:</b>					
Academic or research group	1			2	3
Housing, legal or advice agency or professional or representative body	1	2	1	4	8
Local authorities and their representative bodies	6	14	2	1	23
Other private sector			1	2	3
Other professional or representative body		3		2	5
Private landlord, letting agent or their representative bodies	10	14	18	13	55
Public body or agency			2	6	8
Religious group or body	2			2	4
Social Landlords and their representative bodies	1	4	2	5	12
Tenants' and residents' groups and their representative bodies	4	3		2	9
Third sector organisation			1	21	22
Union, student or campaign group	2	5	3	8	18
<b>Total organisations</b>	<b>27</b>	<b>45</b>	<b>30</b>	<b>68</b>	<b>170</b>
<b>% of organisations answering</b>	<b>26%</b>	<b>44%</b>	<b>29%</b>		
<b>Individuals</b>	<b>204</b>	<b>175</b>	<b>151</b>	<b>226</b>	<b>756</b>
<b>% of individuals answering</b>	<b>38%</b>	<b>33%</b>	<b>28%</b>		
<b>Total non-campaign respondents</b>	<b>231</b>	<b>220</b>	<b>181</b>	<b>294</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>25%</b>	<b>24%</b>	<b>20%</b>	<b>32%</b>	
<b>% of all non-campaign respondents answering</b>	<b>37%</b>	<b>35%</b>	<b>29%</b>		
<b>Campaign respondents</b>		<b>6118</b>		<b>1390</b>	<b>7508</b>
<b>% of campaign respondents answering</b>	<b>0%</b>	<b>100%</b>	<b>0%</b>		
<b>All respondents</b>	<b>231</b>	<b>6338</b>	<b>181</b>	<b>1684</b>	<b>8434</b>
<b>% of all respondents</b>	<b>3%</b>	<b>75%</b>	<b>2%</b>	<b>20%</b>	
<b>% of all those answering</b>	<b>3%</b>	<b>94%</b>	<b>3%</b>		

A very substantial majority – 94% of those answering the question – did not think there should be longer notice periods where there are more than two joint tenants. Among non-campaign respondents overall, opinion was relatively evenly divided with 37% agreeing there should be longer notice periods and 35% disagreeing. Organisations were more likely to disagree than individual respondents, at 44% and 33% respectively.

Around 360 non-campaign respondents went on to provide a comment at Question 12(b).

Among respondents who did not feel longer notice periods would be appropriate, reasons given included that consistency is important and that differing notice periods could be complicated or confusing. Some non-campaign respondents also thought it is not clear why households with more than two joint tenants should be different, and that 4 weeks' notice is long enough. It was reported that there is no evidence that 4 weeks' notice causes significant problems in social housing.

Other arguments against a longer notice period included that landlords of properties with more than two joint tenants will continue to receive rental income from other tenants. Concerns were also raised that increasing the length of notice periods would have an impact on those with overlapping tenancies. This was said to be an issue of particular significance for people on low incomes.

It was also argued that there should not be different 'categories' of tenant and that longer notice periods could just encourage a tenant to give notice earlier. A pre-action process for tenants was suggested as a potential way to enable a smoother transition.

Some non-campaign respondents who thought there should be longer notice periods argued – as at Question 12(a) – that a joint tenant should not be able to exit a tenancy without the agreement of their fellow tenants or that, if the proposed change is made, notice periods should be longer than 4 weeks in all cases. It was also suggested that domestic abuse situations are less likely in properties with more than two joint tenants, so urgency is reduced.

A longer period was also seen as:

- Potentially beneficial for transient tenants such as student households where there is likely to be higher turnover.
- Allowing remaining tenants more time to find replacements or make alternative arrangements and so, potentially, preventing homelessness.

Specific suggestions with respect to how long the notice period should be included:

- 6 - 8 weeks
- a minimum of 8 weeks
- a minimum of 6 months for student lets

There was also a call for further work with private landlords, tenants and other stakeholders to gain a better understanding of the impact of the proposal

### **Student tenancies**

A number of non-campaign respondents made comments in relation to student tenancies, including that a specific tenancy agreement should be considered, and that this could be looked at as part of wider work on the student accommodation strategy. It was argued that work to improve understanding of impacts where there

are multiple joint tenancies should include consultation with students, their representative bodies and others who typically enter into multiple joint tenancies.

However, it was also suggested that uncertainty around the availability of accommodation for students could deter students, particularly those from outwith Scotland, from choosing to study here, and that this would have an impact on higher education providers and the wider Scottish economy.

**Question 13 – 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?**

**Please explain your answer.**

Responses to Question 13 by respondent type are set out in Table 6 below.

**Table 6**

<b>Q13: 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group	1			2	3
Housing, legal or advice agency or professional or representative body	3		1	4	8
Local authorities and their representative bodies	15		3	5	23
Other private sector	1			2	3
Other professional or representative body			1	4	5
Private landlord, letting agent or their representative bodies	20	17	7	11	55
Public body or agency			1	7	8
Religious group or body	3			1	4
Social Landlords and their representative bodies	2	1	3	6	12
Tenants' and residents' groups and their representative bodies	6		2	1	9
Third sector organisation	1		1	20	22
Union, student or campaign group	6			12	18
<b>Total organisations</b>	<b>58</b>	<b>18</b>	<b>19</b>	<b>75</b>	<b>170</b>
<b>% of organisations answering</b>	<b>61%</b>	<b>19%</b>	<b>20%</b>		
Individuals	209	171	134	242	756
<b>% of individuals answering</b>	<b>41%</b>	<b>33%</b>	<b>26%</b>		
Total non-campaign respondents	267	189	153	317	926
% of all non-campaign respondents	29%	20%	17%	34%	
<b>% of all non-campaign respondents answering</b>	<b>44%</b>	<b>31%</b>	<b>25%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6385	189	153	1707	8434
% of all respondents	76%	2%	2%	20%	
<b>% of all those answering</b>	<b>95%</b>	<b>3%</b>	<b>2%</b>		

A very substantial majority – 95% of those answering the question – thought that additional safeguards should be put in place for remaining joint tenants. The proportion of non-campaign respondents overall who thought this to be necessary dropped to 44%, with 61% of organisations and 41% of individuals taking this view. Among organisations, a large majority of those who disagreed were from the ‘Private landlord, letting agent or their representative bodies’ group.

Around 450 non-campaign respondents went on to provide a comment at Question 13, including some respondents who said 'no' or who did not answer the closed element.

Some non-campaign respondents reiterated their opposition to allowing a joint tenant to leave without the agreement of other joint tenants, while others argued that the position of landlords also needs to be safeguarded. Given the potentially serious impacts on remaining joint tenants, it was argued that the Tribunal should be required grant individual release from a mutual liability tenancy.

As at Question 11, some respondents proposed legislative action to ensure that rather than signing a joint tenancy, each tenant receives their own individual tenancy agreement in residences of multiple occupancy, and that this agreement should have the same terms as a PRT. It was argued that, for many tenants, sharing a property is the only viable option and that the current position of joint and several liability, whereby tenants are responsible for each other's rent payments, should be changed.

As a general point it was also suggested that safeguards for remaining joint tenants should take account of the circumstances under which they became 'remaining joint tenants' – for example if they were the perpetrator of abuse against the person who has left the tenancy.

### **Advice and support**

Some non-campaign respondents noted that advice should be available when a tenancy agreement is being signed, to ensure that all parties are clear on the implications of the proposed approach and understand their rights and risks if someone leaves during the tenancy. Specific suggestions included that appropriate information should be produced by the Scottish Government, in a similar format to the Model Tenancy Agreement, and that providing this information should be a statutory requirement. A signing section of the lease highlighting liabilities was also proposed.

With respect to safeguards for remaining joint tenants, some non-campaign respondents highlighted the importance of access to, and awareness of, housing advice and support, with early intervention seen as a key factor in preventing homelessness. Specific topics referenced included:

- Awareness of responsibilities and obligations. Suggestions included that the landlord should be responsible for notifying remaining tenants of their obligations, along with highlighting relevant rights.
- Financial advice around affordability, debt and income maximisation.
- Advice on access to benefits and the impact of joint benefit claims coming to an end.
- Advice on alternative housing options.
- Referral to the local authority if required.

Reference was also made to the Prevention Review Group proposals (consulted on in the recent Prevention of Homelessness Duties consultation) which were thought to provide an important safety net for anyone who might be at risk of homelessness within the next six months. It was suggested that access to advice on ending a joint tenancy should be included as part of the 'reasonable steps' offered by local authorities as part of these new duties.

### **Security of tenure**

Several points were made with respect to security of tenure for remaining tenants, including a potential risk that the landlord decides to terminate the tenancy altogether and repossess the property. Protections were proposed to prevent a tenancy coming to an end as long as the rent is paid. It was suggested that the remaining tenant(s) should have the opportunity to renew the contract in their own name(s). However, it was also suggested that there should be an option for the remaining joint tenants to end the tenancy at the same time as the tenant who is leaving.

A further suggestion was that the number of tenancy changes might be limited, such that one cannot be instigated in the first three months, and only one every six months thereafter. It was argued that this would allow remaining and incoming tenants to feel that they have a secure home for at least that period.

### **Notice**

Reflecting comments made at previous questions, it was argued that notice must be provided to fellow tenants, as well as to the landlord, and that in some circumstances longer notice periods could safeguard the position of remaining joint tenants.

### **Affordability**

With respect to affordability for the remaining joint tenants suggestions included:

- That the landlord should carry out affordability checks to ensure the remaining tenant(s) can afford the rent without financial hardship.
- If applicable, the LHA allowance should be retained to assist with affordability issues which may arise.
- There could be a fund which would help to cover with rent until a replacement tenant is found.
- The Scottish Government should support tenants who cannot afford the rent to remain in the property until social housing is available.
- There should be protection from rent increases for a 6-week period.

It was also suggested that the remaining tenants should not be required to pay additional rent or Council Tax to cover a vacancy.

With specific reference to MMR, it was suggested that there could be more flexibility than at the initial letting stage to help the remaining tenant(s) retain their tenancy.

## **Deposits and arrears**

There were calls for consideration, clarity or guidance with respect to procedures in relation to deposits and rent arrears. Points in relation to deposits included a frequent view that the landlord should not be left with a reduced deposit.

It was reported that, at present, the deposit paid by a departing tenant may be transferred into a new tenant's name, while the new tenant transfers the deposit amount to the departing tenant through a private transaction. It was also reported that this has led to disputes in some cases.

Suggestions relating to how deposits should be managed going forward included that:

- The system for a departing tenant to recover their share of the deposit should not be complex.
- A departing tenant should either forfeit their deposit or wait until the tenancy ends to receive their share.
- The deposit should only be returned following a mandatory inspection.
- Procedures for claims against the deposit for damage while the outgoing tenant was in occupation need to be clarified.
- If other tenants remain, they must be made aware of their obligation to ensure that the deposit held is kept at the full amount stated on the lease.

With respect to arrears, it was suggested that failure to clear arrears accrued before a joint tenant exits the tenancy could leave the remaining tenant(s) in an unfair position and with a poor credit rating. It was argued that:

- A departing tenant must settle their share of any debts before notice can be served or before leaving.
- Arrears should be deducted from the departing tenant's deposit, although this may not cover all liabilities.
- Landlords should be encouraged to pursue the departing tenant for arrears or repair liability, rather than looking to the remaining tenants.

It was also noted that the remaining tenants may not have been aware of any arrears, particularly in cases of domestic abuse.

## **Finding and agreeing replacement tenants**

On finding and agreeing replacement tenants, comments relating to safeguarding the remaining joint tenants included that:

- The landlord should accept a new tenant as long as they meet basic requirements. Otherwise, it was suggested, a landlord could effectively force tenants out by not accepting a replacement while still requiring the full property rent to be paid.
- Securing another tenant should not be the responsibility of the remaining tenants.

- In the instance of multiple joint tenancies, remaining tenants should have a say in how the vacated room is allocated.
- How existing tenants agree a new tenant should be stipulated – for example whether all tenants must agree or if a majority is acceptable.

## **Domestic abuse**

With respect to situations involving domestic abuse, there was support for provisions to enable joint tenants who have experienced domestic abuse to remain as sole tenant. There was reference to access to advice and support from specialist services and financial advice services. The Preventing Homelessness Duties consultation also referenced in this context as relating to proposed legislation that could potentially give social landlords the opportunity to evict perpetrators of domestic abuse.

There was also reference to training and guidance for landlords and letting agents on dealing with cases of abuse, and clear signposting to specialist services in order to avoid further harms. There was also a call for greater information sharing between agencies and landlords.

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

The consultation paper sets out that the Scottish Government wants 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 sector. It sought views on introducing a ground to enable a private landlord to apply to the Tribunal to transfer a tenancy to enable a survivor of domestic abuse to remain in the family home as a sole tenant.

**Question 14 – Should we introduce a similar ground to that in the social sector, to enable private landlords to initiate eviction proceedings to end a perpetrators 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? Please explain your answer.**

Responses to Question 14 by respondent type are set out in Table 7 below.

**Table 7**

<b>Q14: Should we introduce a similar ground to that in the social sector, to enable private landlords to initiate eviction proceedings to end a perpetrators 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group	1			2	3
Housing, legal or advice agency or professional or representative body	4			4	8
Local authorities and their representative bodies	21	1		1	23
Other private sector		1		2	3
Other professional or representative body		1		4	5
Private landlord, letting agent or their representative bodies	17	14	12	12	55
Public body or agency	3			5	8
Religious group or body	1	2		1	4
Social Landlords and their representative bodies	8			4	12
Tenants' and residents' groups and their representative bodies	7			2	9
Third sector organisation	4		1	17	22
Union, student or campaign group	9		1	8	18
<b>Total organisations</b>	<b>75</b>	<b>19</b>	<b>14</b>	<b>62</b>	<b>170</b>
<b>% of organisations answering</b>	<b>69%</b>	<b>18%</b>	<b>13%</b>		
Individuals	237	133	155	231	756
<b>% of individuals answering</b>	<b>45%</b>	<b>25%</b>	<b>30%</b>		
Total non-campaign respondents	312	152	169	293	926
% of all non-campaign respondents	34%	16%	18%	32%	
% of all non-campaign respondents answering	<b>49%</b>	<b>24%</b>	<b>27%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6430	152	169	1683	8434
% of all respondents	76%	2%	2%	20%	
<b>% of all those answering</b>	<b>95%</b>	<b>2%</b>	<b>3%</b>		

A very substantial majority – 95% of those answering the question – thought a ground should be introduced to enable private landlords to initiate eviction proceedings to end a perpetrator’s interest in a joint tenancy and transfer the tenancy to the tenant who was subject to domestic abuse. Among non-campaign respondents overall, just under half (49% of those answering) agreed, with 69% of organisations and 45% of individual respondents agreeing. Among organisations,

most of those who disagreed were from the 'Private landlord, letting agent or their representative bodies' group.

Around 430 non-campaign respondents went on to make a comment at Question 14.

Some respondents indicated their support for the proposed new ground, while also noting their own lack of experience in relation to domestic abuse cases. Enabling private landlords to initiate eviction proceedings to end a perpetrator's interest in a joint tenancy was also seen as sensible, fair and reasonable, and as providing greater protection and security to victim-survivors of abuse. The disproportionate impact of homelessness on women and children who have experienced abuse was also noted. The most frequently-given reason for thinking the proposed new ground should be introduced in the PRS was to provide consistency across the rented sectors, although it was noted that the equivalent ground has not yet been enacted or tested in the social housing sector.

The most frequent reasons for thinking the proposed ground should not be introduced were that this not an appropriate matter for landlords to initiate, or that private landlords are unlikely to have appropriate experience or sufficient information and evidence to intervene in such cases. It was suggested that unplanned, illegal evictions could result. Existing powers to end the interest of any party in a joint lease under the Matrimonial Homes Act 1981 and the Civil Partnership Act 2004 were referenced, and it was argued that these can be used in cases of domestic abuse. Some non-campaign respondents suggested that a judicial process is required, or that action by landlords should only be on the recommendation of the Police or if ordered by a court or the Tribunal. There was also a view that a ground should be available for a tenant to instigate their own action.

As an alternative to the ground proposed it was suggested that provision should be made for a joint tenant (or the local authority on their behalf) to refer the matter to the Tribunal so that it can issue a notice to the landlord ending one joint tenant's interest and transferring the lease into the sole name of the remaining tenant.

A proposed role for the Tribunal is covered at Question 15.

### **How the ground might work**

A number of issues were raised about how a system would work in practice and it was argued that there would need to be defined procedures in place. Specific points were raised with respect to:

- the process being led by professionals
- the need for simple procedures to encourage landlords to engage
- clear guidelines on when it would be suitable to use this ground
- how abuse might be evidenced
- the nature of an appeals process

- ensuring that tenants are aware of the provision
- placing an obligation on the landlord to use the process to protect a tenant if requested to do so when appropriate criteria are met

It was also argued that any issues associated with the victim-survivor of domestic abuse, such as possession of an Anti-social Behaviour Order, should not stand in the way of them being entitled to the tenancy.

Some non-campaign respondents expressed a view that that affordability checks will be necessary to ensure someone who wishes to remain in a property can afford the rent and other liabilities. A fund to provide financial assistance for a remaining tenant was proposed and the possibility of financial assistance for landlords to implement eviction proceedings was also raised.

### **Providing support for landlords**

Some non-campaign respondents identified a need for education, advice and support for private landlords and letting agents with respect to cases involving domestic abuse, and for organisations offering such support to be adequately resourced and equipped. It was suggested that a partnership approach and sharing of good practice would help to support and encourage landlords. Specific suggestions included access to specialist support, detailed guidance and access to free legal advice.

Since social housing providers train their staff to support victim-survivors of domestic abuse, it was suggested that training opportunities might be shared with private landlords. A similar suggestion was that the Scottish Government might make training available for both sectors. It was also suggested that training for landlords could be linked to the landlord registration process.

With respect to content, it was argued that there needs to be a programme of trauma-informed domestic abuse training, statutory guidance and domestic abuse housing protocols in both the social and private rented sectors.

### **Other points for consideration**

Other points raised for consideration in relation to the proposed ground included that:

- Proposed new powers in the social sector are restricted to tenants who have been cohabiting for at least 6 months, while the Domestic Abuse (Protection) (Scotland) Act 2021 considers relationships regardless of whether the victim-survivor and perpetrator live together.
- In some cases, criminal trials involving domestic abuse are taking two years or longer to be heard and, even if an offending partner leaves the home, they still have rights in relation to the tenancy. Changes to criminal legislation would allow the local authority to remove those rights.
- The proposals could cause perpetrators of domestic abuse to be made homeless. It was argued someone at risk of eviction on these grounds should

be considered as 'six months away from homelessness' and referred as soon as possible to housing assistance/homelessness services.

- Abusive behaviour between flatmates within friendships or casual relationships should also be included in the mechanisms for tenancy transfer.

Finally, concerns were raised that a mechanism established to protect victim-survivors could in fact be used by perpetrators of abuse to exercise control over their victims.

**Question 15 – 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?**

Around 430 non-campaign respondents answered Question 15.

Some respondents noted their agreement that the role of the Tribunal should be expanded and/or their support for greater protection for victim-survivors of domestic abuse. The proposed extension was variously described as appropriate, suitable, sensible and logical. The Tribunal was said to be less formal, adversarial, intimidating and complex than the Sheriff Court. It was also said to be less onerous and more accessible for landlords. Other advantages associated with cases being heard by the Tribunal included that it acts as a one-stop-shop for the PRS, reducing court costs. One suggestion was that a trial period would be appropriate, and that the views of Tribunal members and family law Sheriffs should be sought before proposals are finalised.

Reasons why some other non-campaign respondents thought the role of the Tribunal should not be expanded as proposed included that:

- Domestic abuse cases would require a skill-set and experience completely different to that needed for the other matters dealt with by the Tribunal.
- Asking the Tribunal to make such decisions based on accounts given by the occupants may prove problematic and, in the absence of evidence, accusations might be false.
- The Tribunal is often still very formal and heavy on legalities, with substantial amounts of evidence required. It is inaccessible and intimidating for tenants and an alternative mechanism should be found to enable the transfer of a tenancy.
- The financial costs and time required by landlords and agents will increase.

### **Issues to be addressed**

Respondents also added various caveats to their approval or raised issues with respect to how the proposed expansion of the Tribunal's role might work in practice.

## **Tribunal capacity**

Concerns were raised with respect to the capacity of the Tribunal system. It was argued that the system is currently under-resourced, has a long back log of existing cases, and would not be able to deal with the additional workload as quickly as necessary for situations involving domestic abuse. Some non-campaign respondents suggested that such cases would need to be fast-tracked, and that the process would need to be both quick and simple to give confidence to tenants. The need for additional resources and improved capacity was highlighted. Specifically, it was suggested that both a significant increase in the number of legal members, and the employment of permanent Tribunal judges, would be required, along with Tribunal offices across Scotland.

## **Tribunal training requirements**

There were queries about whether the expertise of existing panel members would be appropriate for cases involving domestic abuse, and a requirement for additional training was often suggested. Points raised in relation to suitable training included that:

- This must be addressed comprehensively before any cases are transferred.
- There should be engagement with charities and organisations that specialise in supporting victim-survivors of domestic abuse, such as Scottish Women's Aid and Rape Crisis Scotland.
- Training should be robust, gender-competent and trauma-informed. It could reflect the mandatory training on domestic abuse for new Sheriffs.

It was also argued that the Tribunal process should reflect best practice regarding support for victim-survivors of domestic abuse.

## **Legal position**

Clarification was sought on how the Tribunal's powers would align with those of the Sheriff and High Court in cases where there is overlap and whether some form of criminal offence conviction would be required to allow the Tribunal to proceed with the transfer of a tenancy.

Other queries included:

- Whether an application to the Tribunal would be made by landlord or tenant?
- Who would be responsible for covering the cost of applications?
- If an automatic transfer up on certain thresholds – such as a police caution or court conviction – would be possible as an alternative?

## **Tenant privacy and security**

Issues were raised with respect to the privacy of victim-survivors of domestic abuse and how their right to privacy would be protected. It was noted that Tribunal cases are published, and it was suggested it may be easier to search the Tribunal decisions database than the court registers, potentially deterring victim-survivors from coming forward.

There were also queries with regard to what victim protection measures would be in place, and it was argued that safeguarding steps would need to be established between proceedings to ensure the safety of the abused tenant. Whether the two estranged partners would need to be in the same room for a hearing, or if representatives could be in attendance instead, was also raised.

## **Support**

The importance of support for victim-survivors to ensure that they are not traumatised by the Tribunal experience was highlighted. It was argued that more funding should be provided to services supporting domestic abuse victim-survivors, along with training in any new legal procedures, so that these services are equipped to support victim-survivors.

There were also queries with respect to:

- The availability of legal aid/support for the tenant
- As above, whether a victim-survivor could be represented or supported by domestic abuse advocates?

The importance of guidance for landlords was also highlighted.

## **Criteria for consideration**

Criteria that should, or should not, be factors in the Tribunal's decision to transfer a tenancy were also suggested including that the Tribunal:

- should consider the ability of a remaining tenant to pay the rent
- should not have discretion to allow a perpetrator to remain in the home

**Question 16 – 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 cohabitee) which is punishable by imprisonment in the previous 12 months?**

**Please explain your answer.**

Responses to Question 16 by respondent type are set out in Table 8 below.

**Table 8**

<b>Q16: Should we streamline the eviction process where there has been a criminal conviction relating to abuse of another person living with them in the let property (joint tenant or cohabitee) which is punishable by imprisonment in the previous 12 months?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group	1			2	3
Housing, legal or advice agency or professional or representative body	2	2	1	3	8
Local Authorities and their representative bodies	18	2		3	23
Other private sector			1	2	3
Other professional or representative body	3			2	5
Private landlord, letting agent or their representative bodies	31		12	12	55
Public body or agency	1			7	8
Religious group or body		3		1	4
Social Landlords and their representative bodies	6		3	3	12
Tenants' and residents' groups and their representative bodies	5		1	3	9
Third sector organisation	2	1	1	18	22
Union, student or campaign group	4	1	2	11	18
<b>Total organisations</b>	<b>73</b>	<b>9</b>	<b>21</b>	<b>67</b>	<b>170</b>
<b>% of organisations answering</b>	<b>71%</b>	<b>9%</b>	<b>20%</b>		
Individuals	347	40	115	254	756
<b>% of individuals answering</b>	<b>69%</b>	<b>8%</b>	<b>23%</b>		
Total non-campaign respondents	420	49	136	321	926
% of all non-campaign respondents	45%	5%	15%	35%	
<b>% of all non-campaign respondents answering</b>	<b>69%</b>	<b>8%</b>	<b>22%</b>		
Campaign respondents	7508				7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	7928	49	136	321	8434
% of all respondents	94%	1%	2%	4%	
<b>% of all those answering</b>	<b>98%</b>	<b>1%</b>	<b>2%</b>		

A very substantial majority – 98% of those answering the question – thought the eviction process should be streamlined under the circumstances set out. Among non-campaign respondents overall 69% agreed, with similar levels of agreement between organisations (71%) and individual respondents (69%).

Around 335 non-campaign respondents went on to make a comment at Question 16.

Some non-campaign respondents saw the proposed streamlined eviction process as sensible or appropriate. Specific benefits identified included that it would:

- Make the process as quick as possible and address concerns regarding timescales for the Tribunal to hear cases.
- Protect and provide security for the remaining tenant.
- Be consistent with practice in the social housing sector.

From the perspective of the remaining tenant, it was argued that the stress associated with going through the Tribunal process would be removed and additional scrutiny avoided.

It was also suggested that a streamlined process will help landlords. However, experience in the social housing sector was reported to be that, although the Housing (Scotland) Act 2014 introduced streamlined eviction processes, in practice Courts did still want to consider reasonableness and proportionality. It was suggested that if the Tribunal took a similar approach, landlords would have to be prepared to address issues of reasonableness and proportionality.

Some non-campaign respondents who did not agree that the process should be streamlined as described argued that a mandatory approach would not be suitable, each case should be assessed on merits, and that a one-size-fits all solution should be avoided. There was also a query as to why the streamlined process should apply to abuse-related but not other criminal convictions. It was also suggested that:

- Removal of rights as a tenant without a meaningful hearing may be in breach of [Article 6](#) and/or [Article 8](#) of the Human Rights Act 1998, and that evictions may therefore be susceptible to appeal.
- The benchmark of a criminal conviction relating to domestic abuse punishable by imprisonment in the previous 12 months is set too high. Instead, it was argued the requirement should be conviction on domestic abuse in the previous 12 months, rather than imprisonment.

## **Caveats**

### **Requirement for conviction resulting in imprisonment**

There were requests for further consideration to be given to the requirement for the perpetrator of abuse to have received a sentence of imprisonment in the previous 12 months. Associated comments were that:

- The majority of people do not report domestic abuse to the Police at all, and the majority of reports do not result in the perpetrator receiving a criminal conviction or a prison sentence.
- There is in any case a move away from imprisonment towards Community Payback Orders.
- A sentence of imprisonment relating to the abuse of another person might pre-date the 12-month timescale proposed.

As an alternative to the proposed action via the Tribunal, it was suggested that it might be appropriate for the courts to grant a full exclusion order, including striking down any tenancy-based entitlement at the point of conviction.

It was also argued both that many cases that do not result in custodial sentences could benefit from streamlined eviction processes, and that the same principle should also apply to other criminal convictions for actions at the property.

### **Respecting the wishes of the victim-survivors of abuse**

The agreement of the victim-survivor was also seen as essential, and there was a view that it should be for the victim-survivor tenant to initiate proceedings, or for the local authority to do so on their behalf. It was also reported that many people affected by domestic abuse cannot or do not want to have the perpetrator evicted for a number of reasons.

Concerns were also raised that there might be situations where:

- The landlord wants to use this ground contrary to the wishes of the victim-survivor.
- The victim-survivor feels under pressure to stay in the property when they do not wish to do so.
- The victim-survivor wants a joint tenant to be evicted but the landlord is unwilling to take action.
- A landlord uses the process to evict both joint tenants, although only one has received a criminal conviction. Since the underlying criminal offence is disproportionately committed by men, it was suggested that women could be disproportionately affected by this scenario.

With respect to the last point, the Scottish Government was asked to analyse and share data on the use of streamlined eviction and any impacts on women.

### **Alignment with other regulations**

It was noted that the PRT already has a ground (ground 15) that allows landlords to evict tenants who are convicted of an offence punishable by imprisonment and that this should cover domestic abuse. However, it was also said to be unclear how long it currently takes to evict tenants based on this ground, and whether this process needs to be streamlined. It was also noted that the 2016 Act currently has no provision for ground 15 to be used to end a tenancy for just one tenant and that, if used in these circumstances, it would end the tenancy for all joint tenants.

Any proposal for a new ground to be mandatory was seen as being at odds with proposals in the Coronavirus (Recovery and Reform) (Scotland) Bill that all grounds for possession should be discretionary.

### **Housing requirement for the evicted tenant**

Some non-campaign respondents highlighted the housing requirement of the evicted tenant, including the need to recognise that the perpetrator will have a right to be housed somewhere and that additional pressure may be put on

homelessness services. The need for early referral to these services was noted, although it was also observed that the perpetrator may be in prison.

### **Other issues raised**

A number of other issues were raised, including that an eviction should:

- be reviewed if the relevant conviction is overturned
- not be delayed by any provisions to prevent winter evictions

### **Question 17 – How can we help improve the immediate and longer term housing outcomes of domestic abuse victims living in the private rented sector?**

Around 370 non-campaign respondents made a comment at Question 17.

Some respondents referenced topics covered at earlier questions, including the importance of applying the Domestic Abuse (Protection) (Scotland) Act 2021 within the PRS. The establishment of a Tenant Participation Panel and/or the role out of tenants' unions were also seen as important in ensuring representation for those who have experienced domestic abuse. It was seen as important that victim-survivors have a voice in shaping policy in this area.

It was also noted that, although the question concerns housing outcomes for domestic abuse victim-survivors living in the PRS, action is needed throughout rented housing and in relation to homelessness policy and practice. It was suggested that better integration of homelessness policy with wider housing policy and practice, incorporating a gendered perspective, would also improve housing outcomes.

### **Support for victim-survivors**

Comments in relation to advice and support for PRS tenants who are victim-survivors of domestic abuse included the need for access to specialist services, including housing options advice and access to housing support. Specific suggestions included:

- Involving Scottish Women's Aid and other key partners.
- Making a trauma-informed response, including ensuring that women have access to independent domestic abuse advocacy services.
- Acknowledging the importance of building a good relationship between local authorities and women from the start, reducing their vulnerability.
- Considering whether the perpetrator or their family/friends live nearby and whether additional measures are needed to avoid harassment or abuse.
- Providing ongoing support to those who have experienced domestic abuse, recognising that there can be life-long repercussions.

There was a call for a multi-agency approach to providing advice and support to domestic abuse victim-survivors, regardless of tenure, and for improved funding for organisations working in this area.

### **Financial support**

Financial consequences of economic abuse – for example on a victim-survivor's credit rating and ability to find a deposit – were said to increase the difficulty of accessing alternative housing. It was argued that housing policies which mitigate these barriers would help to improve outcomes.

In terms of specific financial support to victim-survivors, suggestions included

- A fund to enable a survivor of abuse to remain in their home. For example, access to support to cover rent in the months following tenancy changes.
- A dedicated payment to support people to prepare, leave and establish themselves after leaving. For example, funding for a deposit and the first month's rent if a victim-survivor decided to move or temporary support with rental payments while alternative accommodation is found.
- Financial support targeted at sustaining tenancies for victim-survivors, potentially part-funded by unclaimed deposits.

### **Finding alternative accommodation**

With respect to moving to alternative housing it was argued that victim-survivors should be:

- Provided with priority access to temporary accommodation.
- Provided with tenancies with protection and wrap around support as in the Housing First model for people experiencing homelessness.
- Offered accommodation in areas that are not linked to the perpetrator or their family, friends and work.
- Be supported to access social housing more easily with allocation policies reflecting this priority need. Monitoring of domestic abuse presentations through the social housing waiting list and the homeless route to track outcomes and inform best practice was suggested.

It was reported that housing protocols may advise a victim-survivor who has moved to a refuge to present their case as a homeless person rather than as fleeing domestic abuse, meaning they may lose housing priority based on domestic abuse. The respondent making this point argued victim-survivors who have no choice but to flee a domestically abusive situation should retain housing priority based on domestic abuse, regardless of where they are subsequently accommodated.

Other suggestions included that short-term lets of holiday rentals could be used to provide emergency accommodation for victim-survivors, but that this is not possible under current PRT legislation.

Some respondents highlighted issues of around affordability in the PRS, with one 'Third sector' respondent reporting the experience of their own members that rental

costs mean very few women are able to remain in the PRS after separating from an abusive partner or when rehoused from a refuge. There were calls for:

- Increased availability of affordable housing options. Provision of more social housing.
- Rent controls to tackle the affordability crisis.
- Improved understanding of why benefits are not accepted by all PRS landlords and how this barrier can be overcome. It was argued that a widespread 'no DSS' policy discriminates against women, who are twice as likely to be dependent on welfare benefits as men.
- Encouragement of MMR landlords to use social stock to facilitate domestic abuse management transfers.

The availability of sufficient accommodation for the perpetrator was also highlighted.

### **Support for Landlords**

Private landlords were also thought to require access to advice, guidance and support, with guidance detailing how domestic abuse victim-survivors can be supported and who to contact if they suspect domestic abuse is happening at their property. It was reported that there have been circumstances where a lack of understanding of domestic abuse on the part of landlords and letting agents has inadvertently resulted in collusion with a perpetrator.

Providing landlords with education or opportunities to attend training on domestic abuse was proposed and it was suggested that the Scottish Government should work with stakeholders to develop guidance for PRS landlords similar to 'Domestic abuse: a good practice guide for social landlords' produced for the social sector by the Chartered Institute of Housing and Women's Aid.

Other comments included that training could be part of the landlord registration process and that there could be incentives for already registered landlords to attend. It was also argued that all landlords should be required to have a domestic abuse policy.

The importance of ensuring that PRS landlords and letting agents are aware of changes in legislation was also highlighted, with a suggestion that information and signposting should be available via the Citizens Advice Bureaux, council websites, letting agents, the Landlord Registration website, and Landlord Accreditation services. It was argued that landlords should know about, or should have a duty to signpost to, appropriate services to help victim-survivors. It was also suggested that they should be held accountable if they fail to do this.

However, there was also a view that responsibility for safeguarding victim-survivors of domestic abuse cannot realistically lie with landlords.

## **Improving security and dealing with property damage**

The importance of the physical security of a property was also raised, with a view that a new Regulator or tenants' union should look at this issue as a priority.

It was suggested that landlords could: carry out security checks, ensuring locks and door entry systems are in working order; encourage other households to ensure common access areas are secure; and/or install additional safety measures. Provision of funding for private landlords to improve security or install alarms was suggested and it was reported that, in some areas, PRS landlords can access contractors used by Registered Social Landlords (RSLs) who are aware of the particular needs of domestic abuse victim-survivors.

Damage to the property during a period of abuse was also referenced with suggestions that:

- Clarity is needed relating to instances when the property was damaged as a result of the abuse/during the period of abuse.
- In line with processes in social housing, victim-survivors who have a Police crime reference number should be able to make a claim for damage to the property on their landlord's insurance.

## **Role of local authorities and agencies**

A requirement for further education and awareness-raising for housing sector staff and agencies was also identified. It was reported that Scottish Women's Aid has found that some local authority staff questioned the validity of women's experiences of abuse and homelessness, or failed to challenge their partner's entitlement to remain in the home.

There was a call for dedicated PRS teams within local authorities that could:

- Provide a landlord-tenant liaison service that would help to embed good practice regarding responding to domestic abuse and gender-based violence.
- Offer support to tenants, including to access all benefits to which they are entitled.

The need for Police intervention and effective court action to restrain perpetrators of abuse was also highlighted.

## **Status of students**

It was reported that students can find themselves in situations that do not meet the definition of domestic abuse but where they have been or are being abused by a flatmate or a casual partner in a joint tenancy. It was argued that such situations should also be considered under the legislation.

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

The Scottish Government is proposing to legislate to enable the reinvestment of unclaimed deposits. Given these deposits should be returned to private tenants,

they think it is only right that any reinvestment is to the benefit of tenants living in the PRS – 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, the proposal is that 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.

**Question 18 – 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? Please explain your answer.**

Responses to Question 18 by respondent type are set out in Table 9 below.

**Table 9**

<b>Q18: 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group	1			2	3
Housing, legal or advice agency or professional or representative body	6			2	8
Local authorities and their representative bodies	16	2	2	3	23
Other private sector		1		2	3
Other professional or representative body	3			2	5
Private landlord, letting agent or their representative bodies	38	5	4	8	55
Public body or agency	2			6	8
Religious group or body	3			1	4
Social Landlords and their representative bodies	8		1	3	12
Tenants' and residents' groups and their representative bodies	5		1	3	9
Third sector organisation	1		2	19	22
Union, student or campaign group	9			9	18
<b>Total organisations</b>	<b>92</b>	<b>8</b>	<b>10</b>	<b>60</b>	<b>170</b>
<b>% of organisations answering</b>	<b>84%</b>	<b>7%</b>	<b>9%</b>		
Individuals	337	104	88	227	756
<b>% of individuals answering</b>	<b>64%</b>	<b>20%</b>	<b>17%</b>		
Total non-campaign respondents	429	112	98	287	926
% of all non-campaign respondents	46%	12%	11%	31%	
<b>% of all non-campaign respondents answering</b>	<b>67%</b>	<b>18%</b>	<b>15%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6547	112	98	1677	8434
% of all respondents	78%	1%	1%	20%	
<b>% of all those answering</b>	<b>97%</b>	<b>2%</b>	<b>1%</b>		

A very substantial majority – 97% of those answering the question – agreed with the suggested criteria after which unclaimed deposits can be reinvested. Among non-campaign respondents overall the level of agreement dropped to 67%, with the remaining respondents quite evenly split between those who disagreed and those who did not know. Organisations were more likely to agree than Individual respondents at 84% and 64% respectively.

Around 420 non-campaign respondents went on to make a comment at Question 18.

Many non-campaign respondents who agreed expressed a view that the proposals are reasonable or appropriate or, specifically, that the timescale is reasonable. Some noted that they agreed provided that both conditions are met.

Among non-campaign respondents who disagreed, some argued that the proposed period of 5 years is too long, while others thought it too short or that unclaimed deposits should not be reinvested at all.

### **Conditions to be met**

Respondents also highlighted a number of conditions they would wish to see fulfilled before the proposals were taken forward.

### **Arrangement understood by all parties**

It was argued that the proposed arrangements must be clear to all parties from the outset. There were several suggestions with respect to reducing the risks of deposits going unclaimed in future, including that:

- The tenant must be informed where the deposit is registered and how to contact the TDS holding it.
- The time limit for reclaiming deposits, and the need to maintain up-to-date contact details, should be highlighted when a tenancy commences.
- The TDS should obtain multiple means of contacting a tenant. Where details are missing, it was suggested a TDS might acquire email addresses and phone numbers by writing to a property to encourage tenants to sign up.
- As some students have become uncontactable due to the expiry of their academic email address, it should be standard practice to encourage the use of non-student email addresses.
- When either party gives notice, the tenant should be made aware where their deposit is held and how it can be reclaimed.

An additional proposal was that, when lodging a deposit, the tenant could indicate where they would want the deposit to go (for example to a homeless charity) in the event that they cannot be contacted and do not reclaim their money.

### **All avenues exhausted**

There were calls for clarification of what exhausting 'all avenues' would mean in practice, with suggestions that there should be:

- Clarity and guidance on the extent of the checks and tracing that should be undertaken to find tenants and return the deposit.
- Evidence, or specifically auditable evidence, of the efforts made to transfer the funds to the tenant.

- Scope for TDS providers to take account of individual circumstances that may have stopped an individual reclaiming their deposit schemes – for example if proceedings are ongoing in relation to the deposit.
- Publication of a list of deposits that are soon to be re-invested on a government website, with a further period allowed for claims and with precautions against fraudulent claims.

It was also suggested that any provision to reinvest the deposit must also prevent claims against either the landlord or the TDS after the 5-year period.

### **5-year timeframe**

As noted above, some non-campaign respondents thought 5 years is a reasonable time after which an unclaimed deposit could be reinvested. It was observed that this is in line with the arrangements for prescription of debt, as set out in the Prescription and Limitation (Scotland) Act 1973.

Other non-campaign respondents thought that 5 years is, or might be, too long. The most frequently suggested alternative was one year or less, with two or three years were also proposed.

A minority view was that 5 years may not be long enough. Non-campaign respondents taking this view tended to refer to 10-year timeframe. Reasons given for a longer period included that 6 years is the usual time limit for financial matters the UK and that the UK Government's Dormant Asset Scheme makes use of money held in dormant accounts that have not been used for 15 years or more. It was argued that someone returning from a period overseas might reasonably expect to be able to access their deposit. Further exploration of the profile of unclaimed deposits and their owners was suggested.

### **Suggested uses for unclaimed deposits**

Many respondents recommended uses for unclaimed deposits. General points included that proposals should be drawn-up in conjunction with all stakeholders and subject to appropriate scrutiny and consultation. There were also queries with respect to:

- What would be an appropriate mechanism to ensure funds are properly reinvested to give support within the private sector?
- Whether reinvested funds would be apportioned nationally or at local level?

The more frequently-made suggestions for reinvestment of unclaimed deposits were:

- Provision of additional tenant advice or advocacy services, with a specific suggestion that funds should be ring-fenced to enable 'access to justice' through the provision of pro bono tenant legal services.
- Funding tenants' unions or other forms of tenant representation, or that a tenants' union should be consulted on how the money is allocated.

- A deposit guarantee scheme or means tested grant funding for deposits to enable people who cannot otherwise afford a deposit to secure accommodation in the PRS. Any money owed back to the tenant at the end of the tenancy would be returned to the scheme to be used for other tenants.
- Continuation of the current Tenant Grant Fund, or an alternative rent guarantee/tenancy sustainment support scheme, to help lower income tenants with rent payments. Supplementing incomes of remaining tenants in instances of domestic abuse was also proposed.
- Reinvestment into other housing programmes, particularly programmes to support people experiencing homelessness. Housing First models were referenced specifically.
- Returning deposits to landlords or providing support to landlords in meeting new standards.

On this latter point, some non-campaign respondents thought unclaimed deposits should go back to the landlord for reinvestment in the property or for repairing damage. Others argued that receipt of unclaimed deposits should be conditional on improving the property and that landlords should be required to evidence the investments made in the property or provide receipts for work at the property prior to claiming the tenancy deposit. It was also suggested that landlords should apply for grants to cover repairs and maintenance to help keep buildings wind and water-tight.

Less frequently-made suggestions for use of unclaimed deposits included:

- Using some funds to advertise the mechanism to reclaim deposits, for example on social media.
- Investing in Student Associations to assist with student housing advice services and tenants' information campaigns.
- Improving landlord registration services, including provision of advice and assistance to landlords.
- Development of training opportunities for landlords.
- Providing incentives for landlords to accept pets or covering clean-up costs associated with pets.

## Chapter 3 – Greater flexibility to personalise a rented home

Chapter 3 of the consultation paper considered options relating to the keeping of pets and the right to personalise a rented property.

### Allowing people to keep pets

Currently pets are generally allowed only by explicit written agreement and where a landlord agrees for their tenant to keep pets, the Model PRT Agreement outlines the expectations that pet owners must meet. The Scottish Government noted their interest in views on how best to encourage more pet-friendly tenancies.

**Question 19 – 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?**

Around 750 non-campaign respondents made a comment at Question 19, one of the highest comment rates across the consultation. Responses also tended to be longer than at many questions.

Although the question asked how a right to keep pets could be most effectively introduced, many of the comments addressed the rights or wrongs of introducing such a right in the PRS.

### Reasons for supporting a right to keep pets

The most frequently-made point was that, to achieve ‘tenure blind’ housing outcomes and enshrine tenants’ rights to housing, private tenants should have the right to keep pets in their home. Many other comments, particularly those relating to the welfare of tenants and animal, appeared to apply to both the private and social rented sectors, although some were specific to the PRS.

A number of animal welfare-focused ‘Third sector’ respondents referred to their own research into the nature and scale of the issue, including UK-wide survey findings that 51% of tenants had experienced no issues with keeping a pet in their rental property, with no damage caused to the property and the landlord being understanding of pet ownership.

Comments often focused on the importance of pets to people’s emotional life as well as mental health. For example, it was reported that 94% of Scottish cat owners say their cat is part of their family and 95% of tenants who are allowed a cat get positive impacts from having one, including improving their mental health, making them happy and keeping them company. Most recently, it was suggested that the COVID-19 pandemic has highlighted just how vitally important pets are to their owners and that, for many people, they are literally a lifeline. Nevertheless, it was reported that too often cat owning renters face the heart-breaking situation of being forced to give up their cat because of a lack of pet-friendly rented homes.

In terms of all types of pet, it was also reported that 9% of tenants said they had been forced to give up their pets in the past because they were unable to find a suitable property where their pet(s) would be accepted. A 'Third sector organisation' respondent also reported that one of the most frequent reasons dogs are handed in to their rehoming centres is a change in the owner's circumstances, including being unable to live in a rented property with a pet. They also referred to a survey of landlords finding that only two in five private landlords allow dogs.

There was also reference to the particular importance of pet ownership for some groups of people, including that positive pet policies can be crucial to people with experience of homelessness making a smooth transition from hostel into temporary accommodation, especially since many housing providers use PRS properties as temporary accommodation.

It was also noted that research suggests a strong link between animal abuse and domestic abuse, with perpetrators of abuse often threatening or harming a pet in order to intimidate their partner. It was reported that victim-survivors often will not leave their home if they are unable to take their pet with them.

### **Reasons for disagreeing with a right to keep pets**

Other respondents, including many 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents, raised significant concerns about any right to keep a pet being introduced. Connected concerns included that pets can and have caused problems, including some respondents reporting that they have experienced such problems as landlords. A 'Private landlord representative body' respondent reported that a 2020 member survey found that, amongst landlords who have allowed tenants to have pets in the past, 44% experienced problems with allowing cats in their rented properties and 53% experienced problems with allowing dogs in their rented properties.

In terms of the types of problems landlords reported, there was reference to:

- Damage to the property and/or to the floor coverings and furnishings. Some private landlords referred to their own experiences, with reports of damage to walls, doors and skirtings, floor coverings and even floorboards needing to be replaced, and furniture being destroyed or damaged so badly that it too needed to be replaced. There were also references to the substantial costs and inconvenience associated with the necessary repairs and replacements.
- Potentially irreversible damage to listed or traditional properties.
- Specific issues associated with rural properties, in particular with dogs in properties near to areas where livestock is kept.
- Anti-social behaviour problems, particularly related to dogs, and including barking and fouling. It was suggested that the impact on neighbours and the surrounding area must be taken into consideration.

It was also noted that landlords could have allergies or phobias relating to certain types of pets and that allergies could also be a problem for future tenants wanting to move into the property. In relation to shared accommodation, including properties

let on a 'room only' basis, it was suggested that the introduction of a pet by one tenant might lead to concerns or an allergic reaction for other tenants within the property.

A frequently-expressed view was that, rather than a general right, each situation must be assessed on its merits. However, some who did not agree with a general right did note that there should be an exception, and by extension a specific right, for people to keep assistance animals, and in particular for Guide or Hearing Dogs.

More generally, however, it was suggested that tenants should be required to request permission in advance, which should not be unreasonably withheld. Some private landlords noted that this is already the approach they take and that it works well. This included landlords who reported that they have allowed or do allow pets where the circumstances – and in particular the type of property – permit. Overall, it was suggested that the current approach works well and there is simply no need for change.

In conclusion, it was reported that some landlords feel so strongly about this issue that they would leave the sector if a right to keep pets is introduced. A small number of 'Individual' or 'Private landlord' respondents said that they would stop operating as a private landlord if their choice to refuse permission for a pet was removed.

### **Overall approaches**

Those who supported a right to keep pets generally suggested it should be a statutory right, and there was a suggestion that it should be written into the Model Tenancy Agreement.

Other comments on amending the Model Tenancy Agreement that it should allow for pets in the PRS but that it should not be set out as a right. Some noted that they agreed with making keeping a pet the default position, with the landlord having to object in writing within a set time period. This was also articulated as a right to request keeping a pet with permission not be unreasonably withheld.

However, there were also concerns about any approach that was focused only on changes to the Model Tenancy Agreement and/or based on consent for keeping pets being the default position. It was reported that an amendment to the UK Government's Model Tenancy Agreement in February 2021 (which made consent for pets the default position) has had little impact, including a low level of awareness among landlords. A 'Third sector organisation' also reported survey findings that a third of private landlords who do not always allow pets said nothing would persuade them to do so. There was also a concern that merely amending the Model Tenancy Agreement would mean changes would only apply to landlords who are willing to use that agreement.

Whether a statutory right or not, a number of non-campaign respondents acknowledged that certain issues would need to be taken into account. For example, it was noted that:

- Potential limitations could be considered, for example in relation to the number and type of pets.
- Connected to this, there could also be conditions relating to the suitability of the property. There should be a requirement that a property is suitable for the pet, with the landlord allowed reasonable discretion to refuse consent, subject to the jurisdiction of the Tribunal. There was reference to a 'Pet CV' being used to help determine if a property is suitable for a pet and if the landlord is reasonably refusing the keeping of that pet.
- There may need to be an exception when title deeds dictate no pets in the property.
- It would not be appropriate or legal where a tenant/prospective tenant has committed an animal welfare offence and has been banned from keeping a pet.

### **Specific requirements or suggested actions**

If 'consent being the default position' were to be the preferred option, there was a call for it to be supported by appropriate guidance for landlords on how to put the changes into practice. Associated suggestions were that the Scottish Government would need to:

- Promote to landlords the benefits of adopting pet friendly properties. There was reference to awareness-raising on the positive health and wellbeing effects of having a pet, which will in turn increase tenancy sustainment and satisfaction.
- Encourage tenants to ask their landlord if they would consider allowing pets, even if the property is not advertised as pet friendly.

There were also suggestions relating to the types of incentives or assurances that could be offered to landlords to encourage them to rent to people with pets. These included:

- Increasing the maximum deposit that landlords are permitted to take if the tenant is being given permission to have a pet in the property. However, it was also noted that deposits can already be used to act as a guarantee against damage to the property or cleaning bills if the property is left in poor condition. A frequently-made point was that deposits should not be greater for pet owners.
- Enabling landlords to charge more than the market rent for a property which is going to be occupied by tenants with pets – in the form of additional rent or a monthly service charge – to cover the additional wear and tear which the property will experience as a result of the pet.
- Allowing landlords to charge an upfront fee at the start of the tenancy to cover the cost of having the property professionally cleaned and carpets shampooed at the end of the tenancy.
- Requiring tenants to take out pet damage insurance or allowing landlords to require/request that tenants take out insurance. In terms of possible

advantages to this approach, it was noted that it would provide tenants with an incentive to be responsible in order to build up their no claims discount. A 'Third sector' respondent reported survey findings that 42% of landlords would consider pets if they could insist on insurance against damage caused by those pets. It was also reported that 57% of dog owners and 55% of cat owners said they would be willing to take out pet insurance if required by landlords. However, there were also concerns that the costs could be unmanageable.

- Being able to require a deep-clean of the accommodation paid for by tenants at the end of their tenancy period.

Other comments addressed ways of ensuring that any rights that tenants have can be exercised. Suggestions included that:

- There should be clear and easy ways for tenants to contest landlords discriminating against tenants on the basis that they have pets.
- If landlords are able to withhold permission under certain circumstances, there must be a way for tenants to challenge a decision they feel is unreasonable. This could be at the Tribunal or through a complaint to another redress scheme.

Finally, there was a query as to how a private landlord could end a tenancy if pets were causing damage or being a persistent nuisance to neighbours, and whether this might be based on ground for eviction 11 (Breach of tenancy agreement) or 14 (Anti-social behaviour)?

**Question 20 – Should the right to keep pets also be introduced as a right in the social sector?**

**Please explain your answer.**

Responses at Question 20 by respondent type are set out in Table 10 below.

**Table 10**

<b>Q20: Should the right to keep pets also be introduced as a right in the social sector?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group			1	2	3
Housing, legal or advice agency or professional or representative body	5			3	8
Local authorities and their representative bodies	11	8	1	3	23
Other private sector	1			2	3
Other professional or representative body	1	2		2	5
Private landlord, letting agent or their representative bodies	12	14	16	13	55
Public body or agency	1		1	6	8
Religious group or body		2		2	4
Social landlords and their representative bodies	4	5	1	2	12
Tenants' and residents' groups and their representative bodies	3	3	1	2	9
Third sector organisation	7	1	2	12	22
Union, student or campaign group	9		1	8	18
<b>Total organisations</b>	<b>54</b>	<b>35</b>	<b>24</b>	<b>57</b>	<b>170</b>
<b>% of organisations answering</b>	<b>48%</b>	<b>31%</b>	<b>21%</b>		
Individuals	141	309	120	186	756
<b>% of individuals answering</b>	<b>25%</b>	<b>54%</b>	<b>21%</b>		
Total non-campaign respondents	195	344	144	243	926
% of all non-campaign respondents	21%	37%	16%	26%	
<b>% of all non-campaign respondents answering</b>	<b>29%</b>	<b>50%</b>	<b>21%</b>		
Campaign respondents	7508				7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	7703	344	144	243	8434
% of all respondents	91%	4%	2%	3%	
<b>% of all those answering</b>	<b>94%</b>	<b>4%</b>	<b>2%</b>		

A very substantial majority – 94% of those answering the question – thought that the right to keep pets should also be introduced as a right in the social sector. The proportion of non-campaign respondents thinking this right should be introduced dropped to 29% overall, although agreement was higher among organisations than individual respondents (at 48% and 25% respectively). ‘Social landlords and their representative bodies’ and ‘Local authorities and their representative bodies’ respondents were both relatively evenly divided on the issue.

Around 445 non-campaign respondents made a comment at Question 20, although some simply referred back to their comments at the previous question. These comments often related either to the problems that landlords might experience if tenants had a right to keep pets or to the importance of being able to keep a pet, especially in relation to wellbeing. Others noted that they either did not have experience of the social sector, or that they thought it was an issue for those living and working in the social sector to decide on.

The most frequently-made point was that the approach should be tenure-neutral, with those who supported a right to keep pets in the PRS often going on to state that an equivalent right should be introduced for social tenants. There was particular reference to people sometimes being forced to choose between keeping a much-loved pet and being able to move into stable accommodation. It was suggested that a person who finds themselves homeless may have to choose between accessing temporary accommodation or keeping their pet.

Other comments included that, in reality, this already common practice in the social sector, albeit that certain exclusions are likely to be in place. 'Social landlord' and 'Local authority' respondents were amongst those referring to their own approach, including to allowing one pet without permission but additional pets requiring permission. Other comments included that:

- Out of consideration for neighbours the new right should allow for some restriction on numbers and to normal domestic pets.
- Restrictions should also be possible in some other limited circumstances – for example in specialist housing projects at the discretion of the landlord and in consultation with customers.
- Some of the approaches suggested for the PRS, such as pet CVs, responsible pet contracts and pet deposits, could also be applied to the social sector. However, financial support must be put in place if a pet deposit is required or if funding for a deep clean of the property once vacated is a prerequisite.

However, whether there is any evidence that the current approach is not working well was questioned. It was suggested that an unqualified legal right to keep pets would remove the current, important element of discretion for landlords to withhold consent in a small minority of cases, and that this would not be in the interests of tenants or residents/neighbours more widely. A 'Local authority' respondent gave the example of not allowing dogs in some of their blocks of flats.

Further comments included that:

- There is already sufficient detail in Scottish Secure Tenancy.
- There should always be the requirement to seek permission from a landlord and that permission should be on the assumption that nuisance is not caused by the keeping of pets.

- There should be a distinction between the right to the keeping of animals as pets predominantly indoors and animals which live/ housed permanently outdoors.

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

The consultation paper notes that under the PRT, 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 is entirely up to the landlord whether they agree 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.

The Scottish Government was 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.

**Question 21 – 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?**

Around 750 non-campaign respondents answered Question 21.

Although the question asked how a right to personalise a property could be most effectively introduced, many of the comments addressed the rights or wrongs of introducing such a right in the PRS.

### **Reasons for supporting a right to personalise a privately rented home**

The most frequently-made point was that, to achieve 'tenure blind' housing outcomes and enshrine tenants' rights to housing, tenants should be able to redecorate their homes.

Other comments included that many private tenants do not feel as though their home is actually theirs as they are unable to personalise it. It was suggested that being able to make your home feel personal to you can increase mental wellbeing, as well as feelings of choice and control. It was also suggested that tenants may be inclined to take better care of the property and stay longer.

A specific comment relating to MMR was that tenants feel there is little loyalty towards long-term renters in the MMR sector, and no incentive for them to invest in their homes. This included because the value of any improvement is gained by the landlord or subsequent tenants if the tenancy ends.

A number of those who referred to tenants having a right or entitlement to personalise their rented homes did go on to comment that landlords should be able to insist that the property is reinstated to its original condition or to a condition agreed at the initial point of let. Some also noted that, if this is not done, landlords should be entitled to claim on the tenant's deposit to cover works required.

Further comments included that, in many countries, tenants have an unrestricted right to personalise their home with non-structural modifications without prior agreement, but that departing tenants are required to restore decorative elements, such as wallpaper or wall colour, to either the same as it was at entry or to a neutral colour.

There was also reference to tenants' rights to modify a house with accessibility aids, such as stairlifts or wet room conversions, being enshrined, such that landlords must facilitate these modifications when required. This issue is covered in further detail at Question 60.

### **Reasons for not supporting a right to personalise a privately rented home**

Many non-campaign respondents raised concerns about a right to personalise being introduced. It was noted that properties need to be let in good condition for a new tenant coming in and, in general, this is done in neutral paint tones in order to appeal to as broad a market as possible.

A number of non-campaign respondents, including 'Private landlord' and 'Individual' respondents, thought that it is understandable that tenants wish to personalise their home, with further comments including that the majority of decoration is unlikely to be an issue. However, it was also reported that problems that can arise. For example, it was reported that the use of very strong colours can make properties difficult to re-let or can result in a lot of work being required to get it back up to standard prior to re-let. It was also noted the PRT has no minimum term, so tenants could make changes such as these but only stay in the property for a relatively short time.

There were also reports of some of the types of changes tenants had made to properties and the costs that landlords had incurred. Examples included walls painted black, stencilling in metallic paints and the use of stick-on embellishments that are very difficult to remove, and which can leave damage to the plaster. It was also reported that poor quality of workmanship can be a big issue: for example, there were reports of tenants painting walls without moving furniture or protecting sockets or skirtings. It was noted that the landlord can then face the cost of redecoration of an entire room to put these types of issues right.

The associated concern was that the landlord has no way of enforcing a requirement to return the property to the original state when the tenant moves out. It was also noted that to do so may cost well in excess of the deposit, and in any case the deposit may be needed to cover other losses. A follow up point was that there is the potential that landlords will have to seek higher initial deposits which could have a detrimental impact on the ability of lower earners to be able afford a deposit, so denying them access to otherwise affordable homes. For example, a

small number of 'Private landlord' respondents commented that if a right to personalisation is introduced, they will increase the deposit they require from the current one month up to two-month's rent.

A number of non-campaign respondents stressed that, in their view, being able to personalise a property must remain at the discretion of the landlord, and is best handled by agreement between tenant and landlord.

As in relation to keeping pets, some 'Private landlord' and 'Individual' respondents reported that their current practice would be to allow personalisation under some circumstances. There was reference to being comfortable the tenant can, and will, reverse any changes they make if the landlord considers that those changes would not suit successor tenants or where they have no plans to renovate at the end of the tenancy.

Also as in relation to a right to keep pets, it was reported that some landlords' concerns about tenants being permitted to personalise properties are such that they would exit the sector if their choice to refuse permission was removed. However, others did suggest that they would be content for a right to be introduced if there was a mechanism to ensure that the property is not damaged or de-valued by the decoration.

### **Approaches and specific actions**

An overarching observation was that, if the right to personalise a privately rented home were to be introduced, a clear set of guidance and obligations would need to be created to inform and protect both tenants and landlords. It was suggested that this guidance should:

- Be the responsibility of the Regulator.
- Could cover both how the property could be personalised and in what condition it should be left at the stage of the termination.

It was also suggested that the Model Tenancy Agreement could be amended to reflect this standard as well as incorporating a tenancy schedule similar to that in the social sector. This would detail the terms and conditions of the tenancy agreement and include any 'special conditions' which may differ from the national standard but would be considered as 'reasonable'.

Many non-campaign respondents argued that either the landlord should be entitled to require the property to be handed back in the same condition it was received, allowing for fair wear and tear, or simply that properties should be returned in the same condition they are let. In terms of how any right to personalise could or should be framed, suggestions included that:

- There could be a requirement that any personalisation is carried out to a professional standard.
- Any right should be restricted to decoration only. It would be essential to consider what happens at the end of the tenancy with regards to reinstating any fixtures or fittings removed by the tenant.

- A clear distinction should be made between personalisation and necessary repairs and that, although the tenant should be able to redecorate, the landlord must still take responsibility for ensuring quality standards and carrying out required or outstanding repairs.
- Tenants should require permission to make any other types of alterations. There was reference to the approach in social housing, where a tenant would need to ask permission to make an improvement, would need all necessary permissions to be in place and would need to use qualified trades people carry out the improvement. It was also noted that any entitlement to compensation for improvements would need to be set out in legislation and guidance, along with a process for handling disputes.
- If the tenant has redecorated and left the property in a condition that would not be considered appropriate to re-let, then costs for decoration should be obtained from the deposit. However, this must be evidenced by the landlord and based on objective understandings of 'worsened conditions' and not simply differences of opinions on things like colour schemes.
- If there is a disagreement about whether the property needs to be returned to its original state to be re-lettable, a third party – such as a letting agent – could confirm whether or not the property is re-lettable before the deposit is returned.
- There could be flexibility to retain enhancements made to the property during the tenancy where both parties agree.

It was also suggested that the right to personalise would be more appropriate for longer term rentals, allowing people to make the property they live in more like their home. It was acknowledged, however, that what a short/long term rental actually is would need further consideration. There was also a suggestion that there could be a sliding scale of permitted decoration works, with the degree of personalisation permitted linked to the length of the tenancy held.

Those who did not support the introduction of a right to personalise a property sometimes noted that they supported efforts to encourage landlords to allow their tenants to personalise their home. In terms of approaches that could assist, there was reference to:

- Highlighting the advantages to landlords in allowing tenants to personalise their home to suit their tastes.
- Providing additional financial protection to ensure that the property can be reinstated to how it was at the start of the tenancy at no cost to the landlord.

Specific suggestions relating to additional financial protections included:

- Increasing the maximum deposit that landlords are permitted to take if the tenant is being given permission to personalise the property.
- Requiring tenants to cover the cost of an insurance policy for the duration of the tenancy which would cover the cost of reinstating the property to how it was at the start of the tenancy.

**Question 22 – Should different consideration be given where a property is furnished or unfurnished?  
Please explain your answer.**

Responses at Question 22 by respondent type are set out in Table 11 below.

**Table 11**

<b>Q 22: Should different consideration be given where a property is furnished or unfurnished?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group			1	2	3
Housing, legal or advice agency or professional or representative body	2	1	1	4	8
Local authorities and their representative bodies	4	7	7	5	23
Other private sector		1		2	3
Other professional or representative body	1	2		2	5
Private landlord, letting agent or their representative bodies	8	36	2	9	55
Public body or agency		1		7	8
Religious group or body		3		1	4
Social landlords and their representative bodies	2	3	3	4	12
Tenants' and residents' groups and their representative bodies	3	3		3	9
Third sector organisation			1	21	22
Union, student or campaign group	1	6		11	18
<b>Total organisations</b>	<b>21</b>	<b>63</b>	<b>15</b>	<b>71</b>	<b>170</b>
<b>% of organisations answering</b>	<b>21%</b>	<b>64%</b>	<b>15%</b>		
Individuals	105	421	69	161	756
<b>% of individuals answering</b>	<b>18%</b>	<b>71%</b>	<b>12%</b>		
<b>Total non-campaign respondents</b>	<b>126</b>	<b>484</b>	<b>84</b>	<b>232</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>14%</b>	<b>52%</b>	<b>9%</b>	<b>25%</b>	
<b>% of all non-campaign respondents answering</b>	<b>18%</b>	<b>70%</b>	<b>12%</b>		
Campaign respondents		6118		1390	7508
<b>% of campaign respondents answering</b>	<b>0%</b>	<b>100%</b>	<b>0%</b>		
<b>All respondents</b>	<b>126</b>	<b>6602</b>	<b>84</b>	<b>1622</b>	<b>8434</b>
<b>% of all respondents</b>	<b>1%</b>	<b>78%</b>	<b>1%</b>	<b>19%</b>	
<b>% of all those answering</b>	<b>2%</b>	<b>97%</b>	<b>1%</b>		

A very substantial majority – 97% of those answering the question – did not think that different consideration should be given depending on whether a property is

furnished or unfurnished. A majority of non-campaign respondents overall – 70% of those answering the question – did not think there should be a difference with 64% of organisations and 71% of individuals taking this view.

Based on their further comments, it appears that those who did not think there should be different consideration included both those who thought there should be a right to personalise both a furnished and an unfurnished property, as well as those who thought there should be a right to personalise neither.

Around 435 non-campaign respondents made a comment at Question 22. Many of these respondents, including both those who did think there should be different consideration, as well as those who did not, simply referred back to the previous question, commenting that the same arguments around the pros and cons of allowing a right to personalise apply.

Reasons given by non-campaign respondents who thought that there should not be different consideration included that the furniture provided could be insufficient or of poor quality. Suggestions included that tenants should be able to request that furniture be removed by the landlord, at no cost to the tenant, or changed, if a reasonable request is made.

A general observation was that all properties, let at whatever level of furnishing, should be safe, clean, and in good repair, and that landlords should expect any items, goods, decorations, and furnishings to be subjected to a reasonable level of wear-and-tear over the course of the tenancy. There was reference to the Letting Agent Code of Practice (Scotland) Regulations 2016 already requiring a detailed inventory to be produced at the start of the tenancy, and it was suggested that the Scottish Government should amend the Code to ensure that a check-out report must be produced. This could directly reference the inventory to fairly and reasonably establish how the deposit should be used, based on the responsibilities set out in the tenancy agreement.

Issues raised by those who did think there should be a difference included that there is greater potential for damage to furnished properties, and that this increases the risk that landlords would incur costs that exceed the deposit.

It was also argued that the landlord will have given careful consideration to the furnishings in the property, for example in relation to fire-retardant soft furnishing and portable appliance testing of electrical fittings. Given the importance of these safety-related considerations, it was suggested that there is limited scope for personalisation.

Further comments or suggestions included that:

- The tenancy agreement should specify how furnishings are dealt with, including terms that permit substitution of items and any reasonable costs associated, for example relating to transport and storage.
- If a property is let as furnished, this may require specification of responsibility for removal of items at the end of a tenancy.

**Question 23 – 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?**

Around 710 non-campaign respondents answered Question 23.

Most of those who commented did not think there is 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. The most frequently made point was that the legislation should clarify that deposit dispute mechanisms are the processes to resolve disputes over damages to a rented property.

Other comments included that landlords who give tenants permission to personalise their home should be allowed to take a higher deposit or to require tenants to cover the cost of an insurance policy for the duration of the tenancy which would cover the cost of reinstating the property to how it was at the start of the tenancy. Others did not think a review is necessary because they did not agree that there should be a right to personalise a property.

In relation to the current system, there were some concerns about variations in approach between the three deposit schemes if a claim exceeds a deposit. It was suggested that consistent guidance is needed, and that:

- A full claim should be made in all cases and the scheme should adjudicate to make it easy to take a civil claim to the Tribunal for the balance of costs beyond a held deposit.
- It would then also be easy for the Tribunal to award, the considerations already having been made on award amounts by suitably qualified bodies.

Otherwise, relatively few respondents commented on who should resolve disputes. Those that did were most likely to refer to either the Tribunal and/or a TDS. Other suggestions included:

- Via small-claims procedures/courts.
- The use of a mediation or arbitration service. One suggestion was that a national mediation service should deal with almost all potential disputes between landlords and tenants.
- Letting agents. It was suggested that this is one of the reasons why all lettings should go through registered agents.
- An independent body/third party. This included reference to the proposed Regulator.
- A panel of experts, which should include landlord representation.
- Insurance companies.

## Chapter 4 - Reform to the eviction process

### Winter Evictions

#### **4.1 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.**

The consultation paper notes that, in response to the challenges the winter can present, the Scottish Government is 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.

**Question 24 – 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.**

**Please explain your answer.**

Responses to Question 24 by respondent type are set out in Table 12 below.

**Table 12**

<b>Q24: Do you think additional protections against the ending of tenancies during the winter period are needed?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group			1	2	3
Housing, legal or advice agency or professional or representative body	2	1	1	4	8
Local authorities and their representative bodies	7	8	5	3	23
Other private sector		1		2	3
Other professional or representative body		2	1	2	5
Private landlord, letting agent or their representative bodies	1	45	2	7	55
Public body or agency			3	5	8
Religious group or body	1	3			4
Social Landlords and their representative bodies		9	1	2	12
Tenants' and residents' groups and their representative bodies	2	5	1	1	9
Third sector organisation	1	2	2	17	22
Union, student or campaign group	12		1	5	18
<b>Total organisations</b>	<b>26</b>	<b>76</b>	<b>18</b>	<b>50</b>	<b>170</b>
<b>% of organisations answering</b>	<b>22%</b>	<b>63%</b>	<b>15%</b>		
Individuals	79	496	65	116	756
<b>% of individuals answering</b>	<b>12%</b>	<b>78%</b>	<b>10%</b>		
<b>Total non-campaign respondents</b>	<b>105</b>	<b>572</b>	<b>83</b>	<b>166</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>11%</b>	<b>62%</b>	<b>9%</b>	<b>18%</b>	
<b>% of all non-campaign respondents answering</b>	<b>14%</b>	<b>75%</b>	<b>11%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6223	572	83	1556	8434
<b>% of all respondents</b>	<b>74%</b>	<b>7%</b>	<b>1%</b>	<b>18%</b>	
<b>% of all those answering</b>	<b>90%</b>	<b>8%</b>	<b>1%</b>		

A substantial majority – 90% of those answering the question – thought that additional protections against the ending of tenancies during the winter period are needed. However, among non-campaign respondents only 14% thought they are needed, with 75% thinking they are not needed. Among organisations, 63% thought additional protections unnecessary, with 78% of individuals also taking this view. Most ‘Private landlord, letting agent or their representative bodies’ respondents and ‘Social Landlords and their representative bodies’ respondents did not think additional protections are needed, with ‘Union, student or campaign group’

respondents taking the opposite view. 'Local authorities and their representative bodies' respondents were evenly divided.

Around 660 non-campaign respondents made a comment at Question 24. These comments were very much focused on the pros or cons of additional protections, rather than addressing the options set out in the question.

A general suggestion was that greater protections for tenants against evictions should be introduced all year-round. Irrespective of their position on additional winter protections, a number of respondents commented on the negative impact that eviction has on tenants. It was reported that it is a highly stressful process that can be damaging to both mental and physical health.

In terms of strengthening protections there was reference to taking a human rights-based approach, including by fully incorporating the right to adequate housing into Scots law, as well as making routes to consumer redress, such as the Tribunal, more effective and accessible. Reflecting themes discussed at Questions 5 to 9, there were also references to the grounds for eviction under the PRT and to pre-action requirements.

A number of non-campaign respondents, including social and private landlords, commented on the importance of prevention, including suggesting that eviction is always the last resort, particularly in the social sector. There was reference to the extensive support that will have been offered to tenants and it was suggested that legal action is invariably avoided where tenants engage with that support. Delaying evictions over the winter period was described as offering a solution that comes too late. As an example, it was suggested that if a household is struggling to maintain their tenancy, for example due to high fuel bills and other living costs, they should be provided with the support they need to prevent homelessness, rather than being offered a longer notice period prior to being evicted.

An associated comment was that the introduction of the proposed Prevention of Homelessness Duties will offer an enhanced opportunity to respond earlier, especially if a new six-month prevention duty is introduced. In summary, it was suggested that policy interventions on evictions should focus on reducing them, not making sure they happen at a particular time of year.

### **Reasons for supporting additional protections**

Nevertheless, the most frequent suggestion was no eviction order being enforceable during the winter period. Reasons given for thinking that there should either be no evictions, or additional protections against eviction during the winter period, included that:

- Evictions during the winter time can be even more stressful and damaging to a tenant's emotional, physical and mental health. There was also reference to Scotland being a country where we can see extreme weather conditions during the winter.
- Local authority and other homelessness services are most stretched during the winter, meaning that people may be left with no access to secure housing.

- Finding a new home may be more difficult.

It was also noted that a similar French policy – la trêve hivernale – has been in place since 1956.

There were also comments about the additional pressures particular groups of people face during the winter period. These included that:

- For older or vulnerable tenants in the PRS the winter period is often one of the most challenging times, with the associated winter heating costs and added expenditure. The sharp rise in the OFGEM price cap, and the anticipated additional rise in October 2022, will undoubtedly push more into fuel poverty with many struggling to meet day-to-day costs. In this context we would therefore support increased protections for tenants.
- For students the winter period covers the middle of the academic year and a prospective eviction is likely to have a significant impact on their academic performance. Additionally, university advice services are likely to be closed over the Christmas and New year period.

### **Scope of additional protections**

Although most of those supporting additional protections tended not to differentiate based on the grounds on which an eviction might be sought, a small number did. A small number of those who did not agree with additional winter protections made similar points. The suggestions tended to be that, while there may be a case for additional protections in relation to rent arrears in particular, they should not apply in cases of criminal or anti-social behaviour.

Further comments included a query as to whether, if a tenant is being evicted for anti-social behaviour, it is fair on their neighbours and other local residents that they are able to remain in their property beyond the required timescale?

### **Has the case been made?**

Although most respondents did support the introduction of additional protections, some non-campaign respondents questioned whether the case for them has been made. Further comments included that there is no clear evidence that being evicted during the winter is worse than at any other time of year and that the policy rationale for people needing additional protection over winter is also not clear. There was a concern that without a clear rationale it is hard to judge whether the appropriate policy response is being proposed.

There was also reference to evidence from other countries, and while some pointed to French policy (of la trêve hivernale) in support of Scotland adopting a similar approach, others questioned its relevance to the Scottish context. In particular, it was noted that in France other rights for people at risk of, or experiencing homelessness, are not as strong as those in Scotland. It was also reported that there are no published studies of the impact on tenants or the extent to which the approach prevents evictions. It was suggested that the available evidence suggests that evictions in France have been rising in recent years, with a 'season' for

evictions which encourages landlords to take their chance to remove tenants as quickly as they can.

The most frequently-made point by those who did not support additional measures was that the time of year is not, and should not, be relevant. Further points raised included that:

- The Scottish climate can be challenging at any time of year. If the intention is to avoid people being evicted during bad weather, simply setting an arbitrary 'winter' period will be of limited value. In any case, the 'winter period' is undefined and the strategy does not provide a detailed justification for preventing evictions at this time.
- There is an underlying degree of cultural determinism in the proposal, with a connection made to pausing evictions during or close to the winter festivals. It was noted that a number of sacred periods do not fall in December or January.
- The policy objective should be to reduce evictions at all times of the year and there are other measures within the scope of this consultation (like removing inappropriate grounds) that will have more impact.

A general observation, including from a number of 'Private landlord, letting agent or their representative bodies' or 'Individual' respondents, was that the proposed measures are not needed or proportionate. Supporting arguments included that:

- Local authorities have a legal duty to rehouse people at risk of homelessness, including those being evicted from their home during the winter months. In addition, the Tribunal already can, and does, rule that the enforcement of eviction orders should be delayed if they consider it reasonable/necessary to do so for any reason.
- In terms of the PRS, the PRT is effective in providing security of tenure and in preventing unlawful evictions and provides robust statutory protections for tenants.
- Concerns around availability of alternative accommodation, particularly over the Christmas and New Year period, would also be relevant at other times of the year.

Given these issues, it was suggested that it seems more appropriate that cases are considered on an individual case-by-case basis under the umbrella of 'reasonableness' rather than introducing a blanket ban or restriction. It was suggested that there is a case for guidance for the Tribunal and the courts around the use of delays in the enforcement of decrees, particularly where tenants are likely to face significant problems in securing alternative accommodation or an early entry to, and extended stays, in temporary accommodation.

Although most of those who disagreed with additional protections thought that no further measures are required, some did suggest that a short hiatus, possibly of a few weeks over the Christmas and New Year period, might be reasonable or would

reflect the existing practice of many landlords. The timeframes for any potential additional measures are discussed further at the next question (Question 25).

### **Risks and possible unintended consequences**

Many of those who did not think additional protections are needed identified risks associated with their introduction or highlighted possible unintended consequences.

### **Financial risks to landlords**

This was the most frequently-raised concern, with further comments including that a landlord evicting a tenant for rent arrears already suffers huge financial losses due to the amount of arrears tenants owe at the point of being evicted. In terms of possible scale, it was reported that most cases would take at least 5-7 months from the point a notice was served to the landlord obtaining an eviction order from the Tribunal and evicting the tenant.

There was also a concern that tenants could deliberately take advantage of the measures in the knowledge that they cannot be evicted for an additional period. It was also suggested that the proposals would mean that unscrupulous tenants would have nothing to lose by referring their case to the Tribunal or the courts. It was noted that this would also then lead to landlords incurring additional legal costs.

In terms of the PRS, it was suggested that investors will be deterred and will question the viability of their letting businesses if further obstacles are placed in the way of ending tenancies, particularly in cases of rent arrears. Also, enhanced protections for renters would need to be taken into consideration by lenders as part of their credit risk processes.

There was a query as to whether any financial assistance would be offered to assist landlords. It was suggested that to expect PRS landlords to provide housing to tenants who are often in significant rent arrears, effectively free of charge during winter months, is wholly unreasonable unless grant funding is provided from the public purse to reimburse them. This was connected to a wider concern that if the measure is introduced, some PRS landlords may choose, or have no choice but to leave the sector.

There were also concerns that the proposed measures could also have a significant impact on the financial resilience of the social sector. It was noted that rent provides vital income for social housing services and it was suggested that significant increases in arrears over the long term will have a detrimental impact on social landlords' ability to: provide services to existing tenants; maintain and improve existing homes; and deliver new affordable homes. It was also noted that costs incurred through arrears are ultimately borne by tenants who do pay their rent.

In terms of alternative solutions, it was suggested that financial support to tenants, similar to the Tenant Hardship Grant Fund, could allow more effective engagement with landlord. For example, landlords not bearing the whole burden of ongoing arrears, reducing the stress on tenants. However, it was suggested that this would

require an additional financial resource that is not currently available to housing associations or private landlords.

In addition to the stress-related concerns noted above, some non-campaign respondents also commented on the impact on the tenant's themselves of allowing rent arrears to reach high levels. In particular, it was suggested that accruing further debts, before ultimately facing eviction, can leave people in a worse position than if they had been evicted at the earliest point and had then exercised their statutory homelessness rights.

### **Practicality and impact on services**

As noted above, it was reported that eviction cases can take at least 5-7 months. It was reported, however, that this timescale is uncertain and can be delayed by a range of factors. Given these timeframes, along with the potential for delay, it was suggested that it would be extremely difficult to introduce any changes to the eviction process which would ensure, with any certainty, that a tenant would not be evicted during a particular month of the year.

For some non-campaign respondents, this raised issues about capacity within both the Tribunal and the court system. It was reported that a hiatus risks seeing a flood of evictions, either brought forward to immediately before the restriction begins or – as is the case in France – held over until spring. There were concerns about the system being overloaded and the potential for lengthy waits before a ruling is made. This, in turn, fed back into concerns about the scale of the financial losses to which landlords could be exposed.

Non-campaign respondents also raised concerns about the potential impact of the proposed measures on key services, including with significant surges in need and demand at particular points in time. Further comments were that, from the perspective of homelessness services, it is unhelpful to have few applications over a period and then a surge of applications at once. It was reported that a rise in homelessness cases, and a spike in demand for temporary accommodation in spring, would be completely unmanageable for local authorities.

There was also a concern that an increased number of households looking for accommodation within a more restrictive timeframe may result in a drive up of rental costs. It was suggested that this will not only be detrimental to tenants in the longer-term, but it will also likely lead to an increase in homeless applications and increased pressure for social housing providers with finite stock levels.

**Question 25 – 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?**

Around 610 non-campaign respondents made a comment at Question 25. However, many of these respondents simply noted that they did not agree with additional protections being introduced and/or to there being any variations in notice periods depending on the time of year.

In terms of other comments, many appeared to relate to acting on eviction decrees rather than restricting landlords' ability to commence eviction proceedings over holiday periods. For example, it was noted that winter eviction bans in other jurisdictions do not prevent landlords starting actions to evict, typically they prevent the enforcement of an eviction during a specific period. It was also noted that, especially with the potential for it to take more than 7 months to get to Tribunal, it would be impossible to tell if a case will be heard in winter or not.

There were also comments about variations across the country and whether an across-Scotland timeframe would make sense. It was noted, for example, that winter in the North of Scotland is longer than in the South and tenants in the North could suffer more from a Scotland-wide definition. Equally, it was noted that bad and cold weather can happen across the year and might not necessarily be restricted to a 'winter period', however defined.

Those who did not think additional protections are needed, but who went on to make a suggestion at Question 25, were most likely to refer to the Christmas and New Year period or to any restrictions only being in place for a few weeks. A frequent suggestion was that eviction decrees should not be able to be acted between 24 December and 2 January. There were also a number of references to 2 or 3-week periods over Christmas and New Year. Reflecting issues covered at the previous question, it was noted that this would correspond with a period when many housing and homelessness services are operating restricted hours and/or using out-of-hours services.

In terms of specific timeframes, the most frequently-made suggestion was to mirror the French approach, with the 'winter period' timeframe running for 5 months, from 1 November to the 31 March.

The other frequently-made suggestions ranged from 1 to 4 month timeframes:

- In terms of a 4-month period, there was reference to November to February as aligning with the coldest periods of the year. It was also noted that this would reflect the periods in which the Cold Weather Payment Benefit was made.
- Suggestions relating to 3 months tended to refer to December to February, and those advocating for a 2-month timeframe tended to refer to December and January.
- Those suggesting a month tended to refer to mid-December to mid-January.

Among the suggestions of those advocating for longer timeframes were October to March or September to June.

**Question 26 – What other policies or interventions could be considered to prevent evictions during the winter period?**

Around 475 non-campaign respondents made a comment at Question 26, albeit many of these simply noted that no other policies or interventions should be

considered. A number of other comments reiterated the themes covered around grounds for eviction, pre-action requirements and the wider importance of prioritising prevention activities.

The most frequently-made suggestions for other policies or interventions were:

- A right to 'no disconnection', whereby any household cannot be disconnected from gas, electricity or water during the winter period. It was noted that utilities are crucial to stay warm and live in dignity and that with the rising fuel prices, a right to no disconnection will be increasingly needed. 'Tenants' and residents' groups and their representative bodies', 'Union, student or campaign groups' and 'Individual' respondents made this suggestion.
- Local authorities being given additional powers to support homelessness prevention. A specific suggestion was local authorities being able to use unoccupied or empty homes temporarily for rehousing or homelessness services. 'Tenants' and residents' groups and their representative bodies' and 'Individual' respondents made this suggestion.

The other frequently-made point, and an issue raised by a broad range of respondents was the need for additional financial support for tenants. Specific references included to:

- A publicly available rent relief fund, administered by local government, as an additional payment to ensure families in particular are not choosing between rent, food or heat during the winter. 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents made this suggestion.
- A similar suggestion, regarding the greater use of emergency grant support and social services interventions to sustain tenancies was made by 'Tenants' and residents' groups and their representative bodies' and 'Individual' respondents.
- Additional benefits to cover fuel payments. There was also reference to fuel poverty grant funding which can be accessed quickly by organisations on behalf of their clients.
- Rent-free periods being built-in as in the social sector.

Some non-campaign respondents also referred to a fund being made available for landlords to draw on to cover rent arrears during any winter period instead of evicting tenants for non-payment of rent.

There was also reference to energy efficiency improvements being a legislative priority. In terms of current approaches, a Housing Association respondent referred to the work of their Warm and Well Coordinator to ensure that their tenants receive the best support in heating their homes affordably. They went on to note that social landlords spend considerable effort and resources in supporting tenants to maximise their income and save money on the energy bills and that this essential preventative work is provided all year round.

Other suggestions included taking forward commitments to a new Human Rights Bill in Scotland and fully incorporating the right to adequate housing into Scots law.

It was reported that more social housing should be provided. In relation to securing alternative accommodation when needed, comments included:

- Introducing a system whereby there must be a known reasonable alternative accommodation option prior to an eviction being carried out regardless of the time of year.
- Ensuring that tenants who are being evicted are being considered for alternative accommodation prior to the day they have been formally evicted through the Tribunal.

Other ideas for possible interventions were:

- Running a rights awareness information campaign. Tenants need to be aware of their rights to empower them to defend them, thus making sure that these rights are realised.
- Using the Landlord Register contact details to notify landlords of any new rules.
- Encouraging tripartite working between tenants, landlords and the local authority. If these parties worked together from the beginning of the tenancy, or Housing Benefit claim to manage rental payments, it would help avoid the accrual of debt and enable arrears to be tackled more swiftly.
- Introducing mandatory dispute resolution process should be introduced to force landlords and tenants to engage and potentially come to an amicable agreement.
- Making routes to consumer redress, such as the Tribunal, more effective and accessible.
- Taking more action to prevent and address illegal evictions, including increased repercussions for landlords who illegally evict tenants.
- Promoting best practice among landlords when dealing with rent arrears. There was also reference to minimum essential training for landlords and housing professionals to prevent arrears and eviction.
- Promoting 'landlord to landlord sales' if the landlords requires to bring the tenancy to an end for sales purposes. A specific suggestion was considering a tax reward scheme that encourages this process.

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

The consultation paper notes that tenants can experience additional challenges in finding suitable housing during the winter. It sought 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 anti-social or criminal behaviour.

**Question 27 – 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?**

**Please explain your answer.**

Responses to Question 27 by respondent type are set out in Table 13 below.

**Table 13**

<b>Q27: 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group				3	3
Housing, legal or advice agency or professional or representative body	3	1		4	8
Local authorities and their representative bodies	8	7	3	5	23
Other private sector				3	3
Other professional or representative body	1	3		1	5
Private landlord, letting agent or their representative bodies	3	41	3	8	55
Public body or agency			2	6	8
Religious group or body		2		2	4
Social landlords and their representative bodies		6	2	4	12
Tenants' and residents' groups and their representative bodies	3	2		4	9
Third sector organisation			1	21	22
Union, student or campaign group	9		1	8	18
<b>Total organisations</b>	<b>27</b>	<b>62</b>	<b>12</b>	<b>69</b>	<b>170</b>
<b>% of organisations answering</b>	<b>27%</b>	<b>61%</b>	<b>12%</b>		
Individuals	67	465	64	160	756
<b>% of individuals answering</b>	<b>11%</b>	<b>78%</b>	<b>11%</b>		
<b>Total non-campaign respondents</b>	<b>94</b>	<b>527</b>	<b>76</b>	<b>229</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>10%</b>	<b>57%</b>	<b>8%</b>	<b>25%</b>	
<b>% of all non-campaign respondents answering</b>	<b>13%</b>	<b>76%</b>	<b>11%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
<b>All respondents</b>	<b>6212</b>	<b>527</b>	<b>76</b>	<b>1619</b>	<b>8434</b>
<b>% of all respondents</b>	<b>74%</b>	<b>6%</b>	<b>1%</b>	<b>19%</b>	
<b>% of all those answering</b>	<b>91%</b>	<b>8%</b>	<b>1%</b>		

A substantial majority – 91% of those answering the question – thought that a specific requirement for the Tribunal and Sheriff Court to consider delaying the enforcement of eviction orders and decrees during the winter period should be introduced. However, only 13% of non-campaign respondents thought a requirement should be introduced, with a clear majority – 76% of those answering – thinking it should not. Among individual respondents 78% did not think a requirement should be introduced, with 61% of organisations taking the same view. Most ‘Private landlord, letting agent or their representative bodies’ respondents and ‘Social Landlords and their representative bodies’ respondents did not think additional protections are needed, with ‘Union, student or campaign group’ respondents taking the opposite view. ‘Local authorities and their representative bodies’ respondents were evenly divided.

Around 410 non-campaign respondents made a comment at Question 27.

Comments tended to be brief, with those who did agree often simply stating that the winter period should be a circumstance that means that Tribunals and Courts delay the granting of an eviction order. Other comments in support included that better protection for tenants would be welcome, although some queried whether it would simply be better to preclude all evictions during this timeframe, and not just some. A small number of those who disagreed made a similar point. They suggested that there should be a much wider general requirement on both the Tribunal, and the Sheriff Court, to consider delaying enforcement where this would reduce harm, particularly where time in temporary accommodation is likely and where children are involved.

The most frequently-made point by those who disagreed was that, in relation to the PRS, a specific requirement is not necessary as the Tribunal already can and does delay evictions taking place when they consider it necessary in a particular case. Other comments included that a specific requirement would not be required if the proposed winter-related measures are not taken forward.

Other comments also addressed themes covered at previous questions, including that: any flexibility should only cover the Christmas and New year period; should not be available when criminal or anti-social behaviour is involved; or that landlords should receive financial compensation to cover any delays.

## **Illegal evictions**

### **Reform how civil damages for unlawful eviction are calculated**

Consideration is being given to a Legal Services Agency (LSA) proposal to remove the current process for calculating damages for an unlawful eviction and replace it with a multiple of the monthly rent. It is thought this would better empower tenants to seek redress where a landlord does not follow the correct legal process for ending a tenancy. The LSA proposal suggests a minimum of 6 times and a maximum of 36 times the monthly rent should be set.

**Question 28 – Do you agree the current calculation for unlawful eviction should be reformed and simplified, as proposed?**

**Please explain your answer.**

Responses to Question 28 by respondent type are set out in Table 14 below.

**Table 14**

<b>Q28: Do you agree the current calculation for unlawful eviction should be reformed and simplified, as proposed?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group	1			2	3
Housing, legal or advice agency or professional or representative body	4	1		3	8
Local authorities and their representative bodies	20		1	2	23
Other private sector		1		2	3
Other professional or representative body	2	1		2	5
Private landlord, letting agent or their representative bodies	5	16	17	17	55
Public body or agency			1	7	8
Religious group or body	2			2	4
Social Landlords and their representative bodies	4	1	2	5	12
Tenants' and residents' groups and their representative bodies	3		3	3	9
Third sector organisation	1		1	20	22
Union, student or campaign group	9			9	18
<b>Total organisations</b>	<b>51</b>	<b>20</b>	<b>25</b>	<b>74</b>	<b>170</b>
<b>% of organisations answering</b>	<b>53%</b>	<b>21%</b>	<b>26%</b>		
Individuals	133	182	188	253	756
<b>% of individuals answering</b>	<b>26%</b>	<b>36%</b>	<b>37%</b>		
Total non-campaign respondents	184	202	213	327	926
% of all non-campaign respondents	20%	22%	23%	35%	
<b>% of all non-campaign respondents answering</b>	<b>31%</b>	<b>34%</b>	<b>36%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6302	202	213	1717	8434
% of all respondents	75%	2%	3%	20%	
<b>% of all those answering</b>	<b>94%</b>	<b>3%</b>	<b>3%</b>		

A very substantial majority – 94% of those answering the question – agreed that the current calculation for unlawful eviction should be reformed and simplified, as

proposed. Among non-campaign respondents the level of agreement dropped to only 31% with the remaining respondents quite evenly split between those who disagreed and those who did not know. Organisations were more likely to agree than 'Individual' respondents at 53% and 26% respectively. Among organisations, a large proportion of those who disagreed were 'Private landlord, letting agent or their representative bodies' respondents.

Around 350 non-campaign respondents went on to make a comment at Question 28.

Some respondents supported simplification of the current process, which was seen as complex or costly, and as a deterrent to tenants taking action against a landlord who they believe has evicted them illegally. The requirement for a specialist valuation of the property and the low rates of compensation awarded to tenants were both highlighted. One 'Housing, legal or advice agency or representative body' respondent reported their own evidence that unlawful or illegal evictions occur frequently but are rarely prosecuted or enforced against. While they acknowledged that the majority of illegal evictions may be carried out by unregistered landlords, they argued illegal evictions by registered landlords can and do occur, due to landlords not being fully aware of the law. There was a view that so few cases of illegal eviction being pursued demonstrates that current legislation is not fit for purpose, with a call for research to investigate how many tenants who were evicted illegally subsequently took action against their landlord and what the outcomes were. Going forward it was argued that penalties imposed on landlords must be high enough to act as an effective deterrent and that the legislation must be enforced.

Other respondents, predominantly from the 'Private landlord, letting agent or their representative bodies' group, observed that while in support of reform if this is necessary, they are not aware of evidence that the current arrangements are preventing tenants taking action. It was also suggested that illegal evictions are very small in number and the importance of differentiating between the majority of landlords who operate according to the law, and a minority who act illegally, was highlighted.

There was also a view, again largely expressed by 'Private landlord, letting agent or their representative bodies' respondents, was that the current process is punitive enough for landlords and does not need to be changed. It was noted that a court can already impose an unlimited fine and/or a prison term of up to two years on a landlord. In contrast, it was argued, a tenant found to have breached their tenancy agreement will be very unlikely to face a potential prison sentence, illustrating a significant imbalance in the relationship between landlords' and tenants' responsibilities. Some non-campaign respondents considered that the proposed penalties are excessive or that any damages awarded should be based on actual loss. There was a view that, rather than supplementary legislation, improved enforcement of existing legislation would be preferable.

An alternative perspective was that the levels of fines suggested in the consultation paper are still too small. The appropriate minimum and maximum levels of multiplication that the Tribunal could apply are discussed at Question 29.

### **Features of a reformed process**

There were calls for a reformed process to be:

- Transparent, straightforward and easy for the tenant to understand, making it easier for tenants to challenge an unlawful eviction.
- Explicitly set out within the tenancy agreement.
- Simple for landlords who may inadvertently act illegally.
- As inexpensive as possible, although it was also argued that the process is already free, and that the specialist valuation cost is not borne by a tenant.
- Proportionate, allowing a scale of damages reflecting the severity of a particular case.

Consideration for providing students renting in Purpose Built Student Accommodation (PBSA) with tenants' rights to challenge unlawful evictions was also requested.

### **Calculation of damages**

As noted above, some respondents considered the proposed penalties to be excessive. Others saw the proposed calculation method as acceptable or reasonable and supported the LSA approach. However, it was noted that one consequence of the suggested approach is that tenants of properties with higher rents are likely to benefit more than those in cheaper accommodation.

A need to define 'seriousness', 'negative impact' and 'unlawful' was highlighted and guidance on assessing the seriousness of the case was requested. It was suggested that:

- Evidence could be provided in terms of the financial loss to the tenant, for example having to pay for emergency accommodation, or loss of possessions.
- A list of potential damages with an allocated financial value would streamline the process.
- A case before the Tribunal should have expert input from qualified surveyors to determine the level of damage and cost where appropriate.

It was also argued that the Tribunal should consider a range of factors, including (but not limited to) the impact on the tenant and whether it is a first offence or a recurrent pattern of offending by the landlord.

### **Criminal charges**

The importance of partnership working with stakeholders, including Police Scotland, was seen as important to ensure that unlawful eviction is prioritised and there was a call for support from Police Scotland in bringing criminal charges in relation to

unlawful eviction. Training for police officers in relation to what constitutes an unlawful eviction was also suggested as it was reported that officers often see illegal eviction as a civil matter and not a criminal one.

There was also a query with respect to how Tribunal proceedings would relate to a criminal prosecution and whether evidence that a landlord had been convicted in a criminal court would be required before the Tribunal could make a decision on damages.

### **Awareness and education**

It was argued that the new process must be publicised and that tenants must be made aware of their rights. The need for awareness-raising and education for landlords was also highlighted as important to ensure all parties are aware of their rights and responsibilities. Consideration of a landlord registration process, requiring mandatory education for landlords to become licenced, was recommended.

There was also a call for more awareness-raising and education for landlords as an alternative to the proposed changes.

**Question 29 – 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?**

Around 305 non-campaign respondents answered Question 29.

Some respondents noted that the minimum and maximum levels suggested by LSA seem reasonable or that the sum involved needs to act as a deterrent to illegal evictions. It was observed that the range available would provide flexibility to allow the seriousness and negative impact on the tenant to be reflected. It was also argued that the present system should not be changed.

Other points raised with respect to how the level of damages might be calculated included that:

- Compensation should be based on the impact on the tenant and should not be constrained by minimum and maximum levels.
- The scale of costs for tenants who have reported illegal eviction should be reviewed to provide supporting evidence, rather than picking a figure that may be subject to challenge.
- The method used to calculate damages should be similar to the calculation of remedy and restitution by Employment Tribunals.
- The Tribunal should consider whether it is a first offence or a recurring pattern of offending. The multiplier should be increased for repeat offences.

- The severity of an illegal eviction should influence the level of damages, with illegally enforced eviction or threatening behaviour attracting a higher premium.
- The multiplier should be linked to how long the tenancy has been in place.
- Damages should reflect whether the tenant has contributed to the problem or should be net of any rent owing when the tenant vacated the property.
- Guidance will be needed to ensure application is consistent but also reflects individual/household circumstances.

There was also a call for consultation on specific proposals and an associated guidance framework before implementation.

### **Alternatives to the LSA proposal**

The consultation paper notes that the LSA has suggested damages could be set at a minimum of 6 times and a maximum of 36 times the monthly rent. While some respondents considered these reasonable, others suggested a range of alternatives.

#### **Minimum value**

Some non-campaign respondents proposed there should be no defined minimum arguing that, where a landlord has made a genuine mistake when taking possession of a property illegally, any penalty should be at the discretion of the Tribunal.

A range of other minimum values was suggested, ranging from one to 12 times the monthly rent, with 12 times being the most frequent choice. Thereafter, three months was the most commonly suggested alternative, followed by two months and one month at approximately equal frequencies. A minimum value of £5,000 was also proposed.

#### **Maximum value**

With respect to the maximum multiplier of the rent that the Tribunal could award, alternative values ranging from one month to no limit were proposed. By some margin the most frequently suggested alternative value was six times the monthly rental, followed by 12 times. A maximum value of £50,000 was also proposed.

There was also a view that a multiplier of 36 times the monthly rent would be excessive. One Local Authority respondent suggested that, in an area with lower property values, maximum damages calculated on this basis could amount to between a quarter and a third of the property value. Another argued a multiplier needs to take account of the ability of the landlord to pay and that a maximum based on a multiplier of 36 times the monthly rent may never be paid if the landlord lets only one property. Some 'Individual' respondents considered that potential damages equating to 36 months' rent may attract fraudulent claims.

## **Further sanctions**

It was also suggested that in addition to monetary compensation for tenants there could be other penalties, including that a landlord should be stripped of their licence or disbarred from being a landlord or a letting agent.

## **Increasing penalties for non-compliance and illegal action**

The consultation paper notes that, 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 would encourage and enable tenants to exercise their rights and seek redress.

### **Question 30 – What other ways can we make it easier and more attractive for victims of illegal eviction to seek redress and exercise their rights?**

Around 335 non-campaign respondents answered Question 30.

#### **Raise awareness of tenants' rights**

As at Question 28, the importance of raising tenants' awareness of their rights in relation to illegal evictions was highlighted, with suggestions that this could be done via the tenancy agreement or could involve a media/social media campaign. It was also argued that greater publicity through government sources would be an important step in 'normalising' the process of seeking redress.

#### **Publicise the penalties issued**

As well as awareness that they have the right to pursue a case, the importance that tenants have the confidence to do so, as well as faith that they can take action without fear of repercussions were highlighted. It was also suggested that there needs to be tangible evidence that positive results can be achieved and that penalties are being enforced. A 'Tenants' and residents' group and their representative bodies' respondent reported that tenants who have been evicted illegally may be discouraged from trying to claim compensation via the Tribunal by reports others have tried and failed to do so. Publishing outcomes or publishing names of landlords and/or relevant properties was suggested.

#### **Improve access to advice and support**

Also as at earlier questions, access to information, advice and support were identified as important and it was suggested both that there should be increased investment in advisory services for tenants, and that tenants should be encouraged to seek support from appropriate third sector organisations. Signposting to advice by any agency contacted by someone threatened with homelessness due to illegal action was suggested. Potential roles for tenants' unions or an independent regulator in encouraging or assisting tenants to exercise their rights were also referenced.

Specifically, it was argued that tenants should be provided with access to legal advice and advocacy that is local, provided at reduced rate, on a 'no win no fee'

basis, or free of charge. There were calls for access to legal aid, funding for legal advice and for provision of pro bono legal support.

In terms of other support, it was suggested that any victim of a confirmed illegal eviction could be given priority on council waiting lists to ensure quick access to replacement accommodation.

### **Make the process easier or more accessible**

It was thought further ways should be found to make the process of seeking compensation more accessible. Suggestions included:

- Introduction of a private sector landlord ombudsman. It was suggested that the ombudsman process is flexible and informal, does not require representation and is easier for someone who may be intimidated by the adversarial process of the Tribunal.
- Involvement of an independent mediator.
- A process similar to the Sheriff Court Simple Procedure, conducted online and assessed by an appointed arbiter who makes a recommendation to the Tribunal or Sheriff Court.

It was also suggested that the Tribunal system should be improved such that processes are streamlined, it should be possible to apply from overseas, judgements are delivered promptly, and well-resourced enforcement teams ensure tenants receive the compensation awarded. The Tribunal's website was suggested to be off-putting for tenants and it was suggested that a live chat option could be made available to increase levels of assistance and support.

### **Treat illegal eviction as a criminal offence**

'Local authority' respondents were among those who called for clarity that illegal eviction is a criminal offence. It was reported that, although evicting a tenant without a court order is a criminal offence under the Rent (Scotland) Act 1984, Police Scotland often treat illegal evictions as a civil matter with which they cannot help. There were calls for collaborative working with Police Scotland and other stakeholders to raise awareness of housing law and illegal eviction legislation, provide a consistent approach to illegal evictions and to prosecute offenders where appropriate.

Moving responsibility for investigating and reporting unlawful eviction from the police to local authorities, trading standards or regulatory or licencing bodies was also suggested.

### **Consider other penalties**

As well as the application of financial penalties, there were calls to remove offending landlords from the landlord register or, more specifically, to remove repeat offenders from the register. It was suggested that withdrawal of a licence is more powerful than fines, and enforcement rules in the case of mobile home licencing were highlighted. Other suggestions included a system of penalty points on a landlord licence or issuing Rent Penalty Notices (RPNs).

It was emphasised that if a landlord's registration status was revoked, care must be taken to ensure that this does not have adverse consequences for tenants. Suggestions included alternative management of the property through appointment of a letting agent or putting the property in the control of another private landlord (for example an institutional landlord such as an RSL subsidiary active in the private sector).

### **Improve training for landlords**

Improved education and training for landlords was suggested and it was argued more should be done to support registered and accredited landlords and to stop bad practice and illegal activity by unregistered/rogue landlords.

### **Avoiding illegal eviction**

A small number of respondents suggested ways that some illegal evictions, where the process of application to the Tribunal has been incorrect, might be avoided. These included that:

- The process of applying for an eviction order should be fool proof, so that an illegal eviction is not possible.
- Landlords should be required to provide evidence on reasons for eviction.
- Penalties for issue of a wrongful termination order should be increased. It was suggested this could encourage tenants to seek redress when issued with notice.

### **Further action is not needed**

There was also a view that existing penalties for landlords are already severe or that tenants already have adequate routes to seek redress, such that further action is not required. It was argued that the Tribunal service is already advertised in the tenancy agreement and in Easy Read notes so tenants are aware of options available to them.

There were also specific concerns around use of the word "attractive" in the question and fears that a claim culture could be created, to the detriment of landlords who are trying to do the right thing but have made an error in the legal procedure. In some cases, a broader view was expressed that the consultation paper appears to assume that all landlords are bad and that the rights of both tenants and landlords need to be safeguarded.

**Question 31 – 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?**

Around 335 non-campaign respondents answered Question 31, although some simply referenced points made at earlier questions, and some considered avoidance of illegal evictions or penalties for landlords, rather than compensation for tenants. Other respondents emphasised that there *should* be criminal

prosecutions in the face of evidence of unlawful action or queried why there would not be.

There were also views that:

- There would need to be clarity with respect to what would constitute 'unlawful action'.
- The severity of an unlawful action, and whether the landlord is a serial offender, should be taken into consideration.
- In the absence of a criminal prosecution, obtaining compensation will be very difficult if the landlord is required to fund this. A 'Housing, legal or advice agency or representative body' respondent reported that they are aware of a small number of tenants successfully pursuing their landlord for various poor practices but then struggling to access the compensation, especially if the landlord lives in another country.
- If an illegal eviction has not been proved, then no compensation should be payable.

It was also suggested that proposals for alternative sanctions for landlords, and compensation for tenants, should be considered during establishment of the PRS regulator.

While a small number of non-campaign respondents suggested that a tenant might be supported to pursue a small claim against their former landlord, or that responsibility for claims for compensation might be contained within the role of the PRS regulator, most saw application to the Tribunal as the way a tenant might be compensated. A 'Housing, legal or advice agency or representative body' respondent argued that civil penalties awarded by the Tribunal should be in addition to the tenants right to compensation for unlawful eviction.

In terms of how payment of compensation might be achieved, suggestions included that:

- An application for a payment order for compensation could be submitted in a similar manner to the process already in place with respect to landlords who fail to comply with the Tenancy Deposit Regulations.
- The landlord could be charged a percentage of the value of the tenancy deposit.
- The landlord could be fined, and the money used to compensate the tenant.

In the event that a landlord did not comply with a Tribunal decision it was suggested further action could involve:

- A charging order on the property or earnings arrestment.
- A RPN redirecting rent payments if the property is re-let.
- Removal of a landlord from the register. If the landlord were to rent out the property without being registered, the matter should be fast-tracked to criminal proceedings.

It was also argued that landlord registration schemes should be informed of Tribunal decisions, should review a landlord's registration status and be able to revoke it. Although it was acknowledged the damage would already have been done and the tenant would have lost their home, it was argued the local authority or the PRS regulator should ensure that the landlord was removed from the register and could not illegally evict someone again.

### **Burden of proof**

Issues were raised in relation to satisfying a burden of proof, including that evidence is not the same thing as proof of guilt. How sufficient evidence of an unlawful eviction would be established in the absence of a criminal prosecution was queried and a requirement for a clear framework was suggested.

It was also noted that the different burdens of proof that exist in civil and criminal courts would strengthen the position of tenants bringing a civil claim: while a criminal case would require proof 'beyond all reasonable doubt', the test for a civil case would be 'on the balance of probabilities'.

## Chapter 5 - Supporting Students

As the consultation paper explains, students renting from a mainstream private landlord will have a PRT giving students the same rights as any other person living in the PRS. PBSA is exempt from the PRT as PBSA providers effectively act as private providers of 'halls of residence' accommodation. However, there are growing concerns in relation to the disparity of rights and protections that exist between students living in PBSA, compared to those renting from a private landlord.

**Question 32 – 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?**

Responses at Question 32 by respondent types are set out in Table 15 below

**Table 15**

<b>Q32: 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?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group			1	2	3
Housing, legal or advice agency or professional or representative body	3	1	1	3	8
Local authorities and their representative bodies	8	1	7	7	23
Other private sector	1	1		1	3
Other professional or representative body	1	1		3	5
Private landlord, letting agent or their representative bodies	15	13	12	15	55
Public body or agency			1	7	8
Religious group or body			2	2	4
Social Landlords and their representative bodies	2		4	6	12
Tenants' and residents' groups and their representative bodies	4		1	4	9
Third sector organisation	1		1	20	22
Union, student or campaign group	12		1	5	18
<b>Total organisations</b>	<b>47</b>	<b>17</b>	<b>31</b>	<b>75</b>	<b>170</b>
<b>% of organisations answering</b>	<b>49%</b>	<b>18%</b>	<b>33%</b>		
Individuals	304	89	153	210	756
<b>% of individuals answering</b>	<b>56%</b>	<b>16%</b>	<b>28%</b>		
<b>Total non-campaign respondents</b>	<b>351</b>	<b>106</b>	<b>184</b>	<b>285</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>38%</b>	<b>11%</b>	<b>20%</b>	<b>31%</b>	
<b>% of all non-campaign respondents answering</b>	<b>55%</b>	<b>17%</b>	<b>29%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
<b>All respondents</b>	<b>6469</b>	<b>106</b>	<b>184</b>	<b>1675</b>	<b>8434</b>
<b>% of all respondents</b>	<b>77%</b>	<b>1%</b>	<b>2%</b>	<b>20%</b>	
<b>% of all those answering</b>	<b>96%</b>	<b>2%</b>	<b>3%</b>		

A very substantial majority of all respondents – 96% of those who answered the question – thought students living in PBSA should be offered similar rights to students who rent from a private landlord. Among non-campaign respondents 55% agreed, with individual respondents more likely to agree than organisations at 56% and 49% respectively. Most of the organisational respondents who disagreed were from the ‘Private landlord, letting agent or their representative bodies’ group, although within this group respondents were relatively evenly divided.

Around 370 non-campaign respondents answered Question 32. Issues concerning the student market in general are considered at Question 33.

### **Reasons students living in PBSA should have similar rights**

'Union, student or campaign group' respondents were among those who pointed to the principle that all tenants should have the same rights and protections irrespective of their accommodation type. Some went on to highlight rights conferred by a PRT that are denied to students living in PBSA. In particular, it was argued that students living in PBSA should be able to give 28 days' notice to end their tenancy, with some non-campaign respondents referencing the situation of students locked into contracts for accommodation they were not using during the early stages of the COVID-19 pandemic. Although the majority of comments suggested allowing students the right to exit a tenancy, it was also argued that students who wish to stay in PBSA throughout the summer should have the right to do so and that they should not be charged rent at a higher rate in order to do so.

Some 'Private landlord, letting agent or their representative bodies' respondents also thought there should be parity in treatment of student lets, but argued that this should be achieved by allowing PRS tenancies to have a fixed term. A new eviction ground for landlords to use to end the tenancy at the end of the contractual term was proposed. There was also a view that there should be a level playing field for all landlords offering student accommodation, and that the present arrangement puts private landlords at a disadvantage.

### **Reasons students living in PBSA should not have similar rights**

Other non-campaign respondents were clear that PBSA is a different type of accommodation, more like extended serviced accommodation or short term let provision. The different letting cycle and the scale of investment needed were both highlighted. It was noted that there is a specific planning class for the sector, underpinning the different status of this form of accommodation and it was argued that undermining development of PBSA will add to pressure on PRS demand.

Again with a focus on contract length, it was argued that allowing students in PBSA the right to terminate a lease at 28 days' notice would have a serious impact on the supply of student accommodation, with suggestions that:

- The risk of voids will lead to rent increases.
- Students may 'hold' one room while looking for an alternative, meaning rooms are not available to others.
- Guaranteeing the availability of first year accommodation for students will not be possible.
- Uncertainty around the availability of accommodation could deter students from coming to study in Scotland, with impacts on both providers of higher education and the wider Scottish economy.

A distinction between private PBSA and university-owned properties was also highlighted.

In addition to impact on availability of accommodation for other students it was argued that removal of the fixed term contract for PBSA would have wider impacts on other uses of the buildings during the summer months, such as providing accommodation for tourists, or as venues for conferences or summer schools.

### **Issues other than fixed term tenancies**

As noted above, responses at Question 32 often focused on issues around fixed term contracts for PBSA. However, other rights of a PRT, from which students in PBSA are excluded, were also highlighted, including with respect to: quality standards and the property being in a reasonable state of repair; notice about rent increases; notice of landlord entry to the property to carry out repairs; ability to take disputes to the Tribunal; and protection from eviction. On the last point it was suggested students living in PBSAs face differing and unclear disciplinary and eviction procedures depending on their provider.

Concerns were also raised with respect to both the use of highly flammable cladding and poor build quality in PBSA.

Absence of regulation of rent increases and high rent levels in PBSA were also noted; it was reported that PBSA rents have increased by 34% since 2018. It was also suggested that the quality of accommodation provided often does not match the high prices charged and it was argued that rents for student accommodation should be included within the wider rent control agenda. There was also a call for the Scottish Government to ensure that all PBSA provide at least 50% of their rooms at an affordable rate.

### **Retaining some distinctions**

While some respondents argued students in PBSA should have the same rights as any other private tenant others saw reasons that there might need to be some differences or argued that improving students' rights would need to be balanced against the need to maintain the supply of accommodation.

It was suggested there could be:

- A specific PBSA lease, based on and delivering similar rights to a PRT but recognising that the two are different.
- A special category of tenancy specifically for people registered as students.

It was also reported that, in countries such as Denmark, students can choose a tenancy term of 6, 9 or 12 months and have a 3 months' notice period to end or extend their term if they wish to do so. It was suggested that this provides some flexibility and certainty for both parties.

### **Implications for supply of PBSA**

A small number of non-campaign respondents acknowledged that a change in tenancy arrangements could impact supply of PBSA or thought that this possibility should be considered. It was noted that the Scottish Government is undertaking a separate review of PBSA later in 2022 and there was support for work with all stakeholders, including students and businesses that develop PBSA, to develop a

Student Accommodation Strategy for Scotland. It was suggested to be premature to consider amending tenancy arrangements before this review.

It was also argued that there is little evidence that more rights for students will affect supply of PBSA and that students will generally wish to leave PBSA over the summer. It was also argued that profits for PBSA developers must not be prioritised above the rights and welfare of students. There were views that a form of tenancy closer to the PRT would make PBSA a more attractive option for students and would potentially increase tenancy sustainment and reduce the number of students relying on the wider PRS.

**Question 33 – 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?**

Around 305 non-campaign respondents answered Question 33, with general comments including a suggestion that reference to the ‘student market’ reinforces a view of housing as a profit driven ‘service’. It was also noted that students are not a homogeneous group and that not all students are young people away from home for the first time.

Some non-campaign respondents were not aware of any problems with the operation of the PRT in relation to the student market. It was also argued that students should be treated the same as any other PRS tenants with one ‘Union, student or campaign group’ respondent noting that they would strongly oppose any proposals to remove a student’s right to a PRT.

**Absence of a fixed term contract and 28 day notice periods**

As at the previous question, many non-campaign respondents focused on the absence of a fixed term contract and the ability of a tenant to give 28 days’ notice of their intention to leave. It was argued that this combination of an open-ended tenancy and short notice periods do not work well for the student market and the academic year and that landlords are leaving the student market. HMO licencing was also suggested to be a factor.

Shortages of student accommodation in Aberdeen, Glasgow, and Edinburgh were reported. It was suggested that this could be due to a lack of turnover in tenancies, or because landlords are leaving the student market, and that further research is needed.

Specific issues highlighted included that:

- Accommodation is difficult to re-let if tenants move out during the academic year, so void periods are increased.
- Longer void periods and shortage of availability is leading to upward pressure on rents.

- New tenants cannot be lined up in advance for the coming academic year if sitting tenants have not given notice. Students looking for accommodation need to monitor agent listings over several months which may be stressful and time consuming.
- Students in joint tenancies are under pressure to agree amongst themselves when to end a lease.
- Planning maintenance and upgrades while a property is empty is difficult as the lead time for contractors is too short.
- Students may have to rent over the summer in order to secure a property.

It was also suggested that some landlords may be charging 12 months' rent over 8 months, charging a high monthly rent until April then offering 2 months free, or starting tenancies up to two months before the autumn term begins.

Suggested actions to address these issues included:

- Most 'Private landlord, letting agent or their representative bodies' respondents who commented argued that there should be a return to fixed term contracts for students which, it was suggested, generally worked well.
- A longer notice period, with 12 weeks suggested.
- A PRT contract specifically for students.
- Rule changes to ensure rent is charged at a consistent rate across the tenancy and to avoid tenants having to sign tenancies that start up to two months before they will actually move in.

### **Other problems identified**

Respondents also identified a number of other concerns regarding the operation of the PRT in the student rental market, with high rent costs and poor affordability referenced. It was noted that, since student tenancies are typically short, they are more exposed to unregulated rent increases between tenancies. It was suggested both that rent controls could help to address this issue but also that the introduction of further regulations, including rent controls, may cause more landlords to exit the student market. Difficulties in demonstrating affordability and the importance of easily accessible rent guarantor schemes were also referenced.

Poor accommodation quality, difficulties in getting repairs carried out, poor energy efficiency standards and high energy bills were also cited with respect to student tenancies. The importance of following the repairing standard was noted. It was also suggested that Student Housing Cooperatives would allow students to take control of their living situation, or that eligibility for social rented housing should be extended to students. It was also suggested that students may not be aware of their rights, including to challenge issues relating to rent increases or property condition, and that targeted advice/information is required for students with PRTs.

The impacts of joint tenancy issues on student households were raised, with a view that proposed changes to the PRT to allow individuals to exit a joint tenancy should apply to student households.

Other issues raised by a small number of respondents included that:

- Landlord insurance policies sometimes exclude student lettings.
- Landlords or letting agents should not be allowed to discriminate against a potential tenant based on their educational status.
- Rules around deposits and signing leases should be clarified as landlords and agents may ask for deposits to be paid and leases signed long before tenancies actually begin in order to secure the property.
- Charging referencing fees should be abolished.
- Private landlords need to be open and transparent with respect to their terms and conditions. Transparency could be improved by making rental and property information publicly available in a more digestible form.

The Scottish Government's proposals to bring forward a Student Accommodation Strategy were also referenced as an opportunity to gather more evidence and feedback on specific proposals.

## Chapter 6 - Rent Guarantor Scheme

The consultation paper explains that if a prospective tenant does not have a stable income, has a poor credit score or is unable to provide suitable references they may be asked to provide a guarantor. A guarantor provides reassurance to the landlord that, should the tenant not pay the rent or other tenancy related costs, then the guarantor will do so in their place. Where a person cannot 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. Rent Guarantor Schemes in operation in Scotland are currently provided mainly through universities. Views are sought on current provision of guarantor schemes in Scotland, as well as how further schemes can be established to increase access to the PRS.

### **Question 34 – What would be the key features of an effective guarantor scheme?**

Around 350 non-campaign respondents made a comment at Question 34.

General observations included that an effective guarantor scheme should alleviate risks for landlords or should encourage landlords to rent to more vulnerable, or higher risk, tenants. However, there were also views that widespread use of rent guarantor schemes could exclude people from disadvantaged backgrounds from accessing the PRS or that it would be better for households that are likely to be required to provide a guarantor to be housed in the social sector. It was also argued that the level of income at which a guarantor is required – typically when income is less than four times the rent – is too high, and that tenants should be allowed alternative ways to prove that they can pay for a property.

From the perspective of the tenant the most frequently-identified features of a scheme were that:

- Access should be universal and regardless of status.
- The application process should be quick, easy and tenant-friendly. It was reported that existing schemes may be seen as too complicated.
- It should be free to use and run on a not-for-profit basis.
- It should be available for use in high rent areas.
- Landlords should be obliged to accept the guarantor provided.

From the landlord's viewpoint, the features highlighted included that:

- The organisation running the scheme must be financially robust and sustainable.
- Claims should be paid promptly and should cover unpaid rent, or any other loss, as a result of tenants not complying with tenancy terms.

## **Features of an effective scheme**

### **Awareness**

The need to raise awareness that schemes exist, or to promote schemes to landlords, letting agents, students and other tenants was also highlighted. Examples of how this might be done included Scottish Government advertising, the involvement of local authority PRS teams, landlord registration and letting agent registration processes or via Citizens Advice.

### **Appropriate eligibility criteria**

There were apparently differing expectations of who could or should be eligible to use the proposed scheme. While some respondents sought universal access, including to ensure that no stigma is attached to using a guarantor scheme, others suggested a checklist for eligibility, or specific eligibility criteria. Some non-campaign respondents referenced specific groups that they thought should be eligible including:

- students, with particular reference to those from overseas
- young people or people leaving care environments
- young people who cannot call on their family for financial support
- people on benefits
- people at risk of, or experiencing, homelessness
- people with protected characteristics
- people on low or unstable incomes
- young professionals without a guarantor
- specific circumstances – such as an individual's first tenancy

Although most respondents focused on guaranteeing rent, there were also references to accessing finance for deposits.

### **Acceptance by landlords**

While some respondents argued that landlords should be mandated to accept tenants with rent deposit scheme guarantors, there was also a view that such schemes require formal acceptance within the PRS, and that agents and landlords must have confidence in them. A requirement for endorsement by leading property organisations, financial services representatives, and tenant advocacy organisations was suggested, as was providing concrete assurance to landlords in the form of Scottish Government funding, insurance or endorsement.

As a means of encouraging acceptance of guarantor schemes, it was suggested a tax reduction for landlords who take a percentage of their tenants through these schemes could be considered.

## **Easy application process**

The speed with which an application can be approved was highlighted as important for a successful scheme, with reports that tenants can miss out on properties while awaiting approval. It was noted that joint tenancies in particular may need to be agreed in only a few days and it was suggested a rent guarantor could be applied for in advance and approved in principle, up to a maximum amount, in a manner analogous to mortgages.

Although there were calls for the application process to be as easy as possible, careful means testing, affordability checks or an affordability toolkit were also suggested, as were clear clauses for the tenant regarding affordability and responsibilities.

## **Cost of access to scheme**

As noted above, many respondents argued that a guarantor scheme should be free to use, while others suggested it should be affordable to those who need it. A 'Private landlord, letting agent or their representative bodies' respondent reported that, having looked into existing schemes, they felt the subscription cost for the tenant was excessive. They were also unclear what guarantee would be in place if the tenant failed to continue to pay into the scheme.

## **Understanding potential liabilities**

The importance that all parties understand the responsibilities of acting as a guarantor was highlighted, and it was suggested that a scheme should be designed to ensure tenants are not encouraged to default on rent payments. It was also argued that the liability of a guarantor scheme should be limited to 2 month's rent as landlords should have effective policies in place to address arrears issues at an early stage. Other comments in relation to liabilities included that:

- A standard template or statutory guarantor form should clearly explain the responsibilities and liabilities to a guarantor before any agreement is signed.
- In the case of joint tenancies, a guarantor could be liable for unpaid rent or any damage for the property as a whole, rather than for a specific tenant.

In relation to the latter point, a 'Union, student or campaign group' respondent reported difficulties experienced by students in finding a scheme that will guarantee their joint liability if they sign a joint tenancy agreement with others who: have not been approved by the same scheme; have not met the scheme's eligibility criteria; or who have different guarantors.

## **Other features of a scheme**

A number of other points were made with respect to management or oversight of a rent guarantor scheme including that it must:

- Have a robust system for monitoring and evaluating delivery or be subject to independent oversight.
- Include continuing monitoring of eligibility criteria to ensure that breaches do not invalidate any guarantee.

- Be reviewed on an annual basis to assess the circumstances of the parties and, where relevant, allow the guarantor to withdraw and pass the full responsibility across to the tenant.
- Comply with all existing relevant legislation, in particular (but not limited to) the prohibition of tenant fees or premiums.

### **Under-utilisation of existing schemes**

A small number of non-campaign respondents commented on reasons that existing schemes may be under-used, including that:

- Potential applicants do not know the scheme exists.
- The application process is considered overly complicated.
- It may cover too small an amount to compensate the landlord for the perceived level of risk.

It was also suggested that most schemes on offer do not meet the obligations of a guarantor on a PRT in Scotland – for example liability for rent payments for the full term of the lease, as well as in relation to damages at the end of the tenancy.

<p><b>Question 35 – How could we support the development of guarantor schemes that meet the needs of those groups who could benefit from them?</b></p>
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Around 240 non-campaign respondents answered Question 35.

With respect to supporting development of guarantor schemes respondents advised:

- Consultation with organisations – including universities, local authorities and elsewhere in the UK – that already run guarantor schemes to find out what is or is not working well and to determine best practice.
- Engagement with all stakeholders including: universities; student bodies (including the NUS); estranged young people; third sector/advice and advocacy organisations; landlords and industry bodies such as the Royal Institution of Chartered Surveyors (RICS) and the Scottish Association of Landlords; financial sector organisations; and a body representing tenants.
- Co-developing schemes with students, particularly students who have faced barriers themselves or have backgrounds that make them likely to need a guarantor.
- Promoting a partnership based approach between third sector organisations, local authorities, private landlords and local communities.
- Funding pilot and innovation schemes.

There were also calls for the Scottish Government to fund a guarantor scheme, either directly or via local authorities. With respect to the latter, there were views both that a scheme could be developed from the local authority Housing Services Rent Deposit Guarantee Scheme, but also that local authorities do not have the

resources to fund or manage a large scale scheme and that, for consistency, a scheme should be on a national basis.

Other suggestions with respect to how a scheme might be provided included that it could be:

- Funded from unclaimed tenancy deposits (as discussed at Question 18).
- Provided by universities or the NUS in the case of students.
- An existing scheme extended to involve a wider range of third and independent sector partners.
- Development of a new private sector access scheme to ensure a range of options.

There was also support for the review of existing Rent Guarantor Schemes referenced in the consultation paper.

## Chapter 7 - Gypsy/Traveller Communities

The consultation paper notes that a relatively large proportion of Gypsy/Travellers live in rented accommodation, including residents of 26 publicly provided sites across Scotland. Many Gypsy/Travellers stay in the same location for long periods and want the same security of tenancy as people in other rented accommodation. Pitch agreements therefore need to provide flexibility for those who wish to pursue the tradition of travelling, and also security of tenure to ensure equality with the settled population.

### **Question 36 – What are the key issues and concerns relating to current pitch agreements for Gypsy/Travellers on public sector sites?**

Around 135 non-campaign respondents made a comment at Question 36.

Some of these respondents saw a need for improvement in the volume and quality of accommodation for Gypsy/Travellers, noting a shortage of site accommodation across many parts of Scotland, and citing quality and condition issues for existing sites. It was argued that the responsibility to provide Gypsy/Traveller site accommodation should be equal to the responsibility to provide housing for settled populations.

Non-campaign respondents also cited evidence of very significant inequality of outcomes between Gypsy/Travellers and the general population, including specific reference to physical and mental health, education, employment, homelessness and experience of discrimination. Reference was made to research specifically linking a lack of access to suitable accommodation with poor outcomes for Gypsy/Travellers and, in this context, the commitment to provision of more and better Gypsy/Traveller accommodation was welcomed. The need for a better mix of provision was also noted, in light of the relatively large proportion of Gypsy/Traveller families with particular housing needs.

However, some respondents – primarily ‘Private landlord’ and ‘Individual’ respondents – questioned the scale of funding for Gypsy/Traveller accommodation provision. This included calls for some of the proposed funding to minimise any impacts associated with Gypsy/Traveller sites on local settled communities, for example to improve screening or concealment of sites.

In terms of the approach to improving accommodation provision and considering pitch arrangements, there was support for demonstration projects to consider how best to balance flexibility and security of tenancy for Gypsy/Traveller sites. Consultation feedback that informed interim Site Design Guidance was referenced as a potentially valuable source for consideration of current pitch arrangements and further engagement with Gypsy/Traveller site residents was recommended to inform ongoing policy development.

## **Standardising pitch agreements**

Some non-campaign respondents suggested that pitch agreements should be aligned with Scottish Secure Tenancies in terms of the security and protections provided. It was noted that the SHR has supported equality of protections for some time, and there was a view that this policy support should be translated into legal protections. There was support for standardisation of pitch agreements, including proposals for a national model Pitch Occupancy Agreement. However, it was also noted that the level and profile of Gypsy/Traveller accommodation need varies significantly across Scotland, and it was argued there must be sufficient flexibility to reflect this in pitch arrangements.

In relation to potential standardisation of pitch arrangements, ongoing work in Edinburgh to achieve this alignment with social tenancies was described. It was reported that this will involve moving current pitch agreements to a Scottish Secure Tenancy, retaining key provisions such as allowing up to 12 weeks of travel a year. This was cited as a potential model for public sites across Scotland.

For some non-campaign respondents, standardising pitch agreements and aligning them with social tenancies, was seen as a means of ensuring equality of security and protections for Gypsy/Traveller site residents. However, other responses were more focused on perceived issues around site cleanliness and antisocial behaviour, and wished to see pitch agreements include provisions to deal with these issues. Some saw a need for better communication and education to improve understanding of Gypsy/Traveller culture, and to enable Gypsy/Travellers to travel and stop safely in areas with no official site provision.

## **Rent affordability**

Rents and affordability were also identified as potentially significant issues for Gypsy/Traveller pitch arrangements, with concerns raised for the affordability of rental charges. Need for greater transparency around rent setting criteria for pitch rents was suggested, reflecting concerns that rents are not always commensurate with the facilities provided on Gypsy/Traveller sites. It was also suggested that rent setting criteria should be consistent with those used for social rents.

Potential issues for Gypsy/Travellers entitled to Housing Benefit or Universal Credit were also cited in relation to rent affordability. Whether caravan rental costs are eligible for Universal Credit was questioned, and particular difficulties in accessing Universal Credit for those staying on a site for a relatively short period were noted.

## **Other considerations**

Respondents also highlighted a range of other issues in relation to pitch arrangements including that:

- Local authorities vary in their approach to allocation of Gypsy/Traveller site pitches, and in particular the extent to which these are based on assessment against an allocations policy, or on a 'first come, first served' basis using a waiting list if no pitches are available.

- Consideration of pitch arrangements should include provision of accommodation for seasonal farm workers.
- Potential demand for transit sites or stopping places should also be considered, to support Gypsy/Travellers moving between local authority areas. However, resourcing and management challenges which had prevented the development of transit sites or stopping places were also cited.
- Insecurity of tenure on Gypsy/Traveller sites can make it difficult for residents to get insurance for caravans and vehicles.

It was also argued that regulation of Gypsy/Traveller sites should align with the Mobile Homes Act (Scotland) 2013 and Model Standards for Residential Mobile Home sites.

## Chapter 8 - Residential Mobile Homes

The Housing (Scotland) Act 2014 established the framework for a new, robust licensing system for mobile home sites with permanent residents. The consultation paper explains that stakeholders have reported a number of concerns relating to the licencing of residential mobile home sites, and it is intended that a post implementation review of the Residential Mobile Homes Site Licencing scheme should be carried out before the end of the current Parliament.

**Question 37 – 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?**

Around 25 non-campaign respondents made a comment at Question 37. Only one respondent reported that they currently rent a pitch; they reported that they have no issues. There was also a report of someone who rents from a private landlord being told to move to another pitch because the landlord is trying to sell the plot.

Otherwise, it was reported that mobile home owners are generally prohibited from renting out their properties and that there are very few 'rented' permanent residential mobile homes in Scotland, with those that there are generally housing seasonal workers on farms.

In terms of common problems, it was suggested that the main issue is holiday home sites and individual holiday home owners (on holiday sites) renting mobile homes on short term tenancies in the belief that they are not acting as landlords. It was reported that, in a small number of cases, these become long term rentals and result in occupiers believing that this tenancy becomes permanent. There was also reference to residents of mobile homes having to leave the site for a period of 28 days a year to comply with their residency; it was suggested that this can sometimes result in homelessness applications.

Other problems identified included that:

- There are no statutory standards for caravans that are equivalent to the Repairing Standard or Tolerable Standard. The model licensing standards require rented caravans to be kept in good repair, but this does not include a requirement for adequate insulation and there is no guidance available for establishing a line between suitability and unsuitability for occupation. This can have a knock-on effect in terms of priority for social housing.
- The physical standards on caravan sites are controlled by licensing conditions operated by the local authority. However, the licensing system does not offer the same protections as the regulations available to those living in houses.
- Occupiers have no access to the Tribunal, leaving them with only the court system to resolve disputes.
- Electricity supply is controlled by the caravan site operators and can be in the form of pre-payment type meters. The electrical supply to individual caravans

can be minimal and is not comparable to housing supplies. This leaves occupiers having to organise their electrical use around a supply that can be barely sufficient, impacting their personal choices.

In terms of changes required going forward, suggestions included that any improvements should be via The Licensing of Relevant Permanent Sites (Scotland) Regulations 2016, with local authorities being empowered to inspect holiday and residential sites. If people are found to be operating as landlords, they should be required to register and provide certification, in line with other PRS properties.

It was also reported that tenants who are renting mobile homes can be vulnerable – for example, they can have chronic mental and/or physical disabilities – and that, anecdotally, there is a high population of elderly people that rent these types of homes. There was a call for an equalities perspective to be adopted when developing any proposals.

## Chapter 9 - Agricultural/Crofting/Tied Worker Tenancies

The consultation paper notes that Housing to 2040 makes commitments around including agricultural tenancies within a tenure neutral approach to driving up standards and rights. 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.

**Question 38 – 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?**

Around 130 non-campaign respondents made a comment at one or both parts of Question 38. A number of these highlighted issues that respondents saw as common to both.

A general observation relating to tied accommodation was that the strategy appears to be based on the view that those in tied accommodation are on low incomes. It was suggested that this is not necessarily the case and that such employees often have other benefits, such as having energy, council tax and other utility costs met by the employer. It was suggested that, before addressing issues such as affordability, further research and evidence should be gathered to inform policy in this area.

### **Security of tenure**

Lack of security of tenure was confirmed as a key issue particularly, but not exclusively, in relation to tied tenancies. This was sometimes connected to the absence of a residential type Tenancy Agreement. On a technical note, it was reported that the PRT regime effectively turns tied accommodation into a PRT, but that true tied accommodation is a licence to occupy rather than a lease.

In terms of the impact of lack of security of tenure, respondents highlighted that concerns about potential consequences for both accommodation and employment mean tenants are likely to worry about raising quality issues. It was also suggested that there is, in any case, a lack of options available for tenants wanting to raise tenancy-related concerns.

There was reference to a need to end tenancies in a planned way once the employment ends, including to ensure access to suitable alternative housing and to prevent homelessness. This issue is picked up again at Question 39. Other comments and suggestions included that:

- Greater protections and standardisation should be offered to tied tenants in raising issues regarding the tenancy, with written agreements and opportunities for recourse.

- Agents and management organisations should be encouraged to conduct annual surveys to ensure issues are not going unnoticed.

Connected to insecurity were points about there often being a shortage of affordable alternatives for people, particularly if they wish to stay in the same area.

### **Understanding of rights and responsibilities**

Tenants having limited awareness or understanding of their rights was another issue raised, although a further suggestion was that the pandemic has demonstrated that both tenants and landlords are unsure about their rights and responsibilities.

With specific reference to tenants, it was suggested that many may lack knowledge about other housing options, and also may not know where to access information and support. With reference to landlords with tied accommodation, it was noted that they must be registered, but it was reported that this may not always be the case.

In terms of addressing some of these issues, one suggestion was that a clear summary of tied tenants' rights and landlord's responsibilities – as compared with ordinary tenancies – should be developed. It could cover issues such as Energy Performance Certificate (EPC) regulations, requirements around electrical and heating inspections, as well as information on fire risk.

### **Standard of accommodation**

A number of 'Private landlord, letting agent or their representative bodies' respondents were among those noting that they support moves to improve standards. There were also some references to some landlords ensuring that any agricultural or tied accommodation is at the same standard as any let through a PRT.

However, it was also noted that where properties do fall short, or where required standards are raised, there is a recurrent practical problem over the availability, in many areas, of skilled contractors to carry out necessary works.

### **Tied accommodation**

Comments in relation to the quality standards in tied accommodation included that there can be issues relating to the quality of some accommodation, in particular in relation to properties being difficult or expensive to heat and to poor insulation; a link was made to fuel poverty.

A 'Third sector' respondent reported that many of the advice queries they receive on tied accommodation relate to poor conditions and overcrowding. A specific example was of an agricultural worker living in tied accommodation who had no electricity in addition to several broken windows.

In terms of maintaining or improving tied accommodation, it was reported that rents are seldom enough to maintain, let alone improve, the properties. An associated concern was that 'indefinite tied tenancy arrangements' may lead little or no

investment and unacceptable living standards for elderly and vulnerable people who are perhaps scared to move or complain.

### **Agricultural tenancies/tenanted farms**

It was noted that there are some very particular issues associated with maintenance obligations for agricultural holdings, including with the apportionment of responsibility and liability for replacement and repair, wherein the landlord and tenant have different responsibilities, sometimes leading to confusion. In terms of particular issues or circumstances that need to be considered, the following issues were highlighted:

- Agricultural tenancies can run for long periods of time and this, combined with sometimes complex older buildings, frequently leads to a lack of clarity on who is responsible for what; this can lead to necessary work not taking place.
- Aside from maintenance obligations on tenants and classic renewal and repair requirements on the landlord, there are limited obligations to improve properties.
- Many farm buildings are traditional or listed, adding an extra layer of complexity to the situation when it comes to repair and maintenance.
- The implications of a long term farm tenant having made major domestic improvements will need to be considered.
- Tenant farms can require significant investment, but uncertainty for the tenant and poor access to capital can prevent such investment. Specific concerns were raised regarding the resource implications of bringing agricultural tenancies up to Repairing Standard as well as meeting energy efficiency requirements.

It was anticipated that addressing these types of issues will be complex, including because if landlords were required to take on greater responsibility, they may wish to increase rents in line with market values.

It was reported that farm rents for secure agricultural tenancies have no resemblance to the market rents paid for residential properties and that, in many cases, the market rent for the house on the residential market would be far more than the rent paid for the whole farm. There was a concern that rent could become an important issue for tenants in terms of affordability, and for landlords in terms of the ability to obtain a return on any capital invested.

### **Challenges for landlords/businesses**

Along with sometimes noting that they fully supported moves to improve standards, some non-campaign respondents focused their comments on the business/landlord's perspective.

In this context, it was again noted that the issues relating to agricultural holdings, croft housing and tied accommodation are complex, and there was a call to not be too quick to make changes that could have far reaching consequences. Specifically, it was suggested that the Scottish Agriculture Bill, which is expected in

2023, may be the more appropriate mechanism for taking forward any tenancy-related issues.

A number of the other points raised focused on why agricultural/crofting and tied worker tenancies are different to other private tenancies.

### **Importance of on-site accommodation**

There were a number of references to the importance of tenant farmers, crofters or employees living on site in order to either run a business or perform their role. In the case of tied houses or farmhouses as part of an agricultural tenancy, it was reported that the use of the house is there to enable the person living in it the ability to perform their role, often on animal welfare grounds. There was also reference to peaks in seasonal tasks such as harvest, and to farm security.

There was a concern that any restriction on the landlord or employer regaining possession of the property at the end of the farm tenancy, or period of employment, will have severe implications for incoming workers and tenant farmers. In particular, it was reported that it may be impossible to attract staff to live and work in remote areas. It was noted that this is at a time when labour provision on farms is a well-publicised problem, and there was a view that it would be counter intuitive for any housing policy changes to compound this problem.

It was also noted that with housing stock often very limited in rural areas, employers would not simply have options around finding alternative accommodation for incoming employees.

### **Housing for retired workers**

It was reported that, at present, many retired employees remain in their houses, paying little or no rent, until the properties are required for new employees. However, it was reported that if there is no ability to regain possession when required, then this practice is likely to end.

It was also reported that retired workers are sometimes offered alternative accommodation on a PRT, and that this is often at well below market rent. However, it was also acknowledged that not all farms/businesses will be able, or willing, to offer this option.

### **Farmhouses/Fixed equipment**

With specific reference to farmhouses, it was noted that they are considered 'fixed equipment' of the farm and therefore essential to the working of the farm. This would mean that, if the previous tenant remained, it would not be possible to rent the farm to an incoming tenant. This would effectively remove the farm from the rental market and, without a house available, may severely reduce its value.

Issues around planning regulations were also highlighted and it was reported that many houses on farms and estates are subject to planning on the basis of an agricultural occupancy condition; there would be a breach of planning regulations if the property is occupied by someone who does not work in agriculture or forestry.

**Question 39 – 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?**

Around 200 non-campaign respondents made a comment at Question 39.

A general observation was that a review of applications for housing across local authorities could help build a broader understanding of the scale of any issues, and where they are most prevalent. It was also suggested that there may be an opportunity to engage both nationally in the medium term, and at a local level in the short term, to support both the people who have tied accommodation and landowners, or their representatives, to develop better outcomes for all.

Although most of those commenting made suggestions around improving outcomes for people with a tied house who are approaching retirement, some did suggest that nothing could or should be done, including because it is the employee's responsibility to plan for their retirement.

**Increased security of tenure**

As at the previous question, a number of respondents raised issues on the theme of security of tenure. In terms of tenancy-related ways to improve outcomes, there was reference to:

- Introducing protected tenancies aligned with other rented homes which continue into retirement. The protections given to Mobile Home residents in the Housing (Scotland) Act 2014 were cited.
- Providing security of tenure and rights of succession to a tenancy, if a worker dies leaving a family behind.
- Where retirement is not expected to result in the employee's replacement, a Right to Buy or Right to Remain being offered.

Other comments considered options for improving planning for, or providing enhanced rights at, the end of a tenancy. They included:

- Requiring a written agreement between both parties that includes what is expected when the employee leaves employment or reaches retirement age. It was suggested that this agreement could include any special or additional agreements made between the employer and employee.
- Ensuring that sufficient and explicit notice is provided that occupancy rights will cease on the confirmed date of retirement.
- Putting more responsibility on employers to have a plan in place, with longer lead in times (for example, 2 years before retirement) to ensure an employee's wellbeing after they retire. Other suggestions included that preparations for the transition into retirement should start at the beginning of the tenancy, not close to its end.
- Introducing a requirement on employers to inform the local authority when someone living in tied accommodation's employment is coming to an end.

The last suggestion was connected to the view that, where retirement is expected to result in the employee's replacement, the ultimate responsibility should lie with the local authority to provide adequate housing to the evicted person.

### **Awareness raising, prevention and advice**

Many of the comments focused on the importance of the early provision of advice and support. Reflecting some of the suggestions above, one proposal was that the key to successfully managing this situation is for both employer and employee to have a discussion well in advance of the retirement date, and for both parties to be clear of their position.

There were also suggestions that there could be requirements on employers to ensure support and advice is provided to employees prior to their employment ending. In terms of the type of support and advice, and who should deliver it, comments included that:

- Collecting information and data on tenants in tied accommodation from landlords, possibly through landlord registration schemes, may help facilitate targeted early interventions.
- Pro-active housing options advice is required. It was suggested that a Section 11 type system, whereby the landlord must notify the local authority 6 months prior to the end of the tied accommodation, may assist.
- Employers could work with local authorities or other housing advice services to ensure employees can plan for their future housing needs.

In relation to employers having the necessary understanding and information on housing rights, there was reference to the work of the Tenant Farming Commissioner and the establishment of close working relationships between the Scottish Land Commission and landlord and tenant farming representative bodies. It was suggested that the best way to provide support and advice to people with agricultural tenancies and in tied housing, is to develop partnerships with these bodies. There was reference to the Scottish Tenant Farmers Association, the National Farmers Union of Scotland, Scottish Land and Estates, the Scottish Agricultural Arbiters and Valuers Association, RICS and the Agricultural Law Association.

A national approach to raising awareness around this issue was also seen as important. Further comments included that:

- It would be helpful if Scottish Government could work to improve understanding of the role that tied houses play in rural employment, and how this links in with the viability of rural businesses.
- A campaign from the Scottish Government to encourage those with tied tenancies to financially plan for the future at an early stage would be welcome.
- The Scottish Government could produce guidance about having difficult conversations around retirement from employment, including tied

accommodation, so they can occur at an early stage and allow for improved planning.

It was noted that raising awareness may be more of a challenge in remote and rural areas and that it will be important to make an increased effort for harder to reach households.

It was also suggested that awareness raising work within local authority housing teams could be beneficial. It was noted that people who have lived in tied accommodation will potentially find the adjustment of moving into social housing or the PRS very difficult and may require further support, including around budgeting.

### **Priority for social housing**

The other main theme raised related to priority for social housing. There was broad agreement that those facing the loss of tied accommodation should have priority for social housing, and it was noted that this is a particular issue in remote, rural and island communities.

Further comments included that social landlords could look at this issue when next reviewing their allocation policies, although it was also reported that people facing losing accommodation are already considered to be a high priority under many current allocation policies. Nevertheless, some did suggest that they should receive higher priority.

### **More 'retirement' housing in rural areas**

Other comments addressed wider supply issues and included that policy and funding should focus on the provision of more affordable housing in rural Scotland. It was reported that the Rural and Islands Housing Action Plan will aim to support rural repopulation, and will provide an opportunity to bring together policy and funding to enable a significant increase in new rural affordable homes.

Other comments or suggestions included that:

- The consents for new build for retirement homes should be increased.
- It will be important to consider location, including around access to local services and health care.

## Part Two: Affordable Rents

Chapter 4 of the consultation paper highlights the need for quality, affordable accommodation to support the right to an adequate home, and considers the range of factors that can influence affordability of rents. It states that Scottish Government ambitions to improve the quality and standard of rented homes will require investment and regulation of rents alongside measures to ensure the quality of properties.

### A shared understanding of housing affordability

**Question 40 – 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)?**

Around 510 non-campaign respondents made a comment at Question 40.

Many respondents highlighted the importance of affordable rents in enabling people to access housing, citing evidence of the scale of affordability pressures for social and private renters in particular. This included a view that the scale of these challenges is such that PRS policy and rent controls need to be part of a wider approach to improve affordability. Reference was made to issues such as low paid and insecure work, barriers of the benefits system, cost of living pressures, the costs associated with securing the necessary supply of new homes and achieving net zero targets.

There were also calls for a rights-based approach to affordability, to support a person's right to an adequate home. This included some concern that affordability measures must not further limit tenure choices available to low income households, and a view that any agreed affordability standard should be at a level that enables people to live a fulfilling and dignified life. It was also suggested that housing affordability measures can help to empower tenants, for example by supporting comparisons between landlords, and that there should be a role for an agreed minimum income threshold in relation to housing affordability.

Comments on specific factors and measures that should inform a shared understanding of housing affordability most frequently focused on the experience of lower income households. This reflected a view that these households are particularly vulnerable to the negative impacts of housing affordability pressures, for example in terms of having limited affordable housing options and being at risk of homelessness.

### Measures of affordability

There were a number of comments that, while there is no single agreed measure of affordability, most existing measures are based on housing cost-to-income ratios, or residual incomes. Various studies evaluating the relative benefits of existing affordability measures were referenced.

## **Residual income**

Affordability measures based on residual income – whether a household’s residual income after living expenses is enough to meet their housing costs – were the most commonly supported. It was suggested that an “affordability index” could be developed on the basis of residual incomes of low and middle income households and that, as referenced above, this should involve use of a minimum income threshold. The Minimum Income Standard produced by the Joseph Rowntree Foundation was highlighted, and it was noted that the most recent Scottish Government definition of fuel poverty includes reference to a Minimum Income Standard.

## **Housing cost to income ratios**

Measures based on housing cost to income ratios were also supported, including because this type of measure has been relatively widely used to-date and the availability of existing datasets to support this approach. However, issues around the suitability of income ratio measures were also raised – for example, the extent to which affordability thresholds vary based on policy and geographical context. This was reflected in the range of specific thresholds cited. While most of those suggesting a specific threshold felt that that households should not be expected to spend more than 25-35% of their income on housing costs, concerns were raised around the discrepancy between renters and homeowners in the proportion of income spent on housing costs. For example, evidence was cited that housing costs are contributing to significant poverty levels for those who rent, especially private renters.

Any use of income ratios which assume that housing costs should account for a significantly larger proportion of tenants’ income, than for homeowners was questioned. For example, it was noted that an income ratio of 25-30% for renters would compare with homeowners spending an average of 8% of their income on housing costs, and there were concerns that a ratio of 30% or more would not be consistent with the statement in Housing 2040 that private renters should be able to save for the future. In this context, it was argued that any agreed affordability measures should be tested against evidence on households’ experiences of financial stress.

Other concerns raised in relation to use of income ratios as a measure of affordability included a view that income ratios do not recognise that other living costs affect renters and owners disproportionately. There were particular concerns around the ability of income ratios to take account of differences between households with or without children, and those with protected characteristics.

## **Other factors**

In addition to comments about the most appropriate type of affordability measure, non-campaign respondents also identified other factors and questions which they wished to see reflected in a shared understanding of housing affordability. These included a broad mix of potential affordability factors and sources or benchmarks for affordability measures, with a view that current approaches to affordability are too narrow in their understanding of the range of considerations affecting tenants. It

was also argued that affordability measures must be sensitive to geographic variation in affordability pressures, and to potential for factors driving those pressures to change over time.

A number of non-campaign respondents also referred to the role of supply and demand in relation to private rents, and to geographical variation in rent levels. There was a call for the overall policy approach to rent affordability to recognise the interdependence of insufficient social housing supply and affordability pressures in the PRS. Also in relation to tenure, it was suggested that intermediate tenures should not be considered affordable housing for the purposes of policy and allocations. This reflected concerns that the link to average market rents can result in intermediate rents becoming unaffordable, for example due to scarcity of supply.

Specific rent affordability considerations suggested by respondents included:

- Ensuring that affordability measures are based on 'total' housing costs, including Council Tax, water charges, insurance, ground rents, service charges, and upfront housing costs such as tenancy deposits and furniture/white goods costs. Respondents also highlighted the importance of energy efficiency and running costs for housing affordability, for example suggesting that any affordability measures should reference EPC ratings and estimated fuel costs.
- Property characteristics such as type, size and energy efficiency.
- Property quality and condition, including suggestions for affordability measures to include minimum standards for housing quality. This reflected a view that poorer quality standards in the PRS (compared with social housing) are not consistent with higher rent levels.
- Property location, with respondents citing evidence of the extent of the geographic variation in PRS rents noted above. This included reference to potential for factors such as the prevalence of short-term lets to exacerbate local variation in private rents. Respondents also suggested that affordability measures should take account of geographic variation in other factors such as access to employment, household incomes and transport costs. For example, it was noted that households who are less able to move to access more affordable housing options are especially vulnerable to geographic variation in affordability pressures.
- Access to essential amenities and services such as affordable public transport, public services, childcare, etc. These were described as key factors in ensuring the approach to affordable rents addresses poverty and, in particular, child poverty.
- Household composition and size. Evidence highlighting single people on low incomes (with or without children) and families as being disproportionately affected by poverty and rent affordability pressures was referenced. Respondents also referred to challenges highlighted in the consultation paper (such as tenants being more likely to be on low income and to experience financial hardship) and to household characteristics with potential to impact economic circumstances and incomes (such as disabilities and health-related

needs). In this context, it was suggested that equalities and human rights should be given particular prominence when considering housing affordability in the rented sector.

There was also reference to 'subjective' measures, such as household perceptions of affordability, self-reported rent payment problems, and housing stress.

### **Benefits**

A number of non-campaign respondents also suggested that a shared understanding of affordability should address how benefits should be considered by any affordability measures, in particular the relationship between affordability and Housing Benefit and Universal Credit. They cited a range of evidence illustrating the correlation between receipt of benefits and experience of affordability pressures including, for example, potential for social rent increases to have a greater impact on households in receipt of Universal Credit than those in receipt of Housing Benefit. Charges that are not covered by housing-related benefits – such as common maintenance charges – were also highlighted as having potential to add to affordability pressures on households in receipt of benefits. Respondents also sought clarity on whether the definition of affordability would reflect the 'under 35 rule' limiting benefits for single people under 35 to a shared accommodation rate.

### **Costs for landlords**

While most comments at Question 40 focused on affordability for tenants, other respondents – particularly from the 'Private landlord, letting agent or their representative bodies' group – wished to ensure that consideration of housing affordability takes account of costs for landlords. Primarily in relation to the affordability of providing private rented accommodation it was argued that landlords must have some incentive, in the form of profitability, to provide good quality rented accommodation. Respondents noted that the ability of landlords to secure a profit that reflects the effort and risk in providing rented accommodation can be affected by a range of factors, such as mortgage payments, maintenance and improvement costs, insurance and taxation.

It was also observed that such costs can vary over time, with a view that the cost of providing rental accommodation has increased significantly in recent decades as a result of increasing compliance and regulatory costs, rising maintenance costs, and house price inflation. Potential for further cost increases as a result of improvements required to meet minimum EPC requirements were also highlighted. It was suggested that achieving real change in the affordability of private rents in particular will require action to reduce these costs, and to increase housing supply.

**Question 41 – If we are successful in reaching a shared understanding of affordability in Scotland, how should it be used and evaluated?**

Around 365 non-campaign respondents made a comment at Question 41.

Most comments focused on potential for a shared understanding of affordability to help households experiencing affordability difficulties and struggling to access

suitable housing. This included ensuring that the right to adequate housing is being achieved for all, with some noting that the consultation document states that affordability has an important role in the right to housing. The importance of action to deliver the right to housing was highlighted, as were negative impacts of affordability pressures, for example in terms of households' physical and mental wellbeing. There was concern that rents have been increasing at above-inflation levels for a number of years and that rent affordability is a significant issue requiring a strong policy response.

A shared understanding of affordability was seen as essential in identifying how rent increases and associated affordability pressures are impacting households and informing the wider policy approach to reducing poverty. It was also suggested that affordability measures can help to empower households, for example by supporting tenants to engage with their landlord regarding rent setting policies, and to enable households to assess different housing tenure options.

## **Practical applications**

### **Setting rent levels**

In terms of practical applications, the most common suggestion was that a shared understanding of affordability should be used to underpin some form of rent benchmarking or control measures to ensure that rents are genuinely affordable. It was noted that the SHR sets affordability benchmarks for social rents and that the proposed PRS Regulator could consider a similar mechanism for the private sector.

Respondents also suggested other practical applications associated with ensuring rent levels are affordable, such as informing housing association annual rent consultations. It was argued that any affordability measures should be applicable across social and private rented housing, including intermediate tenures such as MMRs, and in supporting the development of any new housing models or financing options to meet affordable housing needs.

Concerns were also raised around the use of a standard definition of affordability to regulate rent levels in the PRS, with some non-campaign respondents taking the view that existing market forces are best placed to set rent levels in the sector. This included reference to the sector being highly variable, and concern that use of a single affordability measure cannot take full account of these significant differences. Use of affordability measures to 'artificially' set rent levels was suggested to be an unwelcome change of policy approach. These concerns were primarily raised by 'Private landlord, letting agent or their representative bodies' or 'Individual' respondents, and reflected comments at Question 40 that a shared understanding of affordability should also consider the viability of investment for landlords. These and similar concerns are considered in further detail at Question 50.

### **Informing other housing policy**

Some non-campaign respondents also suggested a role for a shared understanding of affordability across other aspects of housing policy – indeed, the extent to which affordability considerations can effectively inform policy interventions was seen as a key factor in the success of any affordability standard. Comments highlighted the

value of a standard definition of affordability in understanding how the rented sector is functioning for different households and different income levels, and the characteristics of those affected by affordability difficulties in terms of household composition, age, location and tenure. This kind of deeper understanding was seen as essential in informing policy around rent setting (such as rent controls), housing markets interventions and affordable housing supply, and in relation to income and benefits (including a suggested role in determining availability of financial support for rent).

In terms of specific housing policy applications, some non-campaign respondents saw a role for affordability measures in identifying affordable housing requirements through local Housing Need and Demand Assessment (HNDA), and to inform delivery of housing through strategic housing investment programmes and local development planning. It was also noted that a standard definition of affordability could inform the models already used by social landlords to assess affordability.

Some non-campaign respondents referred to the role of a minimum income standard in relation to measures of affordability; this was seen as essential if the application of affordability measures is to enable households to maintain a decent quality of life. A Minimum Income Standard was also cited as an example of how affordability measures can be used to ensure that households' perspectives and experiences are reflected in rented sector policy. The Living Home Standard was cited as being based on extensive engagement with households to produce a shared understanding of what all homes should provide.

However, there was also a view that any shared understanding of affordability should consider objective data alongside more 'subjective' measures. This included reference to specific measures such as rent to income ratios, rent arrears and other social housing management data collected by the SHR, and the continuing supply of private rented properties. Some suggested that resolving potential inconsistencies in objective and subjective measures will be a key challenge for any agreed affordability measure.

### **Reflecting household's experience**

The views and experiences of households were seen as crucial for the evaluation of a shared understanding of affordability. It was suggested that any definition of affordability should be evaluated in the context of whether this accurately reflects households' experiences and priorities and can be used to improve quality of life for households. Links between affordability and poverty, and the importance of factors such as employment, income and benefits, and living costs such as childcare were highlighted. There was a call for any assessment of affordability to reflect household's experience of these wider issues. It was also suggested that an independent partner should have a role in evaluating affordability measures, supporting Scottish Government and other policy makers such as the Convention of Scottish Local Authorities (COSLA), the Association of Local Authority Chief Housing Officers (ALACHO) and the Scottish Federation of Housing Associations (SFHA), to ensure a robust evaluation approach.

## Data collection

It was suggested that collection of data to support evaluation of affordability should make best use of existing infrastructure such as the landlord register, local authority data collection, SHR data collection, and Rent Service Scotland data. Respondents also emphasised the importance of ensuring affordability data is current, referring to potential for the factors driving affordability pressures to change over time. It was suggested that the agency tasked with gathering this data will require statutory powers.

Those who raised concerns around the potential impact of rent controls on landlords also suggested that collection of evidence to support the application of a shared understanding of affordability should also include data to identify the impact on landlords and the supply of private rented housing. This included suggestions for monitoring data to identify any changes in numbers of private rented properties and for gathering of attitudinal data from landlords to identify any plans to leave the sector.

## Improving our evidence base

The consultation paper notes that there is a consensus across tenant and landlord stakeholders around the need for collection of more comprehensive private rental sector data to improve understanding of trends in rent levels, and to ensure policy development and interventions are based on clear evidence. Work is ongoing to assess the information needed to inform future policy development and setting of LHAs. A Housing Bill to be introduced in 2023 will also require private landlords to provide a range of rental data and other property information.

The consultation paper notes that further work is required to agree the range of data to be required of private landlords, and commits the Scottish Government to working with partners to ensure that an accurate and up to date register of private rented properties and their landlords is in place. At this stage, 11 categories of data are set out as an indication of the information that could be collected at an individual property level.

**Question 42 – Do you think the data we are proposing to collect will provide all the necessary evidence to inform national and local rent control considerations?**

Responses to Question 42 by respondent type are set out in Table 16 below.

**Table 16**

<b>Q42: Do you think the data we are proposing to collect will provide all the necessary evidence to inform national and local rent control considerations?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group		1		2	3
Housing, legal or advice agency or professional or representative body	2	1	2	3	8
Local authorities and their representative bodies	15		3	5	23
Other private sector		1		2	3
Other professional or representative body		3		2	5
Private landlord, letting agent or their representative bodies	7	26	4	18	55
Public body or agency			2	6	8
Religious group or body	1	2		1	4
Social landlords and their representative bodies	2	3	4	3	12
Tenants' and residents' groups and their representative bodies	4	1	2	2	9
Third sector organisation	2	1	1	18	22
Union, student or campaign group	4	6		8	18
<b>Total organisations</b>	<b>37</b>	<b>45</b>	<b>18</b>	<b>70</b>	<b>170</b>
<b>% of organisations answering</b>	<b>37%</b>	<b>45%</b>	<b>18%</b>		
Individuals	77	272	140	267	756
<b>% of individuals answering</b>	<b>16%</b>	<b>56%</b>	<b>29%</b>		
<b>Total non-campaign respondents</b>	<b>114</b>	<b>317</b>	<b>158</b>	<b>337</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>12%</b>	<b>34%</b>	<b>17%</b>	<b>36%</b>	
<b>% of all non-campaign respondents answering</b>	<b>19%</b>	<b>54%</b>	<b>27%</b>		
Campaign respondents	6118			1390	7508
<b>% of campaign respondents answering</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>		
All respondents	6232	317	158	1727	8434
<b>% of all respondents</b>	<b>74%</b>	<b>4%</b>	<b>2%</b>	<b>20%</b>	
<b>% of all those answering</b>	<b>93%</b>	<b>5%</b>	<b>2%</b>		

A very substantial majority – 93% of those answering the question – thought that the data proposed will provide the necessary evidence to inform rent control considerations. The proportion of non-campaign respondents who agreed with this dropped to 19% overall, with 37% of organisations and 16% of individual respondents in agreement. A majority of ‘Local authorities and their representative bodies’ respondents thought the data would provide the necessary evidence while most ‘Private landlord, letting agent or their representative bodies’ thought it would not.

Around 455 non-campaign respondents made a comment at Question 42.

Many of these respondents agreed that there is a need to improve the evidence base on private rents, highlighting the value of improved data to inform rent control considerations. They also saw significant value in improving the evidence base on the PRS in terms of supporting a detailed evaluation of rent affordability, and improving understanding of the operation of the PRS to better inform national policy and strategy. There was also support for the collection of data to support local housing policy objectives, for example in relation to Rent Pressure Zones (RPZs) and short-term let control areas.

Some non-campaign respondents expressed particular support for the focus on accessing data on actual rents being charged, noting limitations associated with the current reliance on advertised rents. For example, it was suggested that the lack of reliability in existing rent data affects the calculation of LHA rates, with potentially significant impacts for households in receipt of Housing Benefit or Universal Credit. There was also support for the inclusion of contextual information to aid more detailed analysis of data, for example on property type and condition, and tenancy details.

There was also a view that there are wider issues with the data currently used to understand the housing system and that, before proceeding further, there should be a full review of housing data collection, quality and the policy and regulatory needs supported. Data collection proposals should then be developed based on the outcome of such a review.

### **Approach to data collection**

Some non-campaign respondents sought clarity on Scottish Government proposals for the approach to data collection, including the frequency of data collection. It was suggested that this should be annually, for example as part of annual updates to the national landlord register. Concerns were also raised around:

- Potential challenges in incentivising or compelling landlords to comply, and the financial costs for landlords required to provide the data.
- Resourcing of data collection for local authorities. There was a view that data collection will require extensive joint working between local authorities and partners to ensure a joined-up approach. Concerns around resourcing this additional burden on local authorities reflected a view that some local authority landlord registration teams are already insufficiently resourced.

However, it was also noted that much of the data to be collected will remain unchanged from year to year and it was suggested that landlords should be asked to confirm what has changed, rather than being required to re-enter all data for each return. Letting agents were also seen as having a key role to play in facilitating collation of data. It was proposed that the data collection approach could be piloted first in areas where a significant proportion of properties are let through agencies.

Some non-campaign respondents also highlighted the potential importance of a PRS Regulator and there was support for use of RPNs to support compliance. Enabling wide access to rent data findings was also seen as having potential to incentivise compliance.

Issues were also raised around both data quality and confidentiality including that:

- There may be gaps in the data collected, as well as potential for double counting of properties where there are joint owners.
- Collection of property-level data could lead to disclosure, particularly in rural areas with more limited volume of properties.

### **Data to be collected**

While many respondents felt that collection of the data suggested in the consultation paper would help to improve understanding of how the PRS operates, a number of changes were suggested. A small number of non-campaign respondents suggested that seeking a more limited range of data may increase rates of compliance across the sector. It was suggested that proposals for PRS data collection to go beyond the level of data asked of publicly-funded social landlords may be seen as disproportionate for private landlords.

However, most of those suggesting changes identified additional data which they felt will be required to support rent controls. In terms of specific suggestions for additional data, the most common in relation to the physical form and condition of the property related to:

- energy efficiency information, including EPC rating
- quality, including of fittings and any furnishings
- accessibility, including any adaptations
- water supply arrangements
- fire safety information
- for flatted properties, which floor the property is on
- the aspect of the property

With respect to the rental amount and other financial considerations suggested additions included:

- Whether the rental amount includes Council Tax and any services charges such as stair cleaning and internet access.
- How the rent level relates to mortgage costs for landlords, for example taking account of local house prices and interest rates. This was highlighted in relation to ensuring rents are sustainable for existing landlords, and that the sector is accessible for new landlords.
- Deposit value.

There were also a number of other suggestions for additional data collection including with respect to:

- the HMO status of each rented property
- whether the tenancy is privately or agency managed
- whether the tenancy is for the whole property, or is 'room only'
- whether the tenancy is an MMR or a student let
- availability of facilities such as lifts, concierge services, gym/pool facilities, etc
- accessibility of local services
- household characteristics, for example to inform the approach to tackling child poverty in the PRS – potentially by linking to other existing datasets
- the presence of pets
- date of tenancy start, to enable analysis of rent increases for longer-term tenancies
- time of year – for example, student properties may achieve a lower rent where they become vacant during periods of low demand
- number of applicants per let
- void rates

### **Other issues**

Respondents also referenced other factors that may not be within the remit of data collection to support rent control considerations, but which they saw as relevant to the affordability of rents. For example, it was suggested that data on the PRS must be understood in the context of other financial pressures (such as increasing energy costs, cost of living increases and Council Tax) and supply of and demand for affordable housing.

There were also concerns around whether the proposed range of data to be collected can provide an accurate picture of the operation of the PRS. This included a view that the extent of regional variation in the characteristics and role of the sector will present particular challenges, and it was noted that that factors such as access and energy/heating arrangements can have a disproportionate effect on rent levels in rural areas. There was concern that these factors will make it difficult to ensure that data can support meaningful comparison of properties in rural areas.

It was also suggested that more detail is required on what the consultation paper means by 'rent controls' in order for respondents to be confident that the proposed data will be sufficient to support any such measures. In this context, there was support for further consultation on the introduction of rent controls to review the data required. Engagement with agencies already delivering similar types of regulatory framework was suggested in order to help to inform the approach to data collection.

**Question 43 – 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?**

Around 430 non-campaign respondents made a comment at Question 43.

Many respondents supported an approach where landlords would face clear penalties for failing to provide accurate rental data as soon as changes are made, reflecting a view that some form of compulsion will be required to ensure data is robust.

### **Penalties for non-compliance**

Suggestions included that the provision of up-to-date rental data should be made a legal requirement (for example as part of landlord registration criteria), and that financial and other penalties should be imposed for non-compliance. Support for financial penalties reflected a view that making non-compliance a criminal offence has not been an effective approach for landlord registration, and that more targeted penalties will be required. However, some non-campaign respondents suggested that penalties should only be used if a more proactive approach to engaging with landlords is not successful.

In terms of specific penalties for non-compliance, RPNs were the most frequent suggestion. Respondents noted that this would simply require extension of current penalties for non-registration to cover failure to provide up-to-date information. Reference was also made to the TDS regulations as a potential model, where the penalty is awarded to the tenant.

There was also support for:

- Use of fines and other financial penalties, with HMRC fines for failure to file tax returns suggested as a potential model.
- Temporary suspension of landlord registration, with a view that continued non-compliance should be grounds for revoking landlord registration.

### **Other suggestions for ensuring compliance**

Other points included that:

- Linking of datasets could be used to identify changes of tenancy or rent, for example between landlord registration, Housing Benefit and Council Tax data. The data gathered should also be linked with other relevant information streams, such as energy efficiency and fire safety data, to further enhance its value.
- A data gathering body (such as a PRS Regulator) could ensure landlords and agents provide accurate rental data, could and provide effective communication to ensure awareness of the new requirement. However, concerns were raised around the resourcing of such a body, with some of the view that landlord registration and HMO licensing services are currently underfunded and unable to deal with illegal non-registered landlords.
- Tenants may be in a position to help to identify non-compliance, for example if tenants are made aware of the requirement as part of the tenancy sign-up process. However, it was also thought that tenants may be concerned that

this could jeopardise their tenancy and may require an incentive to report breaches.

### **Administrative burden for landlords**

It was noted that around half of private rented properties in Scotland are managed by agents who typically deal with landlord registration duties, and that these landlords would expect their agent to assist with any data returns.

However, a number of non-campaign respondents expressed significant concerns around an approach which requires landlords to supply of the type of rental data described, noting the range of regulatory obligations already placed on landlords. Specific challenges for landlords and agents managing 'non-standard' private lets were referenced.

Concern was also expressed around potential for smaller landlords to choose to leave the sector as a result of an additional resource burden, particularly if this is associated with potential financial penalties. In this context, it was suggested that the data gathering approach should be informed by stakeholder engagement, for example as part of the proposed new regulatory approach for the sector.

There was also a view that the focus should be on minimising barriers to compliance, or encouraging compliance – in the latter case, for example, by demonstrating the value of data collection. It was suggested that a perceived lack of benefit associated with landlord registration has had an adverse impact on compliance, and that reporting of rental data could provide a benefit to landlords in the form of useful intelligence about the private rented market.

In terms of minimising resource implications for landlords there were calls for the range of information to be reduced, for support to be made available to landlords, and for the data collection approach to be designed to minimise the time required to provide data. The importance of providing landlords and agents with a quick and easy method for data submission was highlighted. There was support for data to be collected via landlord registration channels – with which landlords are already familiar – and proposals for development of a single platform to manage landlord registration and collection of rental data. However, the potentially significant resources required to establish and manage such a system were also highlighted.

Also in the context of minimising the burden on landlords, an approach based on proactively contacting landlords on a regular basis to request relevant data, rather than requiring landlords to provide data as changes occur, was proposed. It was also suggested that less frequent data collection maybe more proportionate while still ensuring data is fit for purpose, reflecting a view that much of the data will remain unchanged from year to year. One suggestion was that data should be provided at the point of registration and thereafter on renewal, so at three year intervals.

Use of other transactions to collect rental data was also suggested, for example where a new tenancy starts, where rents are increased, or where deposits are lodged with a deposit scheme.

## Disseminating data

The consultation paper proposes that, to provide tenants with information on rents for properties they are considering renting, rental data and property information provided by landlords should be made publicly available.

### **Question 44 – What is your view on making rental and property information publicly available for tenants and others to view?**

Around 565 non-campaign respondents made a comment at Question 44.

Many of these respondents – including most ‘Individuals’, ‘Tenants’ and residents’ groups and their representative bodies’ and ‘Local authorities and their representative bodies’ – supported making rental and property information publicly available. For many, this reflected support for greater transparency in the sector more generally and it was suggested that there is no justification for restricting information that could empower households to make informed housing decisions and enable them to find an affordable home. There was specific reference to potential for data to help tenants challenge rent levels in their existing property, or to compare housing options when choosing a new property. This appeared to reflect some concerns that currently available data on the PRS is insufficient for these purposes.

Respondents also highlighted the wider value of data on the PRS for future housing policy development, and a view that an evidence-based policy approach will require evidence to be widely accessible. It was suggested that any restriction on reporting of rental data should be:

- by exception
- on the basis of public interest and/or data protection concerns for individuals

It was also noted that much of the information to be collected is already in the public domain through letting adverts. Reporting of data on social housing was cited as a point of comparison, with some calling for a similar level of detail to be provided for the PRS.

It was also suggested that allowing tenants to access to their own data would also provide an additional level of quality assurance, for example allowing tenants to flag any errors in their data.

In addition to discussion around the principle of making rental data publicly available, some non-campaign respondents highlighted considerations relating to how data is reported and disseminated. Some highlighted the importance of including enough contextual information to enable meaningful comparison of rent levels across different properties – for example by including any service charges included in the rent, and historical rent levels. A comparison tool, similar to that available for social rents, was recommended to enable meaningful comparison of rent levels.

Other non-campaign respondents, primarily 'Private landlord, letting agent or their representative bodies' or 'Individuals', raised concerns around reporting of rental data, particularly the risk of disclosing details of individual tenancies. GDPR and other data protection requirements were referenced, including calls for further detail on how these will be met. Non-campaign respondents also referred to potential difficulty in ensuring that data will support meaningful comparison of individual rents, and the risk of misinterpretation. Some saw a risk of upward pressure on rent levels if landlords are made aware that others are charging higher rents. There was also a view that tenants may not wish for details of their tenancy to be publicly disclosed, and that landlords may consider this commercially confidential, for example where the landlord has chosen to discount the rent. However, it was noted that comparable property-level information is available for social rents and private house sales, and any justification for the PRS taking a different approach was questioned.

Respondents suggested a range of approaches to ensure that reporting does not include individual addresses, for example by limiting this to postcode area, street level, ward or Housing Market Area. It was also suggested that aggregate data (for example showing average rents for an area) would still enable tenants to identify if their rent is higher than others locally.

A number of 'Private landlord, letting agent or their representative bodies' respondents questioned whether new tenants would benefit from information on the rent paid by former tenants of a property. It was suggested that the market rent for a property may have changed significantly since the rent was set for the previous tenant; for example, where this has been a relatively long tenancy, where rents had previously been reduced to help former tenants, and/or due to changes in market conditions.

## Use of Rent Penalty Notices

The consultation paper suggests that a mandate will be required to ensure that landlords and letting agents provide the data required to build an effective evidence base on the PRS in Scotland. It is noted that current legislation making failure to update landlord registration details a criminal offence has not been a particularly effective for landlords. The consultation paper proposes that RPNs – legal notices that suspend the rent liability of tenant(s) of a property – may be a more effective approach.

**Question 45 – 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?**

Around 535 non-campaign respondents made a comment at Question 45.

Many respondents expressed a view that RPNs are required to incentivise landlords and ensure that rental and property information is kept up to date. It was suggested that provision of the proposed data should not be an unreasonable requirement on landlords, and some noted that they had not seen evidence of

landlords struggling to comply with landlord registration requirements. Those expressing support for RPNs also highlighted the value of an improved evidence base in terms of contributing to better professionalism and regulation of the PRS.

Some non-campaign respondents noted that RPNs are already part of the landlord registration system, with some of the view that RPNs had been the most effective tool for authorities in ensuring compliance with registration requirements. It was suggested that provision of data could be made a requirement of landlord registration such that RPN arrangements would be extended to apply to collection of rental data. Some also wished to see RPN arrangements extended to include other data collection channels, for example in relation to EPC bandings and Affordable Warmth Grants.

Others, primarily 'Private landlord', letting agent or their representative bodies' or 'Individual' respondents, set out arguments against use of RPNs which were often seen as a disproportionate response to failure to provide information. It was observed that failure to update rental data could be due to a simple administrative oversight.

There was also a view that the regulatory burden on landlords is already considerable, and a perception that the approach to reform of the PRS is too focused on penalising landlords. Concerns were expressed that imposing further regulatory burden and penalties on landlords will deter investment and improvement in the sector, ultimately disadvantaging tenants by reducing the number and quality of properties available. Some referred to evidence that the current level of regulation is already causing landlords to leave the sector.

It was also suggested that resources should be dedicated to addressing unregistered landlords and/or regulation of short-term lets, before further regulatory requirements are placed on registered landlords. There were also concerns that RPNs can be ineffective if tenants continue to pay rent to the landlord.

A range of non-campaign respondents – including those in favour of and those opposed to use of RPNs – highlighted the importance of ensuring the effectiveness of data collection systems before any RPNs are issued. This reflected concerns that current landlord registration procedures are not sufficiently robust to support use of RPNs. Reference was made to problems with current landlord registration systems, including examples of landlords not receiving reminders or other correspondence, and a view that individual landlords must not be penalised where failure to provide data is caused by inadequate systems.

Specific suggestions for an effective approach to data collection included:

- Better communication to ensure awareness and 'buy-in' from landlords, and that landlords are clear on both the information required, and on when and how this should be provided.
- A proactive approach that involves landlords receiving multiple contacts and opportunities to provide the required data before any penalties (such as

RPNs) are considered. Additional support may be required for some landlords.

- RPNs should only be required as a measure of last resort in a small proportion of cases, for example due to persistent or long-term non-compliance.

A potential issue raised related to tenants in receipt of Universal Credit, and there were calls for the Scottish Government to ensure that the use of RPNs would not disadvantage these tenants in the event of any refund of rent.

### **Resources for monitoring and enforcement**

A number of non-campaign respondents also highlighted the importance of ensuring that the body or bodies responsible for collecting data are adequately resourced to deliver effective monitoring and enforcement. This reflected a view that inadequate resourcing has limited the effectiveness of enforcement around landlord registration.

It was noted that the ability to issue an RPN as a sanction for provision of inaccurate data will first require access to reliable, contradictory information, and that monitoring changes in rental and property information will also require additional resourcing.

In light of these concerns, respondents sought further detail on arrangements for collection of data, and in particular how enforcement (including failure to update information) will be resourced. This included queries from a small number of 'Local authority or their representative bodies' respondents regarding their role in collection of rental data. There were also calls for information on RPNs to be updated so that their scope is clearer – for example to make clear that notices can apply for reasons other than non-registration.

### **Alternatives to issuing RPNs**

A range of alternative or additional enforcement approaches were suggested to ensure that collection of rental data produces a robust dataset. The respondents making these suggestions included some who opposed use of RPNs but acknowledged that some form of penalties will be required to ensure landlord compliance. There were references to other regulatory frameworks and bodies as potential models for the approach to enforcement of data collection, such as the SHR, and regulation of private rented housing elsewhere in the UK.

Suggestions for specific alternatives or additions to RPNs included that:

- A fixed penalty fee or fine would be a more proportionate penalty, with the landlord registration penalty fee cited as an example. Smaller fines were proposed where landlords fail to respond to initial data requests.
- The TDS model could be adapted, with penalties awarded to the tenants as an incentive to contribute to enforcement.

- If provision of rental and property data was scheduled alongside renewal of landlord registration, renewal of registration status could be withheld until all required data is provided.
- Arrangements for escalation in cases of persistent non-compliance should ultimately result in de-registration.

## Consideration of appropriate forms of rent controls

The consultation paper notes that new rights to help tackle increasing rents were introduced with the PRT. While provisions such as limiting rent increases to once every 12 months have proven successful, others have been less effective. For example, despite all private tenants with a PRT having the right to challenge unfair rent increases, very few people have requested a rent adjudication.

### Rent adjudication

Amongst the possible reasons for limited use of rent adjudication, the consultation paper notes that potential for adjudication to result in a rent increase beyond that proposed by the landlord could be a factor. In this context, the consultation paper proposes that, where private tenants seek rent adjudication, this can only result in a decision to decrease or maintain rent at the level proposed by the landlord. This would allow tenants to challenge in-tenancy rent increases without fear that this could result in a rent increase beyond that being proposed by the landlord in the rent-increase notice.

#### **Question 46 – Do you agree that the rent adjudication process should only result in rents being decreased or maintained?**

Around 600 non-campaign respondents answered Question 46.

Many respondents supported proposals to remove the potential for the adjudication process to lead to a larger rent increase than that proposed by the landlord. There was agreement that the risk of this happening has limited the effectiveness of adjudication in addressing affordability pressures, and a view that this is an unreasonable risk for tenants. Some respondents noted that current rules mean that those requesting adjudication risk being penalised for using provisions intended to increase protections for private tenants. It was argued that rebalancing of the adjudication process is required with a greater focus on protecting tenants, while ensuring clear evidence-based outcomes.

Those in favour of proposals also suggested that changes were unlikely to result in unreasonable adjudication requests, given the under-use of the facility to date, and that a more effective and better used rent adjudication process may act as a deterrent to landlords considering unfair or unaffordable rent increases. The adverse impact of significant and/or unexpected rent increases for tenants were also highlighted, including concern that limiting the frequency with which landlords can increase rents does not limit the size of rent increases. Rent adjudication provisions were seen as the only safeguard for tenants against unaffordable rent

increases and there were calls for more action to ensure all private tenants are aware of the adjudication option.

Other respondents – including most ‘Private landlord, letting agent or their representative bodies’ respondents and some ‘Local authorities’ – disagreed with the proposals, and some questioned the robustness of evidence on the reasons for tenants choosing not to use adjudication procedures. It was argued that the proposed changes would result in adjudication being unfairly balanced against the landlord, and that current rules should remain unchanged to ensure fairness to landlords and to prevent ‘speculative’ rent appeals.<sup>7</sup>

There was also a concern that some form of counterbalance is required to prevent tenants choosing to appeal all rent increases, with some non-campaign respondents of the view that proposed changes risked a significant increase in ‘frivolous’ appeals. Some cited their own experience of rent adjudication, noting that this had required significant time and resources. It was also argued that most adjudication results in some form of rent increase, demonstrating that proposed changes are unwarranted. A requirement for monitoring was identified, to identify any spike in adjudication applications and to manage the associated impact on local authority resources.

A further argument was that the Scottish Government has not allowed sufficient time to assess whether current provisions are working well. Some noted that many landlords have avoided any mid-tenancy rent increases during the COVID-19 pandemic, and that existing PRT provisions have therefore only had around two years to ‘bed in’. Further assessment of the operation of rent adjudication before significant changes are made was requested.

### **Alternative proposals**

Some non-campaign respondents raising concerns around proposed changes to rent adjudication suggested alternative proposals, in some cases reflecting the view that a mechanism to prevent excessive or unfounded adjudication referrals is required. Specific suggestions included:

- Ruling out any further upward rent adjustment where the rent increase proposed by the landlord is above the current CPI +1%.
- Empowering tribunals to limit any mid-tenancy rent increases to an agreed threshold, for example inflation or median income growth.

It was also suggested that, given the relative rarity of mid-tenancy rent increases, rent adjudication rules should be extended to apply across a wider range of cases.

Some wished to see encouragement of more dialogue between tenants and landlords to resolve issues. These respondents referred to potential for effective

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<sup>7</sup> It should be noted that some respondents may have understood that the revised adjudication process would only result in the **current rent** being maintained or reduced, rather than the **proposed rent increase** being maintained or reduced. Clarity on this point was requested.

mediation to ensure both parties are satisfied with an outcome, minimising any risk to the tenant/landlord relationship.

### **Additional actions**

Other respondents referred to factors seen as influencing tenants' willingness to use rent adjudication, suggesting further changes to current adjudication provisions to ensure they are as effective as possible.

Minimising adjudication timescales was thought important, including because tenants may choose to vacate a property if faced with a wait of many months for an adjudication decision. This was seen as creating a risk of landlords using unaffordable rent increases as a means of evicting tenants.

It was also argued that the Tribunal should consider broader issues when assessing the affordability of rent, such as property quality and condition, and energy efficiency. This included calls for rent adjudication to prevent any rent rises for properties with an EPC rating of D or lower.

It was also noted that more reliable PRS data should enable tenants to make more informed decisions about whether to appeal rent increases, and provide a more robust evidence base for adjudication.

### **Rent setting in the social rented sector**

The PRT gave local authorities the ability to apply to Scottish Ministers to designate RPZs to help tackle high rents. The consultation paper notes that RPZs have not been established as was hoped, and that the Scottish Government has committed to implementing a national system of rent controls, with an appropriate mechanism to allow local authorities to introduce local measures, by the end of 2025. Given the range of safeguards already in place to protect social rented sector tenants, it is proposed that national rent controls should only apply to the PRS.

**Question 47 – Do you agree with the proposal not to extend any national rent controls to the social rented sector? Please explain your answer**

Responses at Question 47 by respondent type are set out in Table 17 below.

**Table 17**

<b>Q47: Do you agree with the proposal not to extend any national rent controls to the social rented sector?</b>					
	<b>Yes</b>	<b>No</b>	<b>Don't know</b>	<b>N/A</b>	<b>Total</b>
Organisations:					
Academic or research group		1		2	3
Housing, legal or advice agency or professional or representative body	2	2		4	8
Local authorities and their representative bodies	16	1	1	5	23
Other private sector	1			2	3
Other professional or representative body		2	1	2	5
Private landlord, letting agent or their representative bodies	3	24	11	17	55
Public body or agency	2			6	8
Religious group or body	2	1		1	4
Social landlords and their representative bodies	9	2		1	12
Tenants' and residents' groups and their representative bodies	4	3		2	9
Third sector organisation	1		2	19	22
Union, student or campaign group		4	4	10	18
<b>Total organisations</b>	<b>40</b>	<b>40</b>	<b>19</b>	<b>71</b>	<b>170</b>
<b>% of organisations answering</b>	<b>40%</b>	<b>40%</b>	<b>19%</b>		
Individuals	75	232	157	292	756
<b>% of individuals answering</b>	<b>16%</b>	<b>50%</b>	<b>34%</b>		
<b>Total non-campaign respondents</b>	<b>115</b>	<b>272</b>	<b>176</b>	<b>363</b>	<b>926</b>
<b>% of all non-campaign respondents</b>	<b>12%</b>	<b>29%</b>	<b>19%</b>	<b>39%</b>	
<b>% of all non-campaign respondents answering</b>	<b>20%</b>	<b>48%</b>	<b>31%</b>		
Campaign respondents		6118		1390	7508
<b>% of campaign respondents answering</b>	<b>0%</b>	<b>100%</b>	<b>0%</b>		
All respondents	115	6390	176	1753	8434
<b>% of all respondents</b>	<b>1%</b>	<b>76%</b>	<b>2%</b>	<b>21%</b>	
<b>% of all those answering</b>	<b>2%</b>	<b>96%</b>	<b>3%</b>		

A very substantial majority – 96% of those answering the question – disagreed with the proposal not to extend national rent controls to the social rented sector. Among non-campaign respondents this fell to 48% who disagreed. Organisational respondents were evenly divided between those who thought rent control should be restricted to the PRS and those who did not: a majority of ‘Local authority’ and ‘Social landlords and their representative bodies’ respondents thought it should be restricted, while most Private landlords thought it should not.

Around 355 non-campaign respondents made a comment at Question 47.

Among respondents who disagreed with proposals to restrict rent controls to the PRS were some who were opposed to any form of rent controls but who suggested that, if any such controls are to be introduced at all, then they should apply across social and private rented housing.

### **Reasons for extending rent controls to social rented housing**

Reasons for thinking rent controls should also be extended to social rented housing included high rates of rent increases seen in social housing and that, as set out in the consultation paper, social rents have risen at twice the rate of rents in the PRS. While some noted that social rents remain on average lower than private rents, it was also argued that incomes are generally lower amongst social tenants. Some respondents saw a need for a more effective mechanism to ensure social rents are affordable, and questioned why a consistent approach to ensuring affordability of rents would not apply across both sectors. Significant commonality of policy aims across private and social housing, for example in terms of ensuring access to good quality and affordable housing, was highlighted.

Concerns were raised that rent increases have had a similarly adverse impact on social tenants as has been evident in the PRS. While it was acknowledged that the impact of rent increases has been mitigated for social tenants in receipt of Housing Benefit, respondents suggested that many social tenants have still faced significant financial pressures associated with increasing rents. There were references to the impacts of the bedroom tax and benefit cap for social tenants and the failure to increase benefits in line with rent increases. It was also suggested that a social tenant who is not in receipt of benefits is likely to spend more of their income on rent than a private tenant in a comparable property.

Evidence that a substantial proportion of social tenants have had difficulty affording their rent was also cited, and it was reported that there is widespread concern amongst social tenants about future affordability in light of continuing rent increases. This was seen as indicating a need to tackle increases in both social and private rents, and to consider all available options to ensure that social rents remain genuinely affordable. In this context, some respondents were opposed to ruling out rent controls for social rented housing at this stage.

### **Differences between sectors**

However, it was also suggested that a single system of rent controls may not be appropriate given differences between social and private rented housing. Some non-campaign respondents referred to differences in how the sectors function, for example noting that social housing is more heavily regulated and therefore more homogenous in terms of housing quality, and that social landlords receive public subsidy and operate on a not-for-profit basis.

It was also noted that social and private tenants typically differ in profile, for example with social tenants usually having lower incomes. Some non-campaign respondents suggested that any rent controls applied in social housing would therefore have to be adapted to reflect these differences in function and role. It was also noted that respondents would be able to offer a clearer view on how rent

controls should be adapted once the Scottish Government has provided greater clarity on what the proposed rent controls are.

### **Reasons rent controls should be restricted to the PRS**

Some non-campaign respondents who opposed introduction of rent controls for social rents referred to the well-established regulatory framework in place for social housing. In particular, these respondents noted that the introduction of rent controls would cut across existing rent affordability safeguards, including for example the statutory duty to consult on any rent increases. There was a view that existing safeguards are sufficient to ensure that social rents remain affordable. This issue is considered in further detail at Question 48.

Differences in rent levels between social and private housing were also referenced, and that social rents remain significantly lower on average than private rents.

There was also a view that delivery of government policy priorities has been a key driver of social rent increases over recent decades, for example with rent increases funding policy requirements around housing quality and energy efficiency, and supply of new affordable housing. It was suggested that the introduction of rent controls for social rented housing could undermine delivery of these and future national policy priorities. Some 'Local authority' respondents suggested that, as the local strategic housing authority, they are best placed to ensure that rents take account of local conditions.

### **Keeping social rents affordable**

A range of respondents – including some who opposed rent controls for social rented housing – raised concerns around the rate of increases in social rents, and expressed a view that some social rents are at the limits of affordability. Further consideration of the factors influencing social rent increases was seen as important to inform any policy response and there were calls for the Scottish Government to fund the national policy requirements placed on social landlords more fully.

Respondents suggested several other means of ensuring social rents are affordable. For example, it was proposed that the results of rent consultations should be made binding on social landlords. More generally, it was suggested that regulation of social rents should ensure that introduction of any measures to ensure rents are affordable should not be used to justify delays in investment in social housing. It was proposed that the extent to which a social landlord has ensured that both affordability and quality standards have been met should inform allocation of public funding to landlords.

**Question 48 – Do you think the current safeguards for rent setting in the social rented sector are sufficient and, if not, how could they be strengthened?**

Around 145 non-campaign respondents answered Question 48.

Some of these respondents noted that a number of statutory and voluntary safeguards are currently in place around rent levels, rent setting and affordability for social tenants. This included reference to:

- The legal requirement for social landlords to consult their tenants when proposing to increase rents.
- Statutory standards set out by the Scottish Social Housing Charter.
- Grant funding of new social housing being linked to benchmarking of rents.
- An evidence-based approach to rent setting and transparency in how rental income is used.
- The role of the SHR in assessing rent affordability for social landlords

Some non-campaign respondents were of the view that these safeguards are sufficient, and it was suggested that the resource requirements associated with introduction of additional safeguards would be disproportionate. There was also a view that current safeguards are effective in ensuring social rents are affordable, with the differential between social and private rent levels cited as evidence of this effectiveness.

An alternative perspective was that social rent safeguards are relatively limited in scope, and/or are currently under-used by social landlords and tenants.

Concerns were raised around the affordability of social rents, primarily focused on the lowest income households. Difficulties in accessing social housing for those on very low incomes (including homeless households) were referenced and it was reported that changes to Housing Benefit and Universal Credit have contributed to rent arrears and risk of eviction for these households.

There was also a view that the statutory requirement for social landlords to consult on proposed rent increases is not resulting in social tenants having sufficient influence on rent setting. Some respondents raised concerns around whether there is a consistency of approach to rent consultation across landlords, including a view that consultation approaches are not always accessible and easy for tenants to understand. There was also a perception that social landlords do not take sufficient notice of consultation results when setting rents and it was suggested that some social landlords have work to do to ensure that rent setting is fair across their housing stock.

It was noted that there is no official guidance for social tenants on how rent affordability should be understood, or on the approach to rent setting. Reference was made to differing approaches to rent setting (and subsequent rent increases) across social landlords. It was suggested that a shared definition of affordability for social rented housing, and guidance for rent setting and rent consultation would be helpful for social landlords.

In terms of potential to strengthen current safeguards for social rents, some respondents repeated their view that rent controls should be applied across both private and social rented housing. Other suggestions included that:

- Available data on arrears and evictions for social landlords should be subject to closer scrutiny to identify any evidence of affordability difficulties for social tenants.
- Wider analysis of data on social and private rented housing should be undertaken to ensure equality of outcome in terms of rent affordability.
- The results of rent consultations should be made legally binding on social landlords, for example by replacing a rent consultation with a statutory ballot.
- Landlords should ensure that consultations are accessible to all.
- All consultations should include a 'no rent increase' option.
- A potential role for tenant representatives should be considered.

As noted in relation to Question 47, some sought a greater acknowledgement of the extent to which Scottish Government policies have contributed to increasing social rents, and how this is likely to continue to be the case.

## Vision and principles of future rent controls

The consultation paper highlights the contribution that rent controls are expected to make to delivery of the Scottish Government's vision for people to have equality of outcomes irrespective of the tenure they live in. It makes clear that the objective for rent controls is to make rents more affordable, and to support work to reduce poverty and improve outcomes for low income tenants and their families.

A separate consultation with detailed rent control proposals will be undertaken later in the current Parliament, and at this stage views are sought on the proposed vision and principles to underpin rent controls. The consultation paper describes the vision for rent controls as ensuring tenants pay affordable and reasonable rent for good quality homes. The underlying principles to deliver this vision are that rent controls will: (a) have an appropriate mechanism to allow local authorities to introduce local measures; (b) will be evidence based; (c) will support and encourage the sector to improve housing quality; (d) will learn from safeguards already in place for social rents; and (e) will focus on giving private tenants a stronger voice while taking account of all stakeholder views.

### **Question 49 – Are there elements of the existing Rent Pressure Zone system that could be built upon when designing a new system of rent controls?**

Around 330 non-campaign respondents answered Question 49.

#### **Reasons for retaining/modifying RPZs**

Some non-campaign respondents suggested that it would be premature to replace existing provisions before any RPZs had been trialled; there was a view that further evidence is required to demonstrate the effectiveness or otherwise of RPZs in terms of ensuring rents are affordable. It was also noted that Scottish Government data shows below-inflationary increases in private rents across most parts of Scotland, and it was argued this suggests that a blanket rent control approach is

not necessary, whereas a targeted approach to rent controls may strike the right balance.

Concerns were also raised around the time and resources required of landlords, letting agents and local authorities to support what may be an unnecessary regulatory change. In this context, some respondents were of the view that barriers to implementation of existing RPZ provisions should be addressed before a new national rent control system is considered. This included specific suggestions for changes to current RPZ criteria and evidence requirements, and calls for additional resourcing and support for local authorities.

### **Elements that could inform a new rent control system**

Some non-campaign respondents did think aspects of the RPZ system could be incorporated as part of a future system of rent controls. This included some respondents who were opposed to the principle of rent controls, but who wished to see any future rent controls maintain aspects of RPZ provisions. The importance of the localised aspect of the RPZ system was emphasised and there were calls for this to be replicated in any future rent controls. For example, it was proposed that any excessive mid-tenancy rent increases should be dealt with locally.

Other aspects of the RPZ system identified as suitable for any future rent control systems included:

- Time limiting any restriction on rent.
- Linking rent restrictions to inflation.
- Applying rent restrictions only to mid-tenancy rent increases.
- Maintaining the role of Scottish Ministers in determining whether local rent controls are warranted, on the basis of evidence submitted by the local authority and consultation with landlord and tenant stakeholder groups.

### **Learning from shortcomings of the RPZ system**

Many respondents argued that little or no part of the existing RPZ system should be included in any future rent control system. Some considered RPZs to have been a policy failure, suggesting that the policy design made implementation impossible from the outset, primarily due to unrealistic evidence requirements. However, key deficiencies of RPZ policy were seen as potential learning points for rent controls and it was recommended any system of rent controls must address issues with RPZ provisions.

### **Evidence requirements**

The evidence requirements stipulated by RPZ regulations were described as excessive and it was suggested that any future rent control system should reconsider provisions for the identification of unaffordable rents and/or excessive rent increases. It was suggested that a lower burden of evidence set should be set and that requirements should be linked to proposals for collection of rental and property data (discussed at Question 42).

Establishing a regulatory body for the PRS was seen as an important measure in ensuring a consistent approach to data collection to support rent controls. The need for guidance on how tenants can report rents which they feel are unfair was also suggested.

### **Rent increases between tenancies**

Unregulated rent increases between tenancies were seen as a disincentive to tenants considering a move, an incentive for landlords to find ways to evict tenants, and as meaning that tenants who move more frequently may pay more. It was also suggested that RPZ regulations do not appear to prevent landlords from increasing rents shortly after the start of a tenancy, providing the rent does not subsequently increase more often than once a year. Some noted that within-tenancy controls have been criticised by research into existing rent control systems, suggesting that this should be seen as an argument for stronger regulation.

### **Implications of CPI +1% rent increase**

There were concerns that RPZs would not be effective in ensuring rents are affordable in the long term. It was argued that the CPI +1% rent increase allowed by RPZs would (as of March 2022) equate to 6.5% – well above the level of increase typically proposed by landlords. It was also suggested that the benefits associated with the 2016 Act's removal of the 'no fault' grounds for eviction could be undermined if ineffective controls mean that rent increases can outstrip inflation.

### **Failure to improve quality or reduce rent levels**

Failure to take the opportunity to improve quality in the sector was highlighted, and it was noted that other existing rent control systems have been used to leverage improvements in housing quality. Many respondents also highlighted the link between housing quality and net zero targets, suggesting that use of RPZs to drive up quality standards would have the added benefit of reducing the climate impact of private rented housing.

Failure to reduce current rent levels was also referenced, with respondents citing evidence that private rents are already unaffordable for many households in Scotland.

### **Narrow geographical focus**

Many respondents referred to the relatively narrow geographic focus of RPZs, suggesting that rent controls are required across all parts of Scotland, although the need for flexibility in response to local circumstances was also suggested.

**Question 50 – 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?**

Around 590 non-campaign respondents made a comment at Question 50.

A number of these responses were informed by opposition to any form of rent controls, raising concerns that rent controls have the potential to result in unintended consequences that could reduce supply in the short term, for example by making the PRS increasingly unattractive for landlords and investors. Evidence of a fall in the number of PRS properties in recent years was cited, with increasing regulation reported as an important factor for landlords planning to reduce the size of their PRS portfolio. Some non-campaign respondents were sceptical about the likely effectiveness of rent controls in ensuring that rents are affordable. In addition to the concern that any loss of supply could drive up rents, it was suggested that limiting mid-tenancy rent increases would encourage landlords to make use of other opportunities to increase rents.

There was also a view that, while the proposals are welcome, rent controls alone cannot solve the inadequate supply of affordable homes and that increasing the supply of social housing is the most important change needed to support the right to adequate housing.

## **Vision**

In terms of views on the vision for rent controls as set out in the consultation paper, there was support for the focus on rent affordability and housing quality. However, many suggested that the vision and principles set out are too vague for respondents to offer a firm view. There was a call for definition of key terms, and concern that the consultation paper does not clarify the Scottish Government's vision for the future size and role of the PRS in Scotland.

It was argued that the overall vision for the sector should be reflected in any future rent control system, including detail on how rent controls will balance protection for tenants with the risk of encouraging disinvestment by existing landlords. There was some concern that the vision and principles set out in the consultation paper do not consider the potential impact and risks associated with rent controls for the PRS. For example, there were calls for more explicit acknowledgement of potential issues such as:

- Any loss of landlords and investment.
- How impacts might differ across different parts of the sector, such as rural and urban areas, and the student market.
- How rent controls might affect how the sector interacts with other parts of the housing market.

The need to ensure that policy design anticipates potential adverse impacts, incorporates appropriate enforcement, and can respond to local variation in market pressures was highlighted. Establishing an expert independent panel to inform the design of rent controls was suggested.

It was also argued that the right to housing should be a central element of a rent control system and should take precedence over any risk of landlords leaving the sector due to additional regulation. There was a view that a smaller PRS would be preferable to a sector which cannot deliver on human rights.

## **Principles**

Considering the principles for a rent control system set out in the consultation paper, respondents expressed particular support for the localisation of rent controls, and for an evidence-based approach which ensured openness and transparency.

### **Local measures**

Some non-campaign respondents expressed specific support for mechanisms to enable localisation of rent controls, including comments highlighting the extent of variation in the size and profile of the PRS across Scotland. However, many other respondents raised concerns that localisation should not mean that controls are limited only to specific places and there was a call for a national system of rent controls which allows scope to take account of local circumstances.

### **Evidence based**

There was support for an evidence-based approach to rent controls. However, it was suggested that this evidence should encompass the full range of factors that can influence rent affordability – such as household incomes and other living costs.

### **Support to improve housing quality**

The link between rent controls and improving the quality of private rented housing was highlighted, with many respondents expressing a view that rent controls could have a role in incentivising quality improvements. The Scottish Government was asked to go further by using rent controls to penalise failure to improve standards, for example, by ensuring that controls can reduce rents if properties do not meet basic energy and performance standards.

### **Giving private tenants a stronger voice**

Comments on the intention to give private tenants a stronger voice included suggestions that tenants' views should be prioritised over the views of landlords. Many respondents described tenants' views as reflecting the need to access suitable accommodation, contrasting this with the views of landlords which some saw as being based on generation of financial profit.

It was argued that a rent control system needs to achieve a fairer balance of power between tenants and landlords, for example by improving the availability of affordable housing such that tenants are better able to exercise consumer power in their housing choices.

### **Additional principles**

Respondents also referred to other considerations which they wished to see reflected in the principles for a future rent control system including that:

- The right to housing should be reinforced by the addition of a principle directly addressing the need to ensure housing is affordable. In addition to limiting rent increases, there should be a facility to reduce unaffordable rents.
- Rent controls must aim to ensure rents are stable, and to protect tenants from unpredictable rent increases.

- Effective evaluation methods must be put in place to assess the impact of rent controls.
- How other aspects of the regulatory regime might interact with rent regulation should be considered. It was suggested that, unless regulation of short-term holiday lets is strengthened, there is risk of private landlords moving to short-term holiday lets in response to introduction of rent controls.<sup>8</sup>

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<sup>8</sup> The Licensing Order and Control Area Amendment Regulations were approved by the Scottish Parliament on 19 January 2022 and came into force on 1 March 2022. Further information can be found on the [Scottish Government's website](#).

# Part Three: Supply of Rented Homes

## Increasing supply

The consultation paper notes that the principle that everyone should have access to a good quality, warm safe and secure home underpins the Scottish Government's long-term housing strategy – Housing to 2040. Ensuring an adequate supply of high quality, energy efficient housing is key to this strategy, and this is reflected in the commitment of significant public funds to deliver new housing over the life of Housing to 2040. However, the Scottish Government recognises that public funds alone will not be sufficient to deliver the supply required to ensure that people in Scotland can access the housing they need at a price they can afford. The Scottish Government also recognises that both private rented and social rented homes have a role to play in achieving this target.

## Affordable Housing Supply Programme

For the social rented sector, the consultation paper notes that the Affordable Housing Supply Programme (AHSP) seeks to increase supply primarily in the social sector. Most homes are new build, but the programme also funds the acquisition of existing homes for sale on the open market.

**Question 51– 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?**

Around 305 non-campaign respondents made a comment at Question 51.

### Acquisition of existing properties

Most of these respondents agreed that acquisition of existing properties should be part of the approach to meeting housing need across Scotland. This included comments identifying a range of possible benefits associated with bringing existing stock into social rented supply. These included the potential to:

- Rapidly increase available social rented housing. However, it was also suggested that current guidance and regulations can extend the timescale for acquisitions.
- Target acquisition to address specific unmet housing needs, such as accessible homes or properties for larger families. It was noted that this approach would bring particular benefits in areas where there is no overall shortage of housing supply but there is a mismatch between existing housing stock and current and future housing need.
- Increase the social housing stock in areas where land constraints limit the scope for new build development.
- Bring empty buildings back into use or preserve their use as a residential property for the long term. However, a number of non-campaign respondents noted that acquisition of existing properties does not increase the total

housing supply, expressing a view that new build development must be the focus, particularly in areas with an overall shortage of supply. This included particular concern rural housing shortages and the need to increase the rate of new affordable housing development in some rural areas.

- Resolve issues associated with mixed tenure closes or apartment blocks, for example where the social landlord already has majority ownership but private landlords are unable or unwilling to support the investment required by forthcoming property standards.

It was also noted that acquisition will come with lower carbon generation in comparison with new build development. However, it was also reported that social landlords may face significant challenges in meeting energy efficiency and climate impact targets through retrofit of existing housing. For example, retrofit of energy efficiency measures to existing buildings was described as significantly more costly and time consuming than for new build development.

Some were of the view that landlords will require further incentive and support to address these challenges if acquisition of existing buildings is to make a significant contribution to social housing supply. In addition to calls for increased funding via the AHSP, there was reference to the difference in rates of VAT charged on labour and materials for new build and for refurbishment.

The need for a strategic approach and due diligence was also highlighted. In terms of due diligence, the importance of ensuring that that acquisition of existing properties does not leave social landlords owning properties that are not fit-for-purpose and/or are not suitable for local housing need was highlighted.

There were also calls for the Affordable Supply Working Group to be reconvened to: review the current AHSP position; consider the extent to which rents can be relied upon as the primary funding source; and identify additional actions required to ensure local housing needs are met. Some noted that housing supply targets should take account of future plans for acquisition of existing buildings and the potential for this to have an impact on the supply of homes for private rent or sale.

### **Overall supply**

Other comments were primarily concerned with the overall volume of affordable housing supply.

Some non-campaign respondents cited evidence relating to the significant additional supply of affordable housing that will be required over the next 5-10 years. It was suggested that landlords' focus should be on delivering against housing supply requirements identified by Local Development Plans (LDPs) and Strategic Housing Investment Plans (SHIPs).

This included a view that an appropriate balance between new development and existing properties must be set at a local level, driven by priorities identified by LDP and SHIP including, for example, the profile and distribution of housing need. It was suggested that consideration of this balance should be incorporated as part of the HNDA, with the SHIP setting specific targets for new build and acquisition. This

included calls for engagement with Health and Social Care partners to inform targets for homes to meet particular housing needs.

### **Balance between existing and new supply**

While many of those commenting highlighted the primary importance of ensuring sufficient supply of social housing, some did offer views on how the most appropriate balance of new build and existing buildings should be determined. This included a view that new build development is likely to continue to account for the majority of new social rented housing supply, for example given the potential for larger scale new development achieving economies of scale.

It was also noted that new build development can bring additional benefits not associated with the purchase of existing properties – for example, supporting regeneration, creation of jobs and apprenticeships and the delivery of community benefits. On this basis, some non-campaign respondents suggested that AHSP funding should be targeted at the development of new affordable housing.

Others suggested a more tailored approach, for example with new build supply being prioritised in areas with sufficient land supply and evident need for social housing, and acquisition of existing buildings targeted in areas with more limited scope for new development.

### **Funding levels**

There were a number of concerns about the scale and scope of the investment required to deliver the affordable housing needed.

These concerns included reports that AHSP grants cover less than half of the total cost of providing new social housing – whether that is through new housing development or acquiring existing housing. Reference was also made to examples of local authorities using a variety of funding sources to purchase homes on the open market. There were concerns that this could lead to landlords increasing rents in order to cover any shortfall in funding.

Some non-campaign respondents were of the view that limited funding support and increasing construction costs mean that targets for new affordable housing cannot be met without unaffordable rent increases. In this context, there were calls for increased Scottish Government investment to ensure that AHSP grants do not continue to leave a shortfall in the cost of new social housing supply.

Respondents also suggested that a similar shortfall in funding for the refurbishment of existing housing has acted as a disincentive to greater use of acquisitions. There were calls for increased flexibility in funding for acquisition of existing homes, for example including a higher limit on funding per property and a facility for landlords to retain any underused buy-back subsidy for subsequent purchases of existing homes.

Some also wished to see support for landlords to explore opportunities beyond the open market. This included reference to options to purchase former rental properties or empty properties that are not being actively marketed for sale or rent.

These respondents cited examples of local authority officers helping to identify opportunities to bring empty homes back into use as social housing.

**Question 52 – here has the acquisition of existing stock for the Affordable Housing Supply programme worked well? Are there other opportunities to engage with owners/landlords to allow first refusal to those delivering the Affordable Housing Supply Programme?**

Around 135 non-campaign respondents made a comment at Question 52.

A frequently-made point was that there is likely to be significant interest across social landlords in use of stock acquisitions to increase social housing supply. While reference was made to significant regional variation in the extent to which acquisitions have been used to date, several 'Local authority' respondents described well-established schemes for the acquisition of existing buildings, while others reported plans to expand their use of acquisitions. It was also reported that acquisition work has been supported through positive engagement between social landlords and other key partners, such as AHSP local teams.

Reference was also made to the relationship between local market conditions and opportunities for acquisition. For example, some highlighted the role of acquisitions in areas of high demand where land supply for new development is constrained, including rural areas. In contrast, others referred to more targeted and limited use of acquisitions to meet particular needs where there were gaps in social rented supply.

### **Benefits of acquisitions**

Reflecting themes from the previous question, respondents identified a number of benefits associated with using acquisitions to add to the social housing supply. Examples included the potential for them to be used to avoid eviction of private tenants, and to target areas in which housing conditions are generally poor.

There was a view that acquisitions have been most effective where they are driven by local strategic priorities, and it was recommended that local authorities should develop acquisition strategies to identify local priorities. Some also noted that their approach to acquisitions had been informed by Housing to 2040 priorities.

Respondents also cited specific examples of stock acquisition being used to meet specific housing needs and wider policy priorities. These included acquisition of existing stock in city and urban areas to improve property condition, address poor standards of management by private landlords and support regeneration. There was reference to the refurbishment of vacant and derelict buildings and to the use of compulsory purchase powers. Respondents also referenced:

- Targeting acquisitions to consolidate block ownership where mixed ownership is a barrier to property repair and/or capital investment. This included reference to specific targeting of blocks where the social landlord already owns 50% or more properties.

- Examples of empty homes officers working to identify long-term vacant properties that were not being actively marketed but which could be suitable for acquisition by a social landlord. This included reference to: former Ministry of Defence properties; disused public sector buildings, such as hospitals; and ground floor shops in tenement buildings for conversion into wheelchair accessible properties.
- The use of acquisitions to meet specific gaps in existing social rented provision, most commonly provision of family accommodation, ground floor properties as accessible housing, and smaller properties for homeless households. Respondents also reported use of acquisitions to expand social rented supply in areas where social housing has been absent.
- Examples of acquisitions being used to prevent the eviction of owners or private tenants.

Potential opportunities for acquisitions arising in less pressured housing markets – for example, as a result of private developers being unable to sell properties on the open market – were also highlighted.

### **Right of first refusal**

There was some support for a right of first refusal, and a view that this would be welcomed by many social landlords. This included suggestions that non-participation by owners has been an issue for some landlords. It was noted that acquisitions have been more successful where landlords can liaise effectively with owners and landlords, including reference to examples of owners approaching local authorities to discuss opportunities for acquisition. However, it was also suggested that use of such a scheme must ensure that acquisitions are guided by clear strategic priorities – for example, including the delivery of energy efficiency and property condition targets.

Some non-campaign respondents were looking for more detail on how first refusal would operate, suggesting that further definition and discussion is required to identify appropriate parameters for such agreements. For example, it was suggested that first refusal should apply only where an acquisition would contribute to an identified strategic need. Concern was also raised that sufficient financial support would be required to encourage landlords and owners to give first refusal – for example, some were of the view that district valuations are not usually sufficient to encourage sales to the social rented landlords.

Responses identified potential barriers to a right of first refusal, including that:

- Additional Scottish Government investment in the AHSP would be required. This reflected concern that current investment levels are not sufficient to support acquisitions in addition to new affordable housing development.
- The cost of acquisitions can be higher per unit than new build development. For example, there was reference to market pressure and price inflation as key barriers to acquisitions by social landlords, and to the cost of refurbishment to bring properties up to social rented standards.

The potential for acquisitions to increase competition on the open market, especially for lower income buyers, was also highlighted. However, some also noted that where social landlords refuse to purchase above the home report value, this often leads to landlords being out-bid by private households. It was suggested that in some areas, acquisitions are more likely to be properties requiring significant refurbishment, which are less attractive to other buyers.

### **Future approaches**

Specific approaches or considerations highlighted by non-campaign respondents in relation to the future use of acquisitions included:

- Greater flexibility in acquisition arrangements may be needed, for example to enable landlords to offer market value, or to enable acquisition of private rented properties with sitting tenants to prevent evictions. In relation to the latter point, it was suggested that the requirement for vacant possession has limited the use of acquisitions to date.
- Calls for targeting acquisitions to specific geographical areas, for example where social landlords are experiencing particular challenges around multiple ownership within blocks.

There were also calls for more discussion and awareness raising around the potential benefits of using acquisitions as a route to expanding the social housing supply.

### **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 PRS. Rents for MMR homes should be set at a level which is higher than social rents but lower than the midpoint of private rents.

The consultation paper notes that most MMR housing is delivered by RSLs with funding through the AHSP. However, other funding sources have also been used and the Scottish National Investment Bank (SNIB) has the ability to invest in MMR where this meets the Bank's missions.

**Question 53 – Beyond the routes already available to deliver Mid-market Rent homes how could new, additional investment in this be supported?**

Around 160 non-campaign respondents made a comment at Question 53.

Many of those commenting supported a continuing role for MMR in Scotland and saw a need for additional investment to support the sector. This included reference to perceived benefits and specific examples of successful delivery of MMR. In addition to providing affordable housing to those unable to access other sectors, there was support for the contribution that MMR can make to wider economic and regeneration objectives, with particular reference to delivery of MMR in town centres.

Reflecting these positive views, some non-campaign respondents suggested that MMR has become a popular housing option across Scotland. However, it was also suggested this is, at least in part, because many MMR developments have been in high demand locations with good local amenities. In this context, there were calls for further guidance on how investment plans can include MMR to contribute to the delivery of place and community targets.

Questions were raised about the anticipated size and role of MMR in Scotland, along with how 'affordability' should be understood in relation to this form of housing. A frequently-held view was that the need for alternative housing options, such as MMR, is primarily driven by a shortfall in funding of new social rented housing. Respondents holding this view saw a need for an increase in overall affordable housing investment and suggested that the Scottish Government should prioritise funding for 'genuinely affordable' social rented housing. For some, the preference was for MMR to be delivered through existing funding mechanisms, with calls for additional Scottish Government support for these.

Respondents also highlighted a number of issues or barriers to be considered including that:

- Tenants can become 'trapped' in MMR properties, unable to save a deposit to buy, unable to access other private renting due to high rents, and unable to access social housing due to being low priority.
- The viability of MMR is dependent on LHAs allowing a sufficient gap between social and private rent levels.

It was also noted that the scope for MMR within a local market is also a key factor in attracting private investment. In this context, some wished to see more fine-grained LHAs to help identify potential MMR rents at a smaller geographic level, for example to identify more pressured sub-markets. Others saw a need for greater flexibility on MMR rent thresholds in areas with lower rent levels where MMR could offer benefits in terms of diversifying the housing stock.

### **Investment mechanisms**

A number of non-campaign respondents saw a need for a clearer policy framework to attract new investment for MMR, including calls for promotion of examples of how different models of MMR investment could operate.

There were comments in support of a role for the SNIB. For example, it was suggested that the SNIB could address the gap in mezzanine or equity funding, affordably priced to reflect the low risk of default and potential for positive outcomes for local communities.

There was also support for the use of private investment from large institutional lenders. However, it was noted that the current MMR model would still require public subsidy, with a view that private sector interest in investment remains strong, in large part due to Scottish Government subsidy. There was thought to be a need for continuing grant subsidy to enable landlords to attract private investment. It was also reported that landlords face challenges attracting different types of funding, such as mezzanine or equity investment. The higher rate of return typically required

by investors, and constraints on MMR income due to LHAs limiting rent increases were noted.

Other suggestions for new mechanisms and investment sources for MMR in Scotland included:

- Support (both financial and advice) to local authorities around the initial design and setup of their MMR mechanisms, with comments that that this will be a new venture for some.
- Encouraging partnerships between social landlords and private developers.
- Support for social landlords accessing 'less traditional' investors, including 'green' finance and pension funds. However, some raised concerns around an approach requiring payment of a percentage of a tenant's rent as a return to investors.
- Providing grant funding to upgrade vacant or derelict buildings for use as MMR.
- Encouraging private landlords to enter the sector, for example by providing financial or other incentives to upgrade properties for provision as MMR.

There were also a number of suggestions for ways in which investment could be facilitated, these included:

- Relaxing restrictions on how subsidy is secured to attract investment with more limited public subsidy.
- Relaxing MMR financial eligibility criteria to realise sufficient demand, helping to attract private investment.
- Providing sufficient flexibility to respond to local conditions, for example in terms of the mix between grant and debt financing and the scale of the discount.

There was also a call for focused engagement between social landlords and high street lenders to better understand barriers to potential funding for MMR.

## **Build to Rent Sector**

The consultation paper notes that, although well established in many European cities, Build to Rent (BtR) has not been a significant contributor to new rented housing supply in Scotland. While the private rented sector focus of Housing to 2040 is primarily around the more affordable end of market rents, the consultation paper highlights potential for BtR to boost investment and housebuilding across the housing market as a whole.

**Question 54 – What measures can we put in place to help encourage Build-to-Rent developments in Scotland?**

Around 280 non-campaign respondents made a comment at Question 54.

## **Role for BtR**

Some of those commenting saw BtR playing a role in the mix of housing tenures across Scotland's communities. This included as a means of supporting the overall increase in housing supply required, and in growing and improving the PRS, with some suggesting that BtR could support further professionalisation of the sector. There was also particular support for the potential role of BtR in placemaking and regeneration for both town and city centres.

However, there were also calls for a clearer policy framework for BtR, setting out the anticipated size and role of the sector in Scotland and how this will relate to other tenures. This reflected a view – informed by experience for some – that shared strategic aims are important in guiding the approach to BtR. As noted above, urban regeneration was identified as a key policy focus for the sector, and some also wished to see a role for BtR in delivering 20-minute neighbourhoods.

BtR development was also described as complementing existing housing options for those wishing to rent, although there were questions around the rent levels anticipated for BtR properties and how these will be balanced between affordable and market-led rents. For example, some noted that BtR could have a role in areas where market rent levels constrain scope for MMR but there is need and demand at the more affordable end of market rents.

There was also a view that the policy framework for BtR, and the PRS as a whole, should be focused on creating the socio-economic conditions to encourage investment in the sector. For example, some suggested that investors and developers will find ways of providing housing if the right economic environment is present. This included reference to a need for high quality, high productivity economies in towns and city centres.

Some non-campaign respondents wished to see emphasis on the potential for BtR development to contribute to positive socio-economic impacts, in rural and other areas. It was suggested that these impacts should sit alongside financial returns as an encouragement for investors, including investors with a particular focus on corporate social responsibility.

In terms of those financial returns, it was suggested that challenges are likely to be particularly significant in rural areas. Respondents referred to higher building costs in remote rural and island areas.

## **Concerns about BtR**

Although some respondents supported or saw potential in the BtR approach, others raised concerns. A frequently-expressed view was that the for-profit high-rent sector is not a solution to the challenges facing social and private tenants in Scotland. A small number of 'Local authority' respondents questioned whether there is a significant role for BtR provision in their area.

BtR developments were also seen by some as primarily targeting younger and smaller households, with a relatively small proportion of affordable homes, often with clauses allowing these to return to market rents after a set period. It was

suggested that resources should be directed to support provision of affordable homes before encouraging the development of more market rent housing.

There was also concern that some areas may face challenges in attracting investment for BtR development, for example where local markets cannot support the scale of development required by traditional investors. Some noted that, to date, BtR development in Scotland has primarily been completed to a high specification, above average rent city properties. Proposals for rent controls and additional regulatory requirements were also cited as potentially dissuading investors from the PRS.

### **Ways of supporting BtR**

There were a number of suggestions relating to how BtR could be supported, including that incentives will be required to encourage BtR development and that a suitable financial model will be needed if investment is to be attracted.

In terms of incentives, there was reference to: tax relief; matched public investment; public financial guarantees; easing of planning requirements; and identification of sufficient land supply. There was also thought to be a need for further detail on the likely balance between development and management costs, along with likely financial returns through rents. Some non-campaign respondents noted that the Scottish Government has an opportunity to differentiate from the rest of the UK by providing more favourable conditions for investment.

Additionally, there was thought to be a need for more robust evidence on the potential scale of demand for BtR housing. Some referred to the quantification of need for affordable housing and total housing supply through the HNDA process and wished to see similar estimates around potential demand for private rented housing (including for sub-markets such as BtR). This was seen as critical in providing a clear positive message to developers, in empowering planning services to facilitate BtR projects and in encouraging private investment.

Other suggestions included:

- Sending a clear policy signal that a more diverse range of property types and community mix is required of BtR development in Scotland.
- Encouraging investment to be diverted from buy-to-rent to more stable, longer-term investment in BtR.
- Local authorities identifying potential sites for BtR development, including suggestions that this should include a focus on redevelopment of brownfield and post-industrial sites.
- Local authorities working with developers to help to minimise costs associated with provision of infrastructure around proposed developments, particularly to bring vacant or derelict buildings back into residential use.
- BtR developers working in partnership with planning authorities to co-develop sites, for example for provision of social rented properties and/or BtR properties where social landlords have nominations rights. It was also suggested that an evaluation of current pipeline BtR development should be

undertaken to identify developments that will promote placemaking and regeneration.

- A role for RSLs in developing wholly private BtR developments, drawing on their experience in developing MMR properties.

Reducing the regulatory burden on PRS properties. This included suggestions that the need to register BtR properties as HMOs could be removed as BtR developments already meet building regulations and are therefore appropriate for multiple occupation.

## Social Rented Sector Allocations

The consultation paper notes that, given the important role social housing plays in providing secure long-term housing solutions, social housing allocations policy is important in ensuring the right provision. All social landlords have a published allocation policy and have a duty to make and publish rules covering priority of allocation of houses, transfers and exchanges. This means that any allocation policy should set out clearly how the landlord will decide on priority for housing.

**Question 55 – Is the current approach to social rented sector housing allocations achieving the right balance between supporting existing social tenants and those who are seeking a home within the social sector?**

Around 150 non-campaign respondents made a comment at Question 55. Some of these respondents simply noted that they had no particular expertise relating to social housing and/or that this question would be best addressed by those who live and work in social housing.

Those who did express a view were most likely to believe that the current approach is not achieving the right balance between supporting existing social tenants and those who are seeking a home within the social sector. Reflecting some of the themes covered at the previous questions, there was a view that the crux of the issue is a lack of supply, and quite simply that there are not enough socially rented homes to meet demand.

Associated points were that the only way to address this is with national long term investment to increase the supply of social housing. Other comments included that assessments of housing need and demand, along with resource planning assumptions, need to reconsider how affordability is defined. This view reflected some of the issues raised in relation to affordable rents at Questions 40 - 45.

There was also a view that the pressure statutory homeless services, and the proportion of available lets that are required to secure accommodation for homeless households, is creating more homelessness. It was reported that some people see the statutory homes route as the only way to access the social rented sector. There were also references to some people waiting for social homes for years and others being housed quickly, as well as existing tenants no longer being able to move easily to meet their needs or aspirations.

Other comments about who is currently prioritised for social housing included that:

- Allocation policies prioritise those in housing need, based on various criteria. This reinforces social housing's role as a 'tenure of last resort' and means that those with low priority are effectively forced to remain in the less secure and less affordable PRS.
- The current system does not allow for mixed communities that can thrive and does not support people's needs or desires to move to another local authority area.
- A refreshed look at prioritisation processes and categories might help ensure that households are consistently and accurately prioritised based on their level of need.

Comments made by those who thought that the right balance is generally being achieved included that allocation policies are underpinned by a clear legal framework, subject to regular review and informed by consultation with stakeholders. It was also suggested that the current allocations framework works well in ensuring those assessed with the greatest housing need are prioritised. However, it was recognised that, particularly within a pressured housing system, allocations based on housing need mean that generally only those that are vulnerable either through homelessness, serious health related conditions or extreme need will be offered social housing.

Some 'Local authority' respondents commented on their own approach, including that letting plans and allocation policies are reviewed on a regular basis to ensure a balanced approach that meets the needs of existing social tenants and those who are seeking a home within the social sector. In terms of the balance between those groups, examples of current policy included:

- One local authority reporting recent implementation of a new housing allocation policy which sets a target for 30% of lets to transfer applicants. It was expected that this will significantly increase the number of lets to existing tenants compared to previous years, and that the approach will create a vacancy chain that will significantly increase the overall number of lets made – thereby helping to increase the number of lets to homeless households. It was also reported that this approach can help address issues such as under occupation and moving on from specialist provision housing that is no longer needed.
- Another local authority noting that 70% of their housing goes to people currently in need, 5% is made available for specialist housing and about 25% of housing is available for transfers of existing tenants. They reported that, given very limited availability, transferring possibilities are very low. In terms of the impact this can have on those waiting for a transfer, an example given was someone who is employed at some distance from their home and the resource and childcare implications a long commute can have.

It was also suggested that the current flexibility for social landlords in setting their allocation policy is essential to ensure they can determine this based on their stock/organisational profile and take account of the local context in relation to

supply and demand for social housing. It was suggested that any consideration of potential changes or additional requirements must take account of the pressure on social housing and that any proposals must also align with the changes being made to homelessness legislation and the consultation on Prevention of Homelessness Duties.

There was also a query about why this issue is being raised as part of this consultation. It was reported that every so often over the years, the practice of giving a degree of priority to transfer applicants is questioned. However, it was also reported that the practice is a critical element of good housing management, helping landlords respond to genuine housing need whilst making best use of stock and supporting the maintenance of cohesive communities.

Nevertheless, there were some suggestions about how the approach could be rebalanced and/or groups that should be given higher priority. They included that it would be beneficial if regulation and legislation emphasised expectations of all social landlords in delivering the national priority to end homelessness. Other homelessness-focused suggestions included that:

- There should be a regulatory requirement that all registered providers of mainstream social housing set an annual guideline target for the minimum proportion of social lettings to homeless nominees and report on this publicly.
- All social housing providers should fulfil their responsibilities to cooperate with local authorities in meeting their homelessness duties and are encouraged to adopt best practice in supporting homeless people into social housing.

In relation to priorities more generally, the following were suggested:

- Affordability should be a consideration within the reasonable preference categories.
- In areas of socio-economic fragility, more consideration could be given to how allocations could assist those who are seeking a home within the social sector, beyond those with key worker status. The connection was made to the repopulation of remote rural and island communities.
- Allowing local authorities more freedom in the allocation of new build (or newly acquired) stock to their existing tenants, will in turn allow good tenants to be rewarded and thus improve the management of new developments.

**Question 56 – What more can be done to support people with protected characteristics trying to access social rented homes?**

Around 190 non-campaign respondents made a comment at Question 56. Some of these comments reflected points made at earlier questions, and at Question 1 in particular. They included queries about what is meant by protected characteristics and suggestions that nothing more can or should be done.

## **Understanding the issues**

A number of non-campaign respondents commented on the importance of having a clear understanding of the barriers people with protected characteristics face in trying to access social housing. In terms of how this understanding could or should be achieved, comments included that improved data collection is needed to accurately analyse and predict housing need, determine supply and assess the impact on groups.

The recent national guidance on [Collecting Equality Data](#) was noted, and it was also reported that the SHR's requirement for RSLs to collect equalities data from their tenants will be implemented later this year. However, it was suggested that there may still be a case for considering whether there are any gaps around access to social housing for those with protected characteristics.

A 'Public body or agency' respondent reported that they are in the process of restructuring their data gathering processes to allow for the capture of 25 different vulnerability points. It is expected that this will help to provide the best support that enquirers or complainants with protected characteristics may need, and will also allow cross-referencing of vulnerability categories to see if there are any patterns in the data.

It was suggested that having a greater understanding of the number and profile of people with protected characteristics in a particular area, and their requirements, would help tailor homes to the population. Accurate analysis of supply requirements through HNDAs, with their requirements then delivered through the LHS and SHIP was seen as key to delivering appropriate housing.

The importance of learning from, and consulting with, people with protected characteristics was also highlighted. There was a view that only through effective and ongoing engagement with people with protected characteristics, and agencies and partners providing support, can perceived and actual barriers to accessing social rented homes be effectively addressed in a robust and sustained way. It was suggested that this engagement would need to:

- Be resourced adequately.
- Take place at national and local level to understand the range of issues and to offer consistent and equitable service delivery that responds to particular local needs.

Ensuring that effective consultation extends to any review of policy, and that there is understanding of the equalities impact in any changes, was also seen as key.

## **Broader policy and practice responses**

Other comments addressed broad policy responses and included that, as part of their policy review process, social housing providers need to ensure they are responsive to the specific needs of people across the full range of protected characteristics and that they work to remove any barriers that exist to those seeking access to social housing.

It was also suggested that more powers and resources should be given to organisations such as the Equality and Human Rights Commission and the Scottish Human Rights Commission, or to third sector organisations with a successful track record in advocating for, and supporting, people with protected characteristics. It was also noted that the SHR has a major role to play in ensuring that social landlords support people with protected characteristics to access social housing in practice.

In terms of ways in which people with protected characteristics can be supported, it was suggested that consideration should be given to the housing challenges and barriers particular groups face and how social landlords can employ measures to help people overcome these challenges. Involving and learning from people with protected characteristics was seen as central to this process being effective.

There was also a range of general practice-related suggestions, including:

- Improving access to information and advice, including around housing options. Specific suggestions included developing Easy Read guides on what can be an extremely complex area.
- Providing support for those with identified as having a protected characteristic, from the initial application stage through to the tenant taking possession of a tenancy.

A frequently made suggestion was that more funding needs to be available to fund support systems which allow people to maintain tenancies, regardless of whether they have protected characteristics. This was described as one of the fundamental factors of homelessness.

### **Supply of accessible housing**

In line with comments at the previous question, it was also suggested that supporting people with protected characteristics to access social rented homes is, to some extent, a function of overall levels of supply. There was particular reference to the supply of accessible housing, with specific reference to wheelchair standard housing. It was also noted that the lack of accessible homes is also an issue in the PRS. A 'Public body' respondent reported that members of their Experts by Experience Panel have:

- Had negative experiences of finding accessible housing in both the private and social sectors. Many panel members felt that the lack of accessible housing meant that rents charged for accessible properties tended to be higher than those charged for properties that were not accessible.
- Come up against long waiting lists for accessible social housing, forcing them to find accommodation in the PRS. Some panel members had experienced greater choice in the PRS but felt that this benefit was outweighed by higher costs for rent and council tax.
- Highlighted that having an accessible property is not enough in itself; living near family or friends and in areas that are accessible in terms of transport, services and facilities, is also very important.

It was suggested that a more detailed examination of the shortage of accessible and wheelchair standard housing is needed, including consideration of why social landlords can sometimes face difficulties in re-letting adapted properties. The consultation paper's reference to increasing supply of accessible and adapted homes was welcomed, although it was also noted that no number-specific commitment has been made. It was also suggested that the commitment to establish an inclusive programme of retrofitting social homes could be more significant. Other supply-related suggestions included:

- Setting targets within the new build programme to approve a percentage of new homes for disabled need, older people and larger family homes, as per housing need for each local authority.
- Assessing opportunities to develop housing that is flexible and can be adapted to meet the changing needs of households in the future.
- Making additional Housing Association Grant funding available for the provision of new build adapted properties.
- Ensuring that any social housing provided through Section 75 agreements with developers is built to Housing for Varying Needs standards, including a minimum percentage of adapted housing where appropriate

### **Other supply issues**

The shortage of larger family housing was also seen as an issue, and again one which applies across the rented sector. With specific reference to social housing, there were reports of significant waits for a larger property, including a situation where children have grown up and left home before a property of the right size became available. It was also reported that the shortage of larger family housing has a particular impact on housing associations' capacity to assist minority ethnic households.

There was also a reference to providing more choices of affordable housing for older people.

### **Applying for social housing**

A frequently-made point was that really listening to the prospective tenants' needs from the beginning of the application process will be fundamental. Specific customer journey mapping was one suggestion for helping organisations understand barriers and requirements better.

There was also reference to the [Match Me](#) research finding that allocations should consider the needs of the whole household rather than the unmet needs of one applicant. In terms of other issues that need to be considered, there was reference to:

- Choice Based Lettings systems as a possible barrier to some disabled applicants; there was a call for accessible alternatives enabling equitable bidding to be considered.

- People with learning disabilities finding social housing allocation systems difficult to understand, including in relation to the implications of confining housing choices to certain locations.

Reflecting the general point about advice and information, it was suggested that better housing options advice is needed to aid understanding and enable choice. It was also noted that strengthened and targeted housing advice could be particularly important for ethnic minority households. Specific suggestions included:

- Ensuring all application paperwork is provided in accessible formats, and multiple languages.
- Social landlords allowing for online, paper, telephone and face-to-face applications.
- Application material being available in multiple languages for people whose first language is not English.
- Making practical support available to assist people who may struggle to apply for social housing on their own.

It was also suggested that social landlords should provide in-depth training for all their staff in how to meet the needs of tenants with protected characteristics and that they should also work closely with local social services to ensure that housing needs and rights are seen as key to people's wellbeing.

## **Particular groups**

### **Domestic abuse**

With specific reference to domestic abuse, it was noted that the Scottish Government has accepted all the recommendations in [Improving housing outcomes for women and children experiencing domestic abuse](#). This includes how homelessness strategies, policies and practice can improve responses to provide better outcomes for women and children. Key issues identified included:

- Requiring social landlords to develop and implement a domestic abuse housing policy.
- Placing the [Domestic Abuse Good Practice Guidance for Social Landlords](#) on a statutory footing.

It was reported that there is considerable work to be done to implement the recommendations and to improve housing outcomes for women and children, and that a recent survey of Women's Aid groups found that few social landlords are implementing measures to prevent victim-survivors homelessness.

### **Mental health**

In terms of allocations of social homes, it was also suggested that work needs to be done to ensure that mental health issues are treated in a similar way to physical disabilities. A 'Third sector' respondent reported that, in their experience, a doctor's note confirming the mental health condition is often not accepted as proof, and a

psychiatrist's diagnosis is required. It was noted that this can be both difficult and costly to obtain and is often not an option.

# Part Four: Quality – Raising Standards

## Existing Housing Standards

The consultation paper summarises the complex set of legislation which dictates minimum housing standards and services for private and social rented housing. The Scottish Housing Quality Standard applies for social housing, while the Repairing Standard, set out by the Housing (Scotland) Act 2006, applies to most private rented housing. Work has been ongoing to harmonise these standards, but important differences remain. Stakeholders have identified timely completion of repairs as a concern across both tenures, and for social tenants this in part reflects ongoing recovery from the impact of the COVID-19 pandemic on social landlord services.

### **Question 57 – What is the best way to ensure that landlords undertake essential repairs in a timely fashion?**

Around 645 non-campaign respondents made a comment at Question 54. The issues raised applied, to varying degrees, to both privately rented and social housing. The analysis below identifies where issues were raised specifically in relation to one or other.

#### **Nature and scale of any issues**

In relation to the scale of any problems, some expressed a view that issues are more significant in the PRS, and that while there can be problems in social housing, standards and performance are generally expected to be better. It was also noted that performance is monitored by the SHR through the Annual Return of the Charter and the subsequent benchmarking against peers. In terms of driving further improvement, it was reported that some housing associations have been looking to further improve repairs and maintenance services including, for example, by looking at proactive approaches to identify and resolve issues before a repair is required.

A frequently-raised issue concerned how landlords can be held accountable by tenants when they fail to meet the RS, particularly in relation to essential repairs. Examples were given of tenants having to wait months, or years, before essential repairs are completed. A connected point was that tenants can spend significant time and energy chasing up repair requests, and that their experiences can have an impact on both physical and mental wellbeing.

With specific reference to getting essential repairs done in PRS properties, non-campaign respondents identified a number of factors that are, or can be, problematic. These included that:

- Tenants may not be aware of required standards or may not have the confidence to exercise their rights.
- The three-way relationship between tenants, letting agents and landlords can add to communication difficulties.

- There can be challenges around access to properties where major repairs require a vacant property. It was reported that tenants sometimes refuse access for essential repairs and mandatory safety checks, and that obtaining access through the Tribunal's right of entry process can take several months. It was suggested that options for speeding up this process should be explored.

Concerns were also raised around the financial capacity of some private landlords to bring their properties up to the expected standards. This was raised in relation to examples of landlords with large mortgages and limited disposable income, and to particular challenges for landlords in tenement properties where they cannot secure majority agreement for required repairs or improvements.

Although some respondents had concerns, a number of non-campaign respondents were of the view that current legislation and regulations are sufficient to ensure appropriate standards of repair in the PRS, and that the vast majority of landlords do undertake both essential and non-essential repairs in a timely fashion. There was reference to the application of the Repairing Standard and the Tolerable Standard, and also to other aspects of regulation, such as landlord registration and HMO licensing. Some suggested that the regulatory framework is fit for purpose, but that additional resourcing is required to support enforcement of regulations and standards. There was particular reference to timescales for cases referred to the Tribunal.

### **Clear standards and timescales**

The most frequently-raised issue was the importance of clear standards, and of greater parity in the standards that apply across the rented sector. However, some concerns were raised around the application of a single standard across Scotland, for example, in relation to varying availability of contractors and materials, with particular difficulties in rural areas.

More generally, there was thought to be a need for stronger standards in the PRS, with one suggestion being a PRS Charter, supported by a code of practice for private landlords. It was hoped that this would help ensure that tenants are clear on what they can expect from their landlord and how they can hold them to account. Existing standards for social housing, including the 'Right to Repair', were cited as setting a potential benchmark for a PRS Charter.

Many respondents, including a number of 'Private landlord, letting agent or their representative bodies', 'Tenants' and residents' groups and their representative bodies' and 'Individual' respondents saw a need for further guidance to set out more clearly what a Repairing Standard for the PRS would mean in practice, both for tenants and landlords.

Suggestions around what should be covered by a Repairing Standard were focused primarily on the importance of setting timescales for essential repairs. They included that it might be helpful for PRT guidance notes to indicate what would be considered reasonable timeframes for different types of repairs. It was suggested

that this would help landlords understand their obligations whilst helping to manage tenants' expectations.

In terms of other benefits of having clearly established timescales, it was hoped that turnaround time for Tribunal repairing standard applications could be reduced, with tenants whose landlords are not undertaking repairs in a timely fashion having quicker recourse through that framework.

Further comments or suggestions included that there should be greater clarity around the definition of key terms underpinning standards across private and social housing. This was connected to a concern that debates around the definition of terms such as 'reasonable' and 'safe' could undermine the effectiveness of standards. Reference was also made to a lack of clarity for some tenants on what constitutes an 'essential' repair.

There were also calls to:

- Ensure options are available for in-person reporting of repairs, especially for social housing. A connected point was that some local housing offices have been closed and should be reopened.
- Offer people specific time slots for repairs and for more proactive tracking of where appointments are not kept.

It was also suggested that landlords and tenants need greater awareness of each other's rights and responsibilities in relation to essential repairs, and that this could be highlighted by a national campaign. A tenant's handbook or improved PRT notes for tenants were also suggested. Some also wished to see greater promotion of support services available to help tenants to exercise their rights.

Other specific suggestions for changes to ensure that landlords undertake essential repairs in a timely manner included:

- Ensuring effective systems are in place for tenants to report repairs and track their progress. There was reference to a need to ensure systems for logging repairs are robust, provide tenants with a repair number at the point of reporting, and track the progress of repairs against standard timescales. There was also support for an online portal to enable tenants to track progress, although it was noted that online options would not suit all tenants.
- More resourcing of follow-up inspections and safety checks on completed repairs.
- A requirement for flatted and tenement properties to have either an appointed Factor or owners' association.
- Financial support and/or joint insurance schemes for private landlords.

It was also suggested that all social landlords should have dedicated local capacity to respond to essential repairs, rather than relying on city-wide or regional systems.

## Enforcement of standards

Many respondents thought that better enforcement of current standards, and effective enforcement of any future approach, will be key to driving improvement. In terms of key features of an effective enforcement regime, there was reference to:

- Clearer and easier recourse for tenants where repairs are not delivered to standards. Further suggestions included better mechanisms for reporting issues with the delivery of repairs (such as repairs appointments not being kept), and simpler processes for escalating repair requests where these have not been actioned.
- Landlords being more accountable for addressing issues around undelivered repairs, for example by having someone meet with tenants to agree a plan to address outstanding repairs.

Respondents also saw a need for improvements in access to legal recourse for tenants. There was a view that current processes for the PRS, which involve the Housing and Property Chamber, are protracted and complex; a connection was made to low take-up by private tenants. In this context, there was support for a PRS Regulator having a role, including having the power to refer cases to the Tribunal. There were also calls for tenants to be able to access support to take a case forward, including in the form of free legal advice.

There was also support for the use of penalties where landlords fail to provide an adequate response to outstanding repair issues. However, it was also suggested that legislation and/or regulation may be required and that local authorities would need to be resourced if they are expected to be responsible for taking enforcement action.

Specific suggestions for penalties if a landlord fails to undertake essential repairs included:

- Financial penalties, including the use of RPNs, to ensure landlords cannot continue to collect rent.
- A mechanism for tenants to withhold rent where repairs remain outstanding
- An option for tenants to claim compensation, for example alongside a Repairing Standard enforcement order.
- A facility for tenants to arrange their own repairs in the event of landlord's failure to undertake repairs, with costs to be met by the landlord.
- A facility for the local authority to undertake repairs where private landlords fail to meet the Repairing Standard.
- Options to revoke registration status from private landlords in the event of continued failure to meet property and service standards.

While many respondents saw a need for improvements in the approach to enforcement of standards in relation to repairs, some felt that policy should make clear that enforcement and penalties should be a 'last resort'. These non-campaign

respondents wished to see a focus on information and support for landlords in the first instance.

It was reported that current enforcement of punitive measures, such as penalty notices, is not coupled with an education piece for landlords, tenants and agents on what should be expected of each party in such circumstances. There were suggestions that:

- Provision of training and guidance is likely to encourage all parties to understand who should be doing what when repair issues arise, thus helping to negate disputes arising in the first instance.
- Learning and feedback based on cases considered by the Tribunal and the Property Ombudsman could prove extremely helpful.

### **Driving improvement**

Respondents also noted the important role of tenant feedback and statutory reporting requirements in driving standards for social landlords. It was suggested that performance and tenant satisfaction measures could be strengthened for the PRS as part of the approach to improve standards and consistency. This included proposals for the use of online tenant 'portals' to improve gathering of tenant feedback on completed repairs.

There was also thought to be a need for further discussion around the range of factors contributing to the challenges facing landlords. There was reference to contractor availability and escalating costs, and it was noted that these reflect wider supply chain issues, labour shortages and inflation. These themes are covered in greater detail at Question 59.

### **Registration Systems in the Private Rented Sector**

There are currently three statutory housing registration systems that support the PRS specifically. These systems place requirements on any individual or business carrying out specific activities related to the private rental of residential property. They cover private landlords, including through landlord registration, HMO's and letting agents.

**Question 58 – What do you think are the strengths and weaknesses of the current housing registration systems and what could be improved to help drive up standards of management?**

Around 360 non-campaign respondents made a comment at Question 58.

Most of these respondents focused their comments on landlord registration, but there were a small number of broader comments, including that the current registration system is a robust, transparent process that provides safeguards to both landlords and tenants.

Other general observations included that the rented sector is somewhat unique across the housing sector in that, letting agents aside, there is no requirement for

staff to undertake any training or qualification. It was suggested that a focus on Continual Professional Development (CPD) could help improve practice across the sector, helping to ensure that landlords act professionally and engage with tenants in an empathic and positive way.

## **Landlord Registration**

### **Strengths**

Some non-campaign respondents commented that the landlord registration system generally works well.

A frequently-made comment was that the broadening of the Prescribed Information in 2019 has been hugely beneficial in helping to ensure landlords understand and comply with their obligations. It was also suggested that it can offer valuable peace of mind to tenants, as they know that the landlord has registered with the local authority prior to the property being let.

It was also noted that the registration regime has evolved in other ways since its introduction in 2006, including through the introduction of the current statutory guidance and the applicable statutory penalties, as well as through the extended definition of the fit and proper person test. It was suggested that these changes, together with the requirement on the Housing and Property Chamber to send local authorities notifications of Repairing Standard Enforcement Orders and related matters, has resulted in tighter regulation of private landlords.

A number of other strengths identified related to being able to make contact with landlords and/or tenants and included that:

- During the pandemic, the Scottish Government used the database of landlord contact details to good effect to share updates on COVID-19.
- It also allowed for communication with tenants on their rights and the forms of support available to them during the pandemic.
- The online search facility can be helpful in tracing landlords when needed, for example in relation to common repairs, albeit it does not always contain up-to-date contact information.

Some comments focused on raising standards and increased professionalism. They included that landlord registration has allowed for communication with registered landlords enabling them to be provided with advice, training and information on their responsibilities. It was also reported that registration officers act as a point of contact for landlords seeking advice or information on property and management standards.

Other strengths highlighted by non-campaign respondents included that:

- Self-certification of Prescribed Information questions has identified areas of non-compliance and enabled these issues to be addressed.
- Potential tenants are able to check if a landlord is registered.

- Local authorities have developed a greater understanding of the PRS sector in their area.

In terms of building further understanding, it was suggested that would be useful if a review was undertaken to assess whether the introduction of Prescribed Information has led to an improvement in housing standards within the PRS. It was also thought that a more detailed national stock condition survey may be appropriate to measure standards and to gauge whether Prescribed Information has improved standards relative to previous measurements of stock condition.

## **Weaknesses**

The most frequently-raised weaknesses related to compliance and enforcement. Concerns included that:

- The system is based on self-declaration, and as such is open to abuse. Landlords do not need to provide evidence that they meet the standards required of them during the registration process as part of their Prescribed Information.
- Landlord registration schemes generally do not measure compliance rates, for example how many landlords are meeting their obligations, and how many are not.
- It is unclear how well schemes identify landlords who are avoiding registration.

It was reported that the quality of administration and enforcement of landlord registration by local authorities varies, and that the current system is not driving up standards by pursuing bad or unregistered landlords and taking them off the register or issuing effective penalties. It was also noted that the current system puts responsibility on the tenant to report any poor practice to the local authority and pursue the case, something which many tenants may not feel able to do.

In terms of specific aspects of enforcement that are not, or may not be, working well, it was also reported that:

- Some local authorities are not applying the 'fit and proper person' test in any meaningful way and that some of the most poorly behaved landlords are able to gain registration, and remain registered, despite poor practice.
- The use of Notices for serious disrepair fails to provide any alternative punitive measures to ensure that the owner takes responsibility for any defect identified within their property.
- There are no independent 'on the ground' checks of properties registered. Spot checks are completed electronically and relate only to the provision of certificates. In any case, the 2004 Act, neither empowers local authorities to enter and inspect let properties, nor to insist upon production of documentary evidence to verify the terms of an application.

A number of respondents made a link between enforcement and local authority resources. It was suggested that regulations require enforcement, but enforcement

requires funding. However, it was also suggested either that there are no resources in terms of financing and staffing available to local authorities to carry out check-ups and sampling, or that the majority of landlord registration departments are not funded or resourced well enough to fulfil their role. It was reported that most departments have reduced their allocated staff and budget over the last ten years, despite the PRS growing in size, and that the pressure on registration teams is only going to increase as the short term letting registration process comes into effect in 2022.

In terms of the scale of resources required, it was suggested that the Private Landlord Registration (Information) (Scotland) Regulations 2019 have created significant resource implications for local authorities, including because, at times, landlords do not understand what is required. It was reported that incorrect or incomplete applications can lead to backlogs and delays. More generally, it was suggested that the ability of a local authority to take action against a landlord can be bureaucratic and resource intensive.

Some non-campaign respondents made a connection to the fees payable for landlord registration applications. It was noted that these are prescribed in Regulations and have only increased incrementally since 2006. It was also reported that the benefit of the 2019 fee increases has been marginal for local authorities because a significant element of the additional payments is being put towards the Scottish Government's costs in providing the online platform.

Other comments also considered the online platform and included some concerns about its functionality. It was reported that there are a number of technical issues, including that local authority and other details were erased when the system was updated.

- The search facility using the let address is problematic. Specifically, the Antisocial Behaviour etc. (Scotland) Act 2004 provides that refusals of registration and removals from the Register should be noted on the Public Register. However, this information cannot be obtained through the public search facility.
- Landlords are able to create duplicate accounts.
- The system records compliance with Prescribed Information requirements at registration, rather than property level. This makes it difficult for local authorities to identify issues and to improve standards.

There were also concerns about the platform's limited reporting functionality, with further comments including that:

- The current platform does not meet local authorities' current, or future, needs, particularly with respect to EPCs.
- Information in relation to the number of landlords and properties in a local authority area cannot be produced with accuracy as the reports available do not include applicants and properties where an application for registration is pending.

- It is very difficult to secure data on the numbers of landlord licenses that are revoked or refused based on poor practice. As a result, a true image of how effectively the landlord registration system is working currently is not available.

It was also noted that the consultation paper refers to collecting information about rental charges to inform national policy. In terms of the extent to which the current platform could facilitate that objective, it was again noted that information in relation to each rented property is not currently captured on the system and that, at present, the information held is overwritten each time an application is made to another local authority area.

As noted in relation to the strengths of the current approach to registration, using information collected through the online platform to disseminate information in an easy and timely manner was seen as a positive. However, there were some concerns about how individual local authorities are making use of the database. These included reports that some local authorities have been disseminating inaccurate information on topics such as EPCs and minimum requirements.

There were also observations about whether the records of information that landlords have to provide are sufficiently current and accurate. They included that, since renewals are only required every three years, much of the information is out-of-date. It was also noted that:

- There is no mandatory requirement to provide email and telephone contact details, and that landlord email address is not available as a means of contact on the public part of the platform.
- A landlord can list an address other than their own private residence. At times when trying to pursue legal action against a landlord it can be difficult to obtain their address in order to send correspondence.

Other information and/or data related issues raised included that data sharing among relevant stakeholders is often a hurdle which can be difficult to overcome.

### **Suggestions for improvement**

Respondents made a range of suggestions regarding ways in which the landlord registration system could be improved and strengthened. Many of these suggestions related to the weaknesses respondents saw in the current system (set out above). An overarching suggestion, made by 'Private landlord, letting agent or their representative bodies' or 'Individual' respondents, was that the landlord registration system should be centrally operated and government run, like the letting agent registration system.

However, resources for local authorities was the most frequently-raised issue and it was suggested that local authority registration departments should be asked what resources they would need to be able to take tougher action against landlords in breach of any rules or regulations. There was also a call for investment to increase the capacity of the local authority workforce responsible for enforcement, including

those responsible for environmental health, trading standards and other roles that are needed to provide effective regulation and enforcement in the PRS.

There was also a call for a clear commitment to, and resources for, enforcement. In terms of how these additional resources would be funded, one suggestion was that additional Scottish Government funding may be required, with specific reference to an uplift in the Local Government Finance Settlement. It was also suggested that substantive fines that are enforceable would help fund adequate enforcement teams.

The other frequently-raised theme which, as above, was often connected to resources, was the need for more robust enforcement of the current regulations. It was suggested that there needs to be a common framework of standards and a way of measuring progress against such standards.

Other compliance and enforcement-related suggestions included that:

- If a landlord is not judged fit and proper in one local authority area, and perhaps banned, they should automatically be banned in another authority area. There should be a more joined up system to ensure that this cannot happen.
- Local authorities should also work with the relevant teams and organisations to ensure that landlords with poor practice are identified and reported, through all possible channels, to the landlord registration team. These teams include Police Scotland, local authority homelessness and benefit teams, and the Tribunal. It was noted that this would mean that enforcement would not only rely on tenants reporting poor practice.
- There should be an obligation to provide evidence that properties meet the required standards; this coincides with the introduction of the new standards.
- Additional sanctions such as financial penalties for non-compliance requirements would assist. Specifically, there should be more penalties and sanctions for landlords who do not carry out repairs in time.
- RPNs should be improved and extended so that tenants are incentivised to report issues such as non-registration.
- Any 'revenge' measures taken by a landlord should be clearly penalised to ensure that tenants feel safe to report failures.

There was also a query around how it is possible for a registration team to judge if an offshore firm has fit and proper owners? It was noted that around 5% of properties on the landlord register are owned outside the UK, many in tax havens.

Other comments addressed the specific information or proofs that landlords should provide and included that:

- The renewal process should require landlords to check all details for all properties before renewing.
- Landlords should be required to disclose their own current address.

- The registration process should require a landlord to provide proof of ownership of the property they are registering; this was connected to reports that some landlords are arranging for friends and associates to complete registration on their behalf, as the legal owner of the property may not pass the fit and proper person test.

Finally, there was a call for the Scottish Government to work closely with accredited lettings and management agent bodies to ensure that the regulatory effort is focussed on the greatest risks. It was suggested that the highest priority should be tackling rogue landlords and agents, not policing the compliant.

Other comments addressed data gathering more generally, and the online platform specifically. The most frequently-made comments were that the landlord contact information could be better used to:

- Disseminate information to landlords.
- Identify those who are unregistered or registered but failing to comply with their repairing, safety and management responsibilities.

It was also suggested that data on the numbers of landlords that have had their licence refused or revoked should be collected in a standardised way and made publicly available.

In terms of other additions or changes to the online platform, suggestions included that improvements should be driven by local authorities rather than the Registers of Scotland.<sup>9</sup> Other suggestions were that:

- Internal search facilities could be improved, including by making it easier to search on the public site.
- An option for landlords to provide scanned compliance documentation should be developed.
- With a landlord's consent, their agent should be able to update landlord details on the landlord registration system.

Other suggestions focused on ways of improving management standards and included that landlords could be required to participate in training on issues such as domestic abuse and legal rights and responsibilities, as part of the registration process. It was also suggested that the use of a management agent should be encouraged, and that there could be a difference in the fee for landlord registration between those with agents and those without.

## **Letting agent register**

### **Strengths**

Comments included that letting agent registration, and the associated Code of Practice, has done much to ensure a better standard of management where an

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<sup>9</sup> Registers of Scotland is the Scottish Government's IT partner for the Scottish Landlord Register. Local authorities are responsible for the administration of landlord registration to address known data quality issues, for example duplicate records and imported data errors from previous system.

agent is used by a landlord. It was suggested that the system is functioning effectively and has resulted in enhanced protection for landlords and greater protection for tenants of badly performing landlords.

There was particular reference to increased professionalism connected to mandatory training and CPD requirements.

## **Weaknesses**

Some weaknesses identified reflected those raised in relation to landlord registration and included that there may be a lack of action against unregistered agents, or those that do not otherwise follow the rules. There was also reference to high levels of inconsistency between operators, and it was reported that there are agents who operate to very poor standards; the concern was both that tenants are not well looked after and that the property owner's reputation can be damaged.

The importance of ensuring that staff are properly trained and accredited was highlighted. There was concern that untrained staff may undermine the drive to professionalise the sector as well as the investment made by those letting agencies that do encourage staff to study for qualifications and undertake CPD. A 'Housing, legal or advice agency or professional or representative body' respondent reported that they have commissioned an independent review (to report later in 2022) of the impact of letting agent regulation, and what difference application of CPD requirements could make to improving the performance of private and social landlords.

Other issues identified included that:

- The process for raising complaints against agents needs to be considered.
- There is some ambiguity around who needs to be registered in the case of family-run firms. There are also no limits on the number of properties that a person can manage on behalf of family members, thereby avoiding registration and training.
- When local authorities raise queries around landlord registration, they tend to receive limited feedback from the Letting Agent Register.

Finally, it was suggested that any raising of professionalism and standards resulting from letting agent registration only comes into play when a landlord uses a letting agent, and many do not.

## **Suggestions for improvement**

A general suggestion was that the landlord registration and letting agent registration systems could be streamlined into one catch-all registration system. Other suggestions included that:

- Clearer guidance on what counts as CPD would be helpful.
- Creating a system whereby there is a benefit for landlords to use a registered agent would help drive up standards. Landlords who have their property with a registered agent could be exempt from the upload requirement.

- There needs to be a way to report unregistered or poorly performing agents.

## **HMO licensing**

### **Strengths**

Relatively few respondents commented on HMO licensing, but strengths identified by those that did included that there are now clear minimum standards, including in terms of numbers of tenants and around property and tenancy maintenance and management. It was also noted that HMO licences can be removed. Other strengths identified included that:

- It has been possible to make links to universities and student services.
- Local authorities have the ability to set their own fees for HMO licensing.

There was also a suggestion that the emphasis on health and safety that has accompanied HMO licensing has probably had the biggest impact on the sector.

### **Weaknesses**

In relation to weaknesses, there was a concern that more should be done to protect the rights of tenants. It was reported that there have been recent instances of tenants being illegally evicted when the landlord's HMO licence was revoked.

Other suggested weaknesses included that:

- The cost of HMO licensing is very high for landlords, particularly in proportion to the penalties if they do not adhere to the licensing regulations. It was reported that the current rate in Edinburgh is £871 for a four bedroom licence.
- HMO guidance is not being applied correctly to universities; it was reported that they are being treated as private landlords, meaning that some protections, such as in relation to staffing, sprinklers or an Electrical Installation Condition Report, may not be in place.

### **Suggestions for improvement**

Suggestions included that more needs to be done to protect the rights of tenants, and to ensure that they are fully aware of their rights when an HMO licence is due to be revoked. This could involve making it a statutory requirement that the local authority's HMO team provides the tenant with written advice and information on their rights if their landlord's licence is revoked.

## **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 Strategy.

The vision articulated in Housing to 2040 is a shift away from the existing Tolerable Standard towards the underlying principles 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 that affordability is balanced with quality improvement.

**Question 59 – 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?**

Around 570 non-campaign respondents made a comment at Question 59.

### **Strategic fit and alignment**

A number of these respondents commented on the general principle of a tenure-neutral Housing Standard and considered how it could or should align with other strategy and policy. Although some welcomed the commitment to consult on the principles underlying a proposed new Housing Standard, it was also suggested that it is difficult to comment on the barriers and required support without further detail.

Some non-campaign respondents also commented on how a Housing Standard would align with other policies and strategies. It was noted that social housing has historically been held to higher standards than other tenures and that there is already a complex set of existing legislation that governs standards and services. ‘Housing, legal or advice agency or professional or representative body’ respondents were among those looking for clarity on how the Housing Standard will align with existing requirements for the social sector. In terms of those alignments, there was reference to the existing Energy Efficiency Standard for Social Housing (ESSH2), including in terms of alignment with this Strategy, and it was suggested that an apparent delay in progressing the review of ESSH2 have also been unhelpful for social landlords. Other strategies cited included that the Heat in Buildings and Fuel Poverty Strategies.

Initial concerns or queries included whether new standard can be established without effectively reducing current standards in the social sector. There was also a view that it is hard to see why lower standards have been considered appropriate in other sectors, either in terms of combatting climate change or reducing fuel poverty.

In terms of delivery, it was thought that achieving lasting change across the rented sector will require tax, regulatory and other policy reforms and that the exact nature of these will depend on the Scottish Government’s ambition, how the scope for alignment across the whole rented sector is defined and developing a collective understanding on the case for alignment of standards and services.

In terms of the breadth of the proposed Housing Standard, one understanding was that it will relate solely to physical property standards, but that it would be good to know whether it will cover energy efficiency and zero emissions heating alone or whether it would be broader – for example covering relet standards, space

standards and other design issues. Another perspective was that there could be opportunities for alignment on tenants' rights, customer service, affordability and regulation.

However, it was also suggested that standards across the tenures will never really be comparable without a uniform system of regulation across all housing tenures, and that this would not be possible.

In relation to how any Housing Standard could or should be framed, other comments and suggestions included that:

- Any Housing Standard should consider wheelchair accessibility and promote this in private sector new build housing development.
- It will be important to understand regional differences and to complete Island Communities Impact Assessments.

### **Energy efficiency requirements**

In terms of key challenges, meeting energy efficiency standards across the rented sector was a frequently-raised issue; it was often connected to other key challenges, including around financial constraints and a pressure on rents.

One concern was that there is a lack of suitable technology and a lack of clear direction and advice from the government on cost effective and practical ways to improve the energy efficiency of older properties. Other property-type related comments included that:

- Heat and energy efficiency requirements can be difficult and costly to retrofit in older properties with solid stone walls. Advice and guidance on carrying out works would be useful to avoid damage to properties.
- Housing stock of non-traditional construction can also present difficulties.
- There should be reasonable flexibility in terms of house types meeting the standards.

It was also suggested that there is a lack of confidence in heat pump technology in retrofit and that the extent to which district heating and heat networks should form part of the overall solution also needs to be clarified. A connected concern was around requiring the social housing sector to take a lead in this area, including accepting innovation risk. There was a view that this is likely to result in significant problems in programme delivery and keeping rents affordable.

There were also a number of references to EPCs and the various requirements to achieve particular EPC bands to specific timescales. They included a view that weaknesses in the EPC rating scheme creates unnecessary barriers; for example, it was reported that the rating gets worse if more carbon neutral heating is installed and that this is especially pertinent in 'off gas grid' localities. It was also reported that EPC methodology is not sympathetic to traditional building methods, neither recognising the thermal qualities of stone walls and concrete floors, nor ensuring that recommended actions do not damage the fabric of the building. It was suggested that there is a real danger of money being wasted by owners of all

buildings if deadlines for improvement are imposed prior to a thorough review and modernisation of EPC methodology to measure emissions and actual energy efficiency more accurately.

With specific reference to the EPC requirements for the PRS, comments included that the timescale proposed – application at change of tenancy from 2025, with a backstop date of 2028 for all remaining existing properties – does not provide sufficient time for landlords to undertake such sizable and potentially costly measures.

In relation to social housing, one view was that bringing properties up to EPC Band B is challenging, but something which would provide real improvements for tenants. However, there was also a query as to whether all of the of the EESSH2 standards are appropriate, or whether the costs of achieving them will outweigh the potential benefits, whilst pushing up rents. It was suggested that they may be too aspirational and need to be reviewed.

It was also suggested that the social sector needs greater technical support to identify the most appropriate solutions, especially as new technologies continue to emerge. There was reference to the findings and recommendations of the Zero Emission Social Housing Taskforce, including that the Scottish Government should help to co-ordinate existing activities, develop a central source of technical information and fund additional workstreams on specifications and design guides for other housing archetypes.

Other comments addressed whole-system requirements and included that increasing energy efficiency and warmth, and lowering the carbon emissions, requires integrated masterplans at a local authority or government level. It was suggested that a re-activated and modern infrastructure is fundamental.

### **Financial viability and rent levels**

As referenced above, the financial impact of meeting energy efficiency requirements was also identified as a key challenge. It was noted that any improvement in the energy efficiency of homes in the near future will have cost implications for landlords and that these need to be considered fully by government, regulators, lenders and other stakeholders to avoid any unintended consequences.

A tenure-neutral point was that, if landlords need to make a very significant financial investment in order to meet energy efficiency requirements, this may have to be passed on to tenants. However, it was also suggested that any new Housing Standard must provide positive outcomes for tenants and not compromise housing affordability.

In terms of social housing, it was suggested that social landlords will have to balance investment decisions with the potential impacts on rents or energy costs. There was a concern that investment in property is likely to be transferred on to the tenant and reflected within the rent that they pay. If this is to be the case, it was stressed that any increases must be reasonable.

## **Private rented pressures**

A number of non-campaign respondents highlighted particular pressures in rural areas, including in relation to the relative cost of carrying out work. Further comments included that it may not be viable to spend significant sums on a property which is of relatively low value both in terms of capital value and potential income. It was also suggested that if any cost cap is 'one-size-fits-all', it will favour higher value urban properties and potentially exacerbate the lack of housing in rural areas.

There were also concerns that smaller PRS landlords, including those who may have become landlords through inheriting a property or with larger mortgages and outgoings, may struggle to afford the necessary improvements and may exit the sector. However, a very different perspective, and a frequently-made comment, was that higher standards will pose no problem for professional landlords, who should already be used to delivering a quality service. In terms of some PRS landlords leaving the sector, it was suggested that they could sell to local authorities or housing associations, and that this should be encouraged.

## **Private rented funding options**

Those who commented tended to refer to some form of energy efficiency-related grant funding being required for the PRS. It was noted that some grant funding is already available, but it was suggested that it does not meet current demand.

Although some form of low or interest free loans were also proposed, it was suggested that low or moderate levels of grant funding are often a more attractive incentive. Other grants-related comments included that some form of means testing could be an option.

Other funding options proposed included:

- The creation of a Rural Home Just Transition Package which combines innovative investment mechanisms with targeted advice to support the transition to low carbon energy efficient homes.
- Reduced rate VAT for works aimed at achieving net zero emissions irrespective of being occupied within the last two years; it was noted that VAT is usually at the standard-rate where property is occupied or has been occupied in the previous two years.
- Equity release.

## **Social rented pressures**

In terms of the financial challenges facing social landlords, it was reported that:

- EESSH2 will cost housing associations around £2 billion – or around £7,000 per property.
- The costs of delivering deep retrofit, and implementing Enerphit standards for example, could cost at least £25,000 per property on average, with even greater costs expected for more complex buildings and for projects located in remote and rural areas.

It was also noted that cost estimates cover only the capital costs of installation and there will be further costs associated with managing upgrade programmes, any required enabling works and the costs of decanting tenants to temporary accommodation where required.

A 'Housing, legal or advice agency or professional or representative body' respondent reported that a recent survey of their housing association members found that almost 80% found sourcing funding and the capital investment for retrofit measures either 'very challenging' or 'extremely challenging', with the funding landscape described as complex and difficult to navigate due to the continual changes in scheme and eligibility criteria.

It was suggested that, especially when combined with the proposed requirements around repairing and safety standards, minimum space standards, digital connectivity and the future proofing of homes, the costs will be significant and cannot be funded through rental income alone.

### **Social rented funding options**

It was reported that the Social Housing Net Zero Heat Fund has been welcome, but it was noted that, like other available schemes, it remains a short-term and finite pot which requires 'shovel ready' projects. There was a call for a more strategic, needs-based allocation of grant funding through an approach which aligns business plans and asset management strategies with available funding opportunities.

Comments or suggestions about current or future financial support mechanisms included support for the creation of a Green Heat Finance Taskforce to explore alternative ways of funding and leveraging private investment. It was suggested that it could consider:

- Options for financing the required improvements over the longer term through innovative models such as collective purchase/collaborative procurement, Heat as a Service, and third-party ownership.
- The role of 'off-balance sheet' lending vehicles which do not constrain the capacity of housing associations to respond to multiple funding challenges.

Other funding-related suggestions included that:

- An investment programme needs to be in place to either subsidise the costs of properties that cannot be brought up to standard, or to replace them with newbuild homes, especially in more rural areas where alternative provision is limited.
- Housing Association Grant should be available to retrofit existing stock.
- Greater use should be made of reserves and the potential for refinancing to reduce or avoid passing on additional costs to existing tenants.

### **Support for tenants**

Connected to concerns that the energy efficiency improvements required may have a limited impact on fuel poverty, there was a suggestion the Scottish Government should provide targeted financial support for those who may be in fuel poverty as a

result of the transition to decarbonised heat. It was suggested that this could be addressed through a commitment to emergency redress funds which protects those on low incomes, including social housing tenants, from being negatively impacted by the rollout of new technologies.

### **Common repairs and mixed tenure stock**

A number of non-campaign respondents referred to the particular challenges associated with common repairs and delivering improvements – including energy efficiency-related improvements – in mixed tenure stock. One perspective was that private landlords often delay or prevent works being carried out, and it was also suggested that there can be challenges when owners do not wish to participate in modernisation and improvement work.

It was also reported that some local authorities are more able and willing than others to use available powers, such as those relating to paying missing shares and recharging owners, but that few if any councils would say they had adequate resources to fully exercise these powers.

There was specific reference to the challenges around traditional stone tenements, including the existing levels of disrepair and technical and legal barriers to delivering the required energy efficiency and heating upgrades. The convening of a Short Life Working Group to explore the challenges, and potential solutions, for tenements in more detail was welcomed, with other suggestions including that:

- Additional funding should be targeted at these hard-to-treat and mixed tenure archetypes which require innovation support and more complex solutions.
- Campaigns and further support are required to get everyone on board to fund housing improvements.
- Requiring maintenance funds to be set up for tenement buildings/properties where there are common elements.

Other general suggestions relating to common repairs and improvements to mixed tenure stock, included that the wider benefits of financial support to owners should be recognised. It was noted that supporting owners to take part in investment schemes will allow landlords to meet the necessary energy efficiency standards, which in turn benefits tenants.

Other comments or suggestions included that better tax incentives for work undertaken could be considered. It was also reported that there can be barriers to private landlords participating in some programmes, with the Home Energy Efficiency Programme for Scotland: Area Based Scheme's (HEEPS-ABS) work on external wall insulation cited. The associated concern was that their non-participation penalises private owners and makes it difficult for local authorities to deliver these beneficial programmes of work.

In terms of owner occupiers, a 'Local authority' respondent reported that they have been successful in accessing HEEPS-ABS to support owner participation in external wall insulation programmes. However, they suggested that further financial support needs to be made available to owners in mixed tenure blocks in some

property types and areas. They thought this was especially important for resident owners in low value areas where property equity is likely to be low.

### **Historic and listed buildings**

A small number of non-campaign respondents highlighted key challenges, associated with historic and/or listed buildings, including that more research and new technologies are required in terms of retrofitting more historical and protected buildings. It was suggested that the balance between retrofitting and conserving historically important buildings may need to be reconsidered in order to reduce the carbon emissions of those buildings.

However, there were also fundamental concerns about listed and traditional buildings being able to meet minimum energy efficiency standards. Returning to the issue of EPCs, it was suggested that they do not reflect any understanding of the kinds of energy efficiency measures which would be appropriate to install in a historic building.

It was also reported that, even if appropriate, energy efficiency improvements to historic buildings can be exorbitantly expensive, particularly when landlords have to obtain planning permission and Listed Building Consent. Along with calls to reform EPCs, clear guidance on how best to improve the energy efficiency of listed and traditional buildings, along with adequate funding, was requested.

### **Skills and supply chain challenges**

The other key challenge identified related to the lack of suitably qualified contractors, along with supply chain issues, making it difficult to deliver improvements, and energy efficiency-related improvements in particular.

It was reported that there are likely to be more acute problems in rural areas, but that access to skilled tradespeople, who are trained in the fitting and maintenance of new technologies, is limited across the country.

The lack of capacity in the supply chain was seen as being particularly problematic for the social sector if they are expected to meet higher energy efficiency standards and make the transition to zero emissions heat ahead of the private sector. A 'Local authority' respondent reported that the new PAS standards in respect of carrying out insulation works – the best and most cost-effective ways to tackle fuel poverty in their area – has resulted in their major insulation contractor entering into redundancy consultations with their workforce as it has not been possible to work to the Standard.

A 'Housing, legal or advice agency or professional or representative body' respondent reported that housing associations are experiencing both a skills and volume gap – within both their own organisations and wider supply chains. They suggested that this is partly due to the ongoing uncertainty around the most appropriate heating technologies, in addition to the more general labour pressures resulting from the pandemic and Brexit.

In terms of possible solutions going forward, it was suggested that:

- The Scottish Government should provide targeted grant funding for training and upskilling, with a system of equivalence to streamline accreditation processes.
- As already suggested above, a specific Rural Homes Just Transition Package could recognise the distinct challenges and opportunities in rural, remote and island communities.

A list of vetted tradespeople could be developed. This could include tradespeople who are willing to carry out small works.

## Disability and the Rented Sector

Housing to 2040 sets out the actions the Scottish Government 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. It notes that the Scottish Government is committed to undertaking a fundamental review of the adaptations system, and that this 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

**Question 60 – What is your personal experience in securing necessary adaptations for disability – 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?**

Around 175 non-campaign respondents commented at this question. Of these, around 45 respondents stated that their experience related to the PRS, around 10 respondents to the social sector and a small number to both. Some respondents said that they are private landlords but that their properties would not be suitable for someone needing adaptations, or that they have never had a tenant who has needed or has asked for an adaptation. A small number of respondents noted that their only experience related to owner-occupied sector and had not been positive.

### Experience and practice in the PRS

#### Landlords' experience

Many of those who commented referred to their experience as a private landlord, sometimes simply noting that adaptations had been made to their property. Examples given included the installation of ramps, railings and handles, and the installation of a wet room. Some referred to carrying out the work and others to agreeing to work being carried out.

In terms of funding, there were references to local authorities or tenants funding any work, but also occasional references to landlords making a contribution. For example, one respondent referred to agreeing to a request from a wheelchair user to replace carpets with the vinyl flooring and splitting the cost with the tenant. They explained that this split recognised that when the tenant leaves, the landlord would

need to fit carpet again. Others also referred to adaptations being removed when their tenant moved on.

Although some of those with experience of having adaptations done referred to the process being easy, including being as simple as confirming they consented, others referred to difficulties. For example, there was one reference to costs being exorbitant and another to trying, but failing, to get local authority help to install a walk-in shower for elderly tenants.

Very much reflecting other responses, a 'Private landlord, letting agent or their representative bodies' respondent reported that their landlord members' experience of disability adaptations had often been around the conversion of a bathroom to a wet room, arranged by the local authority. They noted that some landlords had reported a possible positive outcome being that the tenant might stay for longer, albeit that this is often not the case as disability conversions usually happen very close to the end of life or shortly before a tenant moves into a care home.

### **Tenants' experience**

A small number of 'Individual' respondents commented on their personal experience of trying to secure adaptations to a PRS home. These experiences tended to be negative and included:

- Trying but failing to get grab rails installed, with an overseas landlord failing to reply to requests.
- A local authority not supporting the adaptations they were looking for.
- Long waits for Occupational Therapy (OT) assessments.

There were also a small number of references to other disrepair, and problems getting issues such as dampness rectified, making it impossible or unpleasant to make use of adaptations – such as a walk-in shower – which had been carried out at the expense of the tenant.

## **Experience and practice in social housing**

### **Landlords' experience**

Comments were limited but included a view that adaptations work well in the social rented sector. It was also reported that the processes for housing associations to secure funding for adaptations are long established.

A small number of respondents referred to the approach in their area being tenure-neutral, including:

- The local authority having an integrated equipment and adaptation service which provides an all-tenure assessment for adaptations.
- A Care and Repair service delivering adaptations across tenures with 'co-located' input of specialist OTs. It was reported that this has led to a clear and streamlined set of arrangements in place, with the only overall constraint being the funding envelope to deliver the volume of adaptations the area requires.

However, there were also reports that, in some areas, the process to adapt a home can be very lengthy, including with long waiting lists for assessments. It was noted that this situation has been exacerbated by the pandemic.

### **Tenants' experience**

The small number of social tenants who commented had mixed experiences. For example, one tenant who had experience in both the PRS and the social sector reported that, although there had been a long wait, their experience in the social sector had been better. Another respondent reported that they had not had to wait long for a level access shower, although the wait for a stairlift had been longer and they are yet to have ramps installed.

A 'Tenants' and residents' groups' respondent reported that timescales for adaptations in local authority housing are too long, that staff do not always listen to tenants and that those carrying out assessments are not always trained to a high enough standard. They also reported that funding is not available throughout the year, with housing association tenants often being told that there are no resources available.

### **Barriers to adaptations**

From a local authority perspective, it was reported that the policy landscape is complex in terms of tenure, criteria, funding routes, responsibilities and definitions, and that this can make navigating the adaptations process challenging for both tenants and landlords.

In terms of barriers that were seen as common to both the PRS and social housing, comments included that cost can be a barrier and that adaptations can be expensive. It was also noted that some properties, and older properties in particular, may not be suitable for adaptations.

The shortage of OTs to undertake assessments was also raised, and that delays in accessing community care assessments can vary across local authorities. It was also reported that eligibility criteria can vary, meaning that what is available in one local authority may not be supported in another.

A specific issue raised was around additional challenges when adaptations are required to facilitate rehousing someone in different local authority area to that in which they are currently resident. It was reported that there can be confusion around which local authority is responsible for assessment of the suitability of the new property and for recommendation of any adaptations required.

### **Barriers in the PRS**

Specific comments about the PRS included occasional reports of there being no barriers, including one landlord who reported that over a 30 year period they had experienced no problems when their property had been adapted. However, other landlords did report that there are barriers, including that:

- Support systems rightly focus on the individual requiring the adaptation but can fail to engage with landlords.

- There can be issues with the quality of the work and, when it is undertaken by a third party, that the landlord has no control over this. A connected point was that the public liability insurance of tradespeople may not provide a safety net if their company is placed into administration.
- It can be more difficult to re-let properties that have been adapted. There was particular reference to bathrooms, and it was reported that, in many cases, landlords have stripped out the adaptations and renovated the bathroom at considerable expense after the disabled tenants have moved out.

From a tenant's perspective, it was reported that it can be difficult to obtain landlord permission and that some landlords are unwilling to carry out permanent adaptations. It was suggested that this often limits the ability of people who require adaptations to look for a PRS home. It was also reported that, if adaptation requirements occur during a tenancy, disputes can escalate to the point where a tenant is served a Notice to Quit.

Other barriers identified included that:

- Private rented tenants may not be aware that they are able to access funding for adaptations.
- MMR properties are considered as privately rented and this can leave tenants with limited access to grant funding.

### **Barriers in social housing**

The most frequently-identified barrier in the social sector was insufficient funding, and in particular that the monies available run out before the end of the financial year.

In relation to housing associations, it was suggested that the level of funds provided by the Scottish Government is insufficient, and that the current system is deeply unfair to those housing association tenants who may have to self-fund. There was specific reference to tenants of stock-transfer landlords who are in this position because of business plan settlements from 20 years ago.

### **Moving forward**

In terms of learning from existing practice, comments included that some adaptations do not require a specialist assessment, meaning that simple adaptations can be completed with minimal delay, easing demand on OT services. However, it was also reported that, while some housing providers have successfully employed housing OTs to enhance their adaptations services, their roles are most likely focused on re-housing and adaptation provision, rather than initial assessments.

There was support for Scottish Government plans to review the adaptations system and aids and equipment guidance. In terms of what any future system might or should look like, suggestions included that:

- A tenure neutral approach would be beneficial.

- Equity between social tenants would be improved by similar adaptations funding arrangements being in place for local authorities and housing associations. It was suggested that grant funding for adaptations should not be based on tenure but on need.

## Driving up Standards of Management

### A vision for cross-rented sector regulation

The consultation paper sets out the Scottish Government's vision that 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. In addition, it sets out four principles for regulation:

- Development of a private rented sector regulator to build on the strengths, experience and learning from the SHR and existing approaches.
- Private rented sector regulation will be based on clearly defined standards for quality, affordability and fairness.
- The regulatory approach will take account of evidence, views of stakeholders and value for money.
- The regulatory approach will reflect the overall ambitions of the Rented Sector Strategy.

**Question 61 – 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?**

Around 435 non-campaign respondents made a comment at Question 61.

Comments in support of the vision set out in the consultation paper included agreement with the focus on tenure neutral outcomes for tenants in both sectors, and with ensuring the right to adequate housing applies across all tenures. A PRS regulator was also seen as having a key role to play in empowering tenants, with a call for more effective enforcement of standards in the sector. While some felt that legislation provides private tenants with relatively strong rights, others saw a need for better mechanisms to ensure that private tenants can assert their rights, and access redress where their rights are not upheld. Reference was also made to potential for a regulator to improve awareness of rights among private tenants.

However, others felt that the vision and principles are too heavily weighted in favour of tenants; they wanted to ensure that any regulator balances support for tenants' rights with the rights of landlords and the need to achieve a high quality PRS.

Some of those broadly in favour of the vision for a PRS regulator also raised potential concerns or issues. For example, it was suggested that the regulatory approach must reflect fundamental differences between the social and private rented sectors, for example in terms of the profile of landlords, properties, and access to finance. There was also a view that differences in the structure and

operation of the private and social rented sectors are such that a consistent regulatory approach is unrealistic.

Concerns were also raised that the PRS regulator may become another layer of administration that unduly increases the regulatory burden on landlords, or that adds to confusion around accountability for tenants. It was argued that a proportionate approach to regulation should not disadvantage the majority of landlords and tenants in order to address the shortcomings of a minority. There were also concerns that a national regulator may lack important local knowledge.

For some non-campaign respondents, opposition to the vision for a PRS regulator as set out in the consultation paper, reflected opposition to the principle of such a regulator. This included some primarily 'Private landlord, letting agent or their representative bodies' respondents who raised concerns around the impact of further regulatory burdens and costs on landlords. It was suggested that such additional regulation would result in more landlords choosing to leave the sector and there was a call for an assessment of the regulatory and financial impact of a PRS regulator to be published alongside the final strategy.

Some of those opposed to the vision suggested that the existing regulatory framework has not been effective in improving standards among landlords who do not comply with legislation, and expressed scepticism around potential for a PRS regulator to change this. A range of respondents, including 'Private landlord, letting agent or their representative bodies' and 'Local authority' respondents, suggested that the vision for a PRS regulator does not make clear how this would add to capacity or value for money of enforcement. It was argued that a focus on ensuring local authorities have sufficient resources and support to enforce current regulations would be preferable to establishing a new regulator.

### **Role of a PRS regulator**

With respect to the role of a PRS regulator, there were views that this will ensure a more consistent approach to administration and enforcement. It was suggested that the efficacy of a regulator will depend on the structure, scope and powers of the role, and there was a view that it is not possible to reach any conclusion about the vision and principles without these details.

Respondents also highlighted the importance of clear definitions of terms and robust processes, and saw a need for a clear remit to be set out. There were calls for further detail on how the regulator's remit will integrate with other bodies contributing to a high quality rented sector, with a proposal for an Ombudsman role alongside the regulator. A clear remit for a PRS regulator was seen as particularly important for RSLs providing MMR properties, who will be subject to oversight from both social and private rented housing regulators.

There was specific support for the PRS regulator drawing on the experience of the SHR, including reference to establishing a culture of accountability and effective self-assessment. It was also suggested that a PRS regulator should be willing to engage with the investor market to encourage new investment in the sector.

However, some respondents identified aspects of the SHR approach they would not wish to be applied to the PRS, including a lack of enforcement powers and reliance on landlord self-reporting. There was also a view that the number and diversity of private landlords means that it would be very challenging for a regulator to have meaningful oversight of every landlord.

### **Clearly defined standards**

In relation to 'clearly defined standards of quality, affordability and fairness' there was a view that definition of these terms has been ambiguous in regulation of the sector to date. Specific points raised in relation to applying clearly defined standards included that.

- Regulation should be based on a clear definition of what affordability means for the PRS.
- A definition of fairness should account for what was described as an inequality of power between landlords and tenants. It was suggested that there is an imbalance of power at the Tribunal, and there were associated calls for the regulatory approach to place a burden of proof on landlords.

The Letting Agent Code of Practice was suggested as a potential model for standards for private landlords.

### **Evidence, views of stakeholders and value for money**

Some respondents agreed that regulation should include input from a wide range of stakeholders. There was also a view that the importance of engagement with private tenants should be emphasised, reflecting concern that tenants' voices can be 'drowned out' by landlords. There was also a call for the regulatory framework to set out guidance and best practice to ensure landlords take an inclusive approach to engagement with tenants and other stakeholders.

Value for money was a particular area of concern for some respondents. It was argued that careful balancing of costs and benefits associated with a PRS regulator is required, both in terms of cost to the public purse and the potential financial impact on private landlords. As noted above, this reflected concerns around the potential financial impact of a PRS regulator, and whether there is likely to be sufficient improvement in standards to justify this.

### **Additional principles**

Respondents also highlighted several other principles which they wished to see reflected in the approach to regulation of the PRS including:

- Ensuring that private tenants live in genuinely affordable housing. It was argued affordability should be included as a specific principle since affordability is the most significant issue for many private tenants.
- Accountability to tenants. Respondents highlighted the importance of the regulator being taken seriously by landlords.

- Climate justice. Respondents drew links between climate change, housing quality and fuel poverty, arguing that the impacts of climate change are not felt equally across Scotland's communities.

Ensuring good relations between tenants and landlords. Research indicating the importance of the tenant-landlord relationship in securing positive outcomes for tenants was reported. There was a call for this relationship to be reflected in the principles for a PRS regulator, for example including a role for mediation.

## **Annex 1 - Organisations responding to the consultation**

### **Academic or Research Group (n = 3)**

CACHE Conference  
Indigo House Group  
JRF Tenants Insight Project

### **Housing, Legal or Advice Agency or their Professional or Representative Body (n = 8)**

Advice Direct Scotland  
Ayr Housing Aid Centre SCIO  
CIH Scotland  
Citizens Advice Scotland  
Glasgow Student Housing Cooperative  
Law Society of Scotland  
SafeDeposits Scotland  
Scottish Association of Law Centres

### **Local Authorities or their Representative Bodies (n = 23)**

Aberdeen City Council  
Aberdeenshire Council  
Angus Council  
Argyll & Bute Council  
City of Edinburgh Council  
Comhairle nan Eilean Siar, Housing Team  
Dumfries and Galloway Council  
Dundee City Council  
East Ayrshire Council  
East Lothian Council  
East Renfrewshire Council  
Falkirk Council, Corporate & Housing Services  
Glasgow City Council  
Inverclyde Council Public Protection  
Moray Council  
North Lanarkshire Council  
Renfrewshire Council  
South Ayrshire Council  
South Lanarkshire Council  
Stirling Council  
The Association of Local Authority Chief Housing Officers (ALACHO)  
The Highland Council  
West Lothian Council

### **Other Private Sector (n = 3)**

Homes for Scotland  
Northern Developments  
Solutions Developed

### **Other Professional or Representative Body (n = 5)**

Central Association of Agricultural Valuers / Scottish Agricultural Arbiters and Valuers Association  
Royal Institution of Chartered Surveyors (RICS)  
Scottish Land & Estates  
Scottish Property Federation  
UK Finance Limited

**Private Landlord, Letting Agent or their Representative Bodies (n = 55)**

2 plus 2 equals Ltd  
A Flat In Town Ltd  
Annandale and Lochwood Estates LLP  
Balmyre Farm  
Balnamoon Farms Company  
Ben Property Management Ltd  
BruceRae Ltd  
Cawdor Estate  
Craigmar Properties  
Cromartie Estate  
Cullen Property Ltd  
Darcie Developments  
Davidson & Robertson  
Duncraggan Properties  
Dunecht Estates  
Glamis property services  
Hillcrest Enterprises  
Historic Houses  
Homes for Good  
Hopetoun Estates  
Jackal Properties Ltd  
Jamieson Properties Co  
Kirkgate Developments Ltd  
Landlords matter  
Lar Operations CIC  
Lawson & Thompson  
LET it  
Littlejohns Ltd  
Milton of Drimmie Farming Partnership  
Moray Estates  
Neil Reid Property  
New Start Property  
Newhill Properties Limited  
Newlyn Property Developments  
One Stop Properties (Glasgow) Ltd  
Paul Rolfe Letting  
Penguin RE  
Peterkins  
Propertymark  
Rettie & Co.  
Safeagent  
Scottish Association of Landlords  
SJBMAC IL  
Southesk Estates  
St Malo House Ltd  
Student Bubble Ltd  
Tay Letting Ltd  
The Dupplin Trust 2000  
Trosten Ltd  
Umega Lettings  
University of Edinburgh  
University of St Andrews  
WEPL  
Winchesters Lettings Limited  
Your Move

**Public Body or Agency (n = 8)**

Crown Estate Scotland  
Equality and Human Rights Commission  
Highlands and Islands Enterprise Limited  
Poverty and Inequality Commission  
Public Health Scotland  
Scottish Land Commission  
The Property Ombudsman  
The Scottish Courts and Tribunals Service

**Religious Group or Body (n = 4)**

Peedie Kirk  
Religious Society of Friends General Meeting for Scotland (Quakers in Scotland)  
The Church of Scotland General Trustees  
The Scottish Churches Committee

**Social Landlords or their Representative Bodies (n = 12)**

Castle Rock Edinvar (trading as Places for People Scotland)  
Cloch Housing Association  
Eildon Housing Association  
Glasgow and West of Scotland Forum of Housing Associations  
Home Group  
Kingdom Group  
Link Group Ltd  
Port of Leith Housing Association  
Scottish Borders Housing Association  
Scottish Federation of Housing Associations  
West of Scotland Housing Association Ltd  
Wheatley Housing Group

**Tenants' and Residents' Groups or their Representative Bodies (n = 9)**

Central Scotland Regional Network  
Edinburgh Tenants Federation  
Living Rent, Scotland's Tenants' Union  
Regional Network, rent setting and affordability working group  
Scottish Confederation of Park Home Residents Associations (SCOPHRA)  
South Lanarkshire Tenant Participation Coordination Group  
Tenants Information Service (TIS)  
TPAS North of Scotland Regional Network  
TPAS Regional Network of Registered Tenant Organisations (Region 2 – SE Scotland))

**Third Sector Organisation (n = 22)**

AdvoCATSeastmids  
Age Scotland  
Battersea Dogs & Cats Home  
Blue Cross  
Cats Protection  
Child Poverty Action Group in Scotland  
Crisis  
Cyrenians  
Dogs Trust  
Electrical Safety First  
Everyone Home Collective  
Homeless Action Scotland  
JRF

Jubilee Key Scheme (SC030049)  
NOAH  
RSABI  
ScotPEP  
Scottish SPCA  
Scottish Women's Aid  
Shelter Scotland  
The Society for companion Animal Studies (SCAS)  
Women's Support Project

**Union, Student or Campaign Group (n = 18)**

Common Weal  
Dundee Student Renters Union  
Edinburgh University Students' Association  
Generation Rent  
Glasgow City Unison (12,500+ members)  
Glasgow Trades Union Council  
Glasgow University Environmental and Sustainability Team  
Glasgow University Students' Representative Council  
GMB Scotland  
NFU Scotland  
NUS Scotland  
Scottish Tenant Organisation  
Scottish Trades Union Congress (STUC)  
Unison Scotland  
Unite Not for Profit, Edinburgh  
Unite the Union Scotland  
University and College Union (UCU) Scotland  
University of St Andrews Students' Association



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Any enquiries regarding this publication should be sent to us at

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