



The Scottish
Government

Housing, Regeneration and Planning

Charging of Premiums in the Private Rented Sector

Analysis of Consultation Responses



social
research

**CHARGING OF PREMIUMS IN THE PRIVATE
RENTED SECTOR:
ANALYSIS OF CONSULTATION RESPONSES**

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**Scottish Government Social Research
2012**

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CONTENTS

EXECUTIVE SUMMARY

1.	INTRODUCTION	1
2.	OVERVIEW OF RESPONSES.....	3
3.	RESPONSES TO THE CONSULTATION EXERCISE	5

ANNEX ONE CONSULTATION RESPONDENTS ANALYSED

LIST OF TABLES

Table 2.1: Distribution of Responses to Charging of Premiums in the PRS Consultation
Table 3.1: Responses to Q1a by Stakeholder Group
Table 3.2: Responses to Q2a by Stakeholder Group
Table 3.3: Responses to Q3a by Stakeholder Group
Table 3.4: Responses to Q4a by Stakeholder Group
Table 3.5: Responses to QD6 by Stakeholder Group

EXECUTIVE SUMMARY

Introduction

Although it was intended that existing legislation should prevent charges being applied to tenants other than rent and a refundable tenancy deposit, evidence suggests that additional charges are being made to tenants.

The Private Rented Housing (Scotland) Act 2011 will change the law on premiums in the private rented sector. Firstly, it will amend the existing definition of a premium and secondly, it will provide powers to Scottish Ministers, through secondary legislation, to outline permitted charges.

This consultation sought views on three potential options:

- embarking on a consumer focused communications exercise to clarify the definition of a premium;
- developing secondary legislation which specifies categories of sums which are permitted to be charged for providing services to a tenant, **with** maximum allowable amounts for each charge; and
- developing secondary legislation which specifies categories of sums which are permitted to be charged for providing services to a tenant, **without** maximum allowable amounts for each charge.

The report provides an analysis of responses received to the consultation.

Overview of the response

There were a total of 424 responses to the consultation, including two petitions. These included 300 responses which were submitted as a result of a publicity exercise by Shelter, of which 201 were identical responses. In addition, ten identical responses came from the Edinburgh Private Tenants Action Group (EPTAG), five identical responses from private individuals and two identical responses from letting agents. For analytical purposes, we therefore considered 210 responses.

Nearly two-thirds of responses came from private individuals and nearly one fifth from letting agents (although some letting agents described themselves as private individuals). Less than ten per cent of the estimated 500 letting agents in Scotland chose to respond. Other significant respondent groups included professional, representative or trade bodies (7%) and local authorities (4%).

Summary of responses

- Almost three-quarters of respondents (73%) supported option 1, (which would involve amending and publicising the definition of a premium through a customer focused communications exercise, in order to provide clarity). Two-thirds of all respondents (67%) indicated that it was their preferred option. However, only one letting agent and five local authorities (50%) responding identified it as their preferred option.

- For many, the key argument in favour of option 1 was that it would promote and reinforce their view of the existing law.
- Of those expressing a view, the majority felt that option 1 would have minimal impact on the sector as not all agents currently make such charges as part of their business model. They suggested that any costs incurred as a result of implementing this option would either be passed on to landlords or absorbed. Some argued that the charges currently made by some letting agents were greater than the costs involved and not charging fees would improve perceptions of the sector.
- However, others (in particular, those letting agents who responded) suggested that not charging fees could have an adverse effect, either on tenants as a result of increased rents - or on agents if they were to absorb the costs.
- One quarter of respondents (25%) supported option 2 (which would involve developing secondary legislation in order to specify charges that should not be classed as a premium, along with maximum allowable amounts for each charge), with all indicating that it was their preferred option. This was the most popular option among letting agents with around two-thirds of those responding (65%) selecting this option.
- Many letting agents supporting option 2 argued that there are legitimate charges they require to make to tenants in order to deliver an effective and quality service. Some argued that this approach was more transparent than including such costs within rents on an ongoing basis.
- However other respondents, both supporting and opposing option 2, suggested that setting maximum allowable amounts was not an appropriate task for Government and could stifle competition.
- The final option (developing secondary legislation to specify the charges without a maximum allowable amount) was least favoured with less than ten per cent of respondents indicating that they supported it. By far the most significant support for this option came from letting agents.

1. INTRODUCTION

About this report

- 1.1 This report provides an analysis to the Scottish Government's "Consultation on the Charging of Premiums in the Private Rented Sector". The report provides a detailed analysis of each element of the consultation. It looks in detail at the responses to the consultation questions and provides an analysis of the views of particular groups, highlighting trends and issues where appropriate.

Background to the consultation

- 1.2 Letting agents play an important role in the private rented sector (PRS) in Scotland. The industry has been expanding as access to owner occupation becomes more constrained, and property owners become private landlords due to difficulties selling their properties. Letting agents support landlords by managing private rented property and help prospective tenants to access suitable accommodation. It is estimated that there are approximately 500 letting agents operating in Scotland. They are involved with around 150,000 private lettings in Scotland each year, representing half of the annual transactions in the sector¹.
- 1.3 Although it was intended that existing legislation (Section 82 of the Rent (Scotland) Act 1984 and Section 27 of the Housing (Scotland) Act 1988) should prevent charges being applied to tenants (other than rent and a refundable tenancy deposit), there is evidence that a variety of additional charges are being made to tenants. This seems to result from a lack clarity regarding the definition of premiums.
- 1.4 When fully commenced, Section 32 of the Private Rented Housing (Scotland) Act 2011 will change the law on premiums in the private rented sector. Firstly it amends the definition of a premium so it is clear that a premium:
- is any fine, sum or pecuniary consideration other than rent and a refundable deposit (equivalent to no more than two months rent); and
 - includes any service or administration fee or charge.
- 1.5 Secondly, Section 32 includes a new section 89A into the 1984 Act which provides Ministers the power to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy.

¹ CityLets Data Source (www.citylets.co.uk)

About the consultation

- 1.6 The consultation seeks views on three specific options:
 - embarking on a consumer focused communications exercise to clarify the definition of a premium;
 - developing secondary legislation which specifies categories of sums which are permitted to be charged for providing services to a tenant, **with** maximum allowable amounts for each charge; and
 - developing secondary legislation which specifies categories of sums which are permitted to be charged for providing services to a tenant, **without** maximum allowable amounts for each charge.
- 1.7 The consultation included 22 questions, 15 of which related to the proposed options and the impact of proposals. The remaining seven questions related to annexes within the consultation document containing a draft Business Regulatory Impact Assessment and the draft Equalities Impact Assessment.
- 1.8 Respondents were able to provide either an open response or complete the consultation questionnaire, offering systematic responses to each of the consultation questions.
- 1.9 The analysis was undertaken using a response matrix. Respondents were categorised into stakeholder groups and responses were fed into the matrix in accordance with the answer to the consultation question. General and additional points that did not relate to the questions were fed into a separate section of the matrix and analysed manually.
- 1.10 Where a respondent chose not to answer the consultation questionnaire, the response was read thoroughly and where the respondent directly answered any of the questions, the comments were fed into the appropriate place on the matrix. Other substantive comments were treated separately as with other responses.
- 1.11 The analysis drew out the themes emerging within each of the questions posed and the range of views being expressed. It also highlighted any specific trends among stakeholder groups.

2. OVERVIEW OF RESPONSES

Introduction

2.1 This section provides an overview of the responses received to the consultation. It considers who the responses came from, who was not represented in the response, and provides general comments on the responses.

Who replied to the consultation?

2.2 The consultation was publicised to a broad range of consultees with an interest in the issues. Consultees included letting agents; local authorities; housing; consumer and industry stakeholders; and other interested or relevant organisations and individuals.

2.3 A total of 424 responses were received to the consultation from organisations and private individuals (Annex 1), including two petitions. Of these, we identified four groups of identical responses submitted with different names on the Respondent Information Form (RIF).

2.4 Of the 424 responses to the consultation, 300 responses were submitted as a result of a publicity exercise by Shelter, of which 201 were identical responses. In addition, ten identical responses came from the Edinburgh Private Tenants Action Group (EPTAG), five identical responses from private individuals and two identical responses from letting agents. Following the standard approach adopted by the Scottish Government, we have treated each group of identical responses as 'campaigning' and therefore as single responses for quantitative analytical purposes. We also treated each petition as a single response.

2.5 This meant that 214 were not included as individual responses resulting in there being a total of 210 responses to be analysed. Where respondents have shared responses and submitted similar (but not identical) responses, these have been included in the analysis.

Type	Total received	% of responses
Private Individual	133	63
Letting agent	38	18
Professional/ representative or trade bodies	15	7
Local Authority	10	4
Other	5	2
Public petitions and campaigns	5	2
Voluntary organisation / Charity	4	2
Total	210	100

- 2.6 As Table 2.1 shows, the largest group of responses (63%) came from private individuals. The next most significant respondent group was from letting agents (18%). However, it is worth noting that a number of letting agents chose to respond as private individuals and this number is therefore understated. Other significant respondent groupings were professional / representative and trade bodies (7%) and local authorities (4%). There were five responses each (2%) from the 'other' category and from the 'public petitions / campaigns' category. This latter group included the 'campaign' responses through Shelter and EPTAG. There were four responses (2%) from voluntary and charitable organisations.

Who was not represented in the responses?

- 2.7 Responses came from a wide cross-section of organisations and individuals with an interest in the proposals.
- 2.8 Although the second largest respondent group, less than 10 per cent of the estimated number of letting agents in Scotland submitted a response. However, responses were received from two letting agent representative bodies. Less than a third of local authorities (31%) responded to the consultation.

The interpretation of quantitative and qualitative information

- 2.9 The analysis used both a quantitative and qualitative approach. A quantitative approach was used to demonstrate how strongly different elements of the proposals were supported or opposed. This was particularly appropriate due to the use of 'tick boxes' for the questions relating to each of the proposed options. The report uses tables to identify the general opinion among respondents. In a small number of cases, respondents gave a narrative response to a particular question but did not use the tick box. In these cases, where the comment clearly implied agreement or disagreement with the proposal, we have assumed either 'yes' or 'no' for the quantitative analysis. Where the comment was non-committal in terms of agreement, we have included the answer as 'other comments'.
- 2.10 A qualitative approach has been the main focus of the analysis, based on what people said and trends in views. This qualitative approach has allowed us to identify the key themes emerging from the consultation and particular areas of agreement and disagreement among respondent groupings.

3. RESPONSES TO THE CONSULTATION EXERCISE

Introduction

3.1 This section considers the responses to the consultation questions posed in the consultation document.

Question 1a

Should the Scottish Government embark on a consumer focused communications exercise as set out in the ‘Option One’ box above? Please explain why.

Table 3.1: Responses to Q1a by Stakeholder Group					
Type	Yes (and preferred option at Q4) ²	Yes (but preferred another option at Q4)	No	Other comments	No response
Private Individual	111	3	16	0	3
Letting agent	0	8	29	1	0
Professional/ representative or trade bodies	11	0	3	0	1
Local Authority	5	1	4	0	0
Other	2	2	1	0	0
Public petitions and campaigns	2	0	1	0	2
Voluntary organisation/ Charity	4	0	0	0	0
Total	135	14	54	1	6
<i>Percentage</i>	<i>64%</i>	<i>7%</i>	<i>26%</i>	<i>0%</i>	<i>3%</i>
<i>Percentage of those responding</i>	<i>66%</i>	<i>7%</i>	<i>26%</i>	<i>0%</i>	

3.2 A large majority of respondents supported this option, with around three-quarters (73%) of those responding saying that the Scottish Government should embark on a consumer focused communications exercise. For 14 of these respondents (8 of which were letting agents) this was not, however, their preferred option. Around a quarter of respondents (26%) said that the Scottish Government should not embark on such an exercise. Most stakeholder groups broadly supported the option, with the exception of letting agents (none of whom put this forward as their single preferred option at Question 4) and local authorities (whose response was more mixed than other stakeholder groups).

3.3 Many private individuals chose this option because they felt it would ensure that charges they consider to be unfair would remain illegal. Many felt that the options explored in later questions would legalise what they consider to be poor practice, and this would lead to additional costs to tenants and prospective tenants. There was particular concern about the frequency, level and

² Question 4 asked respondents to state their preferred option.

application of fees relating to cleaning, inventories, assignation and credit reference checks. They often suggested that such costs should be passed onto the landlord, rather than the tenant.

“Option 3 would reward years of law breaking by legalising bad practice. . . Option 2 is little better . . . Only Option 1 will do anything to right the wrongs which have been suffered by hundreds of thousands of tenants over the years.”

(Private individual)

“Shelter Scotland believes that all premiums i.e. any fine, sum or other pecuniary consideration (and this included any service or administration fee or charge), other than rent and a refundable deposit of not more than two months rent should remain illegal and this should be communicated widely to all tenants, landlords and letting agent groups to clarify any existing ambiguity.”

(Shelter Scotland)

- 3.4 Respondents from a wide range of groups (private individuals, local authorities, voluntary organisations and representative bodies) who supported this proposal emphasised the need for greater promotion of the existing law, and work to raise awareness. Private individuals, letting agents, local authorities and others felt that clarification was required in this area – either because the law is unclear or is poorly understood.

“This option appears to be most appropriate in that it is most likely to deliver clear, unambiguous, transparent and easily comprehensible [and] explicable messages for both tenants and landlords [and] agents.”

(Argyll and Bute Council)

“Further clarity is required in order to avoid confusion and unnecessary bad feeling between tenants and landlords / letting agents.”

(1Let Ltd.)

- 3.5 Many, including a number of private individuals, some local authorities and representative bodies, emphasised the need to enforce the existing legislation alongside (or instead of) raising awareness of the existing law.

“Yes, but coupled to enforcement. . . Whilst there may be resource issues in the early stages for local authorities . . . CIH believes this would be short lived, as landlords become aware of the consequences of their actions.”

(CIH Scotland)

“As well as these charges remaining illegal, there needs to be a considerable effort on the part of the Scottish Government not only to communicate this fact effectively with the public, but also to enforce the legislation.”

(Private individual)

- 3.6 Some respondents (who both supported and did not support the option) argued that the law is already clear and does not need to be clarified – although they had sometimes quite different views about what was meant by ‘premium’. In particular, private individuals and letting agents had strong views on the current definition.

“The law is clear that any charge other than rent and a refundable deposit is an illegal premium. However, the majority of letting gents ignore the law and charge additional fees to tenants as a condition of the grant or continuance of a tenancy. It is important therefore that the law is reaffirmed . . .”

(Campaignatc)

“I am not satisfied that the previous legislation means what you claim in the executive summary. A premium is a charge over and above another charge . . . nowadays agents like us charge for extra services...”

(Trinity Factoring Services Ltd)

- 3.7 Those who disagreed with the option had different reasons. Some letting agents challenged the view that many charges come under the definition of a ‘premium’, suggesting that the 1984 Act never intended to prevent the types of reasonable charges now being made to tenants.

- 3.8 A number of letting agents and a local authority emphasised that any policy or practice which reduced the application of charges which have become accepted within the industry would likely lead to increased charges to landlords. These would be passed on to tenants in rent levels. They suggested that this would have a negative impact on the private rental market at a time when it will be increasingly relied upon.

A complete ban on any fees will have the negative impact of an immediate increase in most rents in the market . . . with very undesirable consequences to the tenants...”

(Martin and Company, Aberdeen)

- 3.9 A few respondents argued that while communication is important this option alone would be insufficient to address the lack of clarity.

“This still leaves a lot of ambiguity and potential for many hidden costs in rent charges. It also would not stop rising rent charges in the future as costs go up for landlords and letting agents.”

(Scottish Association of Landlords)

- 3.10 A number of private individuals and a few others felt that this option would be a poor use of public funds, and was simply unnecessary.

Question 1b

If you have answered ‘yes’ to question 1a, what is your assessment of the impact to the industry? If you are in a position to provide such information, please include indication of likely costs to businesses, where appropriate.

- 3.11 Just under a quarter (23%) of respondents provided further comments in response to question 1b, many taking the opportunity to reinforce views made earlier. Some respondents who answered no to question 1a did respond to this question.

- 3.12 A significant number of respondents, including private individuals, some local authorities, representative groups, a few letting agents and others felt that the proposals would have very little or minimal impact on the industry – even if this meant ending existing charges being made. In many cases, respondents said that the costs would simply be passed on to landlords, or absorbed in some other ways into the business model of each letting agency.

“All costs can be properly met under the management fee charged by agencies to the owners of the properties they manage, or should be “rolled up” in the rent, allowing tenants to compare like with like.”

(National Association of Student Money Advisors)

- 3.13 Private individuals in particular felt strongly that passing the fees on to landlords was a fairer approach, as they are the recipient or beneficiary of most of the services charged for.

“Letting agents are employed by landlords and it should be landlords who bear the cost.”

(Private individual)

- 3.14 A number of respondents emphasised that the costs of carrying out many checks for which charges are made, are actually much lower than the charges made. In this sense, the costs that may need to be absorbed may be much lower than the charges.

“...according to Shelter, the fees charged to tenants appear to be much higher than the costs incurred by letting agents and landlords to carry out reference and credit checks.”

(Edinburgh University Student’s Association)

- 3.15 A few respondents, including some local authorities, several private individuals and Shelter emphasised that a number of letting agents deliver successful businesses without charging such fees, which suggests that business models might be adapted to take account of any changes in practice.

“If some agents can afford not to charge premiums and still provide a service, we do not see why this should not apply to all agents.”

(The Moray Council)

“Currently running a one property operation, our business model is not to charge the tenant or prospective tenant for the privilege of applying, and therefore securing a tenancy for our property. This business model in our opinion is sustainable, and more customer focused.”

(Private individual)

- 3.16 Some respondents suggested that not charging such fees would have a positive impact on the sector, raising standards and improving perception.

“Aberdeen City Council are of the opinion that the impact on the industry will be to promote an open, honest, trustworthy and professional service and assist in driving out less scrupulous operatives from this sector.”

(Aberdeen City Council)

- 3.17 However, a range of respondents emphasised that such costs would ultimately be passed on to tenants in the form of rents.

“If current fees are outlawed, the net effect will be to push up rental thresholds and tenant costs will rise beyond combined current levels. The industry will not just simply absorb these legitimate costs.”

(Northwood Edinburgh Ltd)

- 3.18 Letting agents were most likely to consider the impact of the proposal as being significant, if agents came under pressure to stop charging what many consider to be reasonable administrative fees as a result of option one. They suggested two main potential negative impacts. Firstly, that particular checks will not be made with prospective tenants. This could lead to delays in securing tenancies, and other issues. Secondly, that administrative tasks continue to be made, but that charges are passed to landlords. Some warned that this could put significant pressure on landlords at a difficult time, and may even lead to their businesses folding and (as one respondent suggested) tenants being made homeless.

“The professional letting and property management business works on very small margins but the costs are ever increasing... If the applicant does not pay this cost then this will have to be borne by the landlord. However this may also mean that less diligence is carried out.”

(Glenham Property Management Ltd)

“Many small agencies will go out of business also with extra cost imposed on the landlords to claw back income many may start selling their letting properties.”

(Crichton- Stuart Management Company)

- 3.19 Only three letting agents provided evidence about the actual costs to their businesses. In one case, the agent said the income taken from such charges is in the region of £4,000 per year whilst another suggested that the reduction in income under this option would amount to £30,000 per year, which might be equivalent to two staff members. One said charges make up approximately eight per cent of their fee income in a year.

Question 1c:

If you have answered ‘yes’ to question 1a, can you provide examples of successful business models letting agents could adopt to ensure that the removal of such charges will not result in financial difficulties for their organisation?

- 3.20 Around one in five respondents (19%) commented on this question, many taking the opportunity to reinforce views made earlier rather than commenting on potential business models. Some respondents who answered no to question 1a did respond to this question.

- 3.21 Several letting agents suggested there were no alternative business models which would mitigate the impact of the removal of costs, again reinforcing their view that certain charges to tenants should be allowed.

“No. The removal of such charges will, unfortunately, have a negative impact whatever alternative business model is adopted.”

(DJ Alexander)

“I understand that some letting agents operate such a model and I dare say that adoption from day 1 would be feasible however for a mature businesses the removal of such an income stream can only be detrimental...”

(Belvoir Lettings, Falkirk)

- 3.22 However, a number of respondents including some local authorities, private individuals, and professional bodies emphasised that some letting agents run successful businesses without charging fees to tenants for many services which other letting agents do charge for. In their view, this illustrates that it is quite possible to run a successful business without such charges.

“There are currently many letting agencies that do not charge any extra fees at all, thus providing letting agents that do charge with examples of successful business models within the industry itself.”

(National Association of Student Money Advisors and Strathclyde Students’ Association)

“East Lothian Council has identified a number of letting agents who currently do not charge any fees to tenants or prospective tenants...”

(East Lothian Council)

3.23 A few private individuals emphasised that it was up to letting agents themselves to develop their business models in an appropriate way, within the law.

3.24 The most common suggestion was that letting agents would need to review the costs of any services currently charged to tenants and pass these on to landlords. Several letting agents, private individuals, professional or representative bodies, a local authority and others all suggested this – either because it was preferable to charging tenants or because there would be no alternative. They suggested that this could be achieved by charging an increased management fee to landlords.

“At its most basic, letting agents should receive fees from landlords, not prospective tenants.”

(Scottish Council for Single Homelessness)

“In our survey of fifty letting agencies in Edinburgh, we found three successful letting agencies that charge no premium to tenants. They instead charged landlords for their services.”

(Edinburgh Private Tenants Action Group)

3.25 The Moray Council suggested that it is also important to ensure landlords are treated fairly and receive a good service:

“Letting agents already charge landlords a percentage to look after the landlord’s property. Often the service provided for this percentage varies across letting agents . . . The preferred option would be regulation of the amount that a landlord can be charged by the agents and agreement on what the agents should provide for the sum charged.”

(The Moray Council)

3.26 Letting agents, a private individual and the Association of Residential Letting Agents (ARLA) reinforced comments made by a range of respondents in response to Question 1a, suggesting that the costs may ultimately be passed on to tenants in other ways. In particular, they felt that this would be passed on through rent increases.

“The loss of the fee income generated for services provided to tenants will result in fee increases to the landlords and ultimately increase the rents. This is likely to mean tenants paying more in the longer term.”

(ARLA)

“Charge the landlord the fee . . . It should be remembered however that if, ultimately, the first option is chosen then it will probably lead to agents passing on the fees to tenants by other means. For example . . . the first month’s rent increase[s].”

(Private individual)

- 3.27 Two letting agents suggested that some costs might be passed on to the tenant as an inventory fee, possibly at more than cost price.

“Some agents will likely charge tenants an inventory fee at more than cost price. The new TDS [Tenancy Deposit Scheme] system makes it entirely reasonable that this cost is shared between the landlord and the tenant.”

(1Let Ltd)

- 3.28 A student association and letting agency suggested that it might be possible for consumers to do some things themselves which agents currently charge for – such as organising references or credit checks. Although the letting agency did suggest this would be highly unusual.

Question 1d:

If you have answered ‘yes’ to question 1a, how could we ensure that this amendment to the definition of premium is clearly and effectively communicated to the industry and that any charges which would fall within the definition of premium, as amended, must stop?

- 3.29 Just under a quarter (22%) of respondents provided comments in response to question 1d, many taking the opportunity to reinforce views made earlier. Some respondents who answered no to question 1a did respond to this question.
- 3.30 Many respondents emphasised the need for effective communication, which was co-ordinated and tailored to reach specific target groups. In particular, a wide range of respondents called for effective awareness raising with letting agents and landlords, as well as tenants and the general public.
- 3.31 Letting agents, local authorities, private individuals, and professional or representative bodies proposed the use of existing networks or methods to raise awareness with landlords and letting agents. Many suggested working with industry or representative bodies, which have regular contact with their members.

“Letting agents and landlords could be reminded that premiums are illegal via industry associations like ARLA, SAL, local council PRS advisors and via the Landlord registration scheme.”

(Campaignatc)

- 3.32 Suggestions included:
- The Law Society of Scotland
 - Landlord Accreditation Scotland
 - Royal Institute of Chartered Surveyors Scotland
 - Association of Residential Letting Agents
 - Scottish Land and Estates.
- 3.33 A few respondents emphasised the role of local authorities in raising awareness - given their existing contacts with landlords and letting agents and their regulatory role.

“Local authorities could use their communication tools to alert agents, landlords and tenants to the changes. In East Lothian Council this might include the regular landlord and tenant newsletters, landlord registration email lists, the council website and the regular council newspaper.”

(East Lothian Council)

- 3.34 A number of respondents including letting agents, a local authority, professional or representative groups and private individuals suggested that there is a need for Scottish Government publications or guidance on premiums. Some suggested that this should be integrated into wider guidance in a co-ordinated way. In particular, it was suggested that information on premiums could be built in to new Tenant Information Packs, information on Short Assured Tenancy requirements, tenancy deposit schemes, HMO licensing and accreditation schemes, and the landlord registration website could offer opportunities.

- 3.35 There was also strong support for raising awareness among the public. There were various suggestions about how this might be achieved including:

- a national publicity campaign;
- working with advice organisations – such as housing advisors, student unions and specific organisations such as Shelter and Citizens Advice Bureaux;
- publicising information on online property sites (which are particularly used by students); and
- building information in to Tenant Information Packs.

“A nationally led campaign will enable the message to have the sufficient weight to be taken seriously.”

(Clackmannanshire Council)

“A publicity campaign would help – organisations such as Shelter, Citizen’s Advice and Edinburgh Private Tenants Action Group could be instrumental in assisting with this.”

(Private Individual)

- 3.36 Whilst there was support for greater awareness raising, a range of respondents including letting agents, local authorities, private individuals, professional or representative bodies and charity or voluntary organisations also placed a strong emphasis on the need to ensure monitoring, regulation and suitable

recourse are in place to deal with those who break the law. Some respondents reinforced earlier concerns that agents who currently break the law are not being challenged.

“Greater enforcement against letting agents would be absolutely necessary to put a stop to this already widespread flouting of the law.”

(Private Individual)

“First and foremost the Scottish Government needs to ensure proper enactment of current legislation and impose penalties, fines or sanctions on letting agents and landlords who flout this legislation.”

(Heriot-Watt University Union)

3.37 Others emphasised the need for a balance of awareness raising and regulation.

“...effective communication is most likely to come from a mixture of providing information clarifying that the charging of premiums is unlawful, in an accessible way to both landlords and prospective tenants, whilst penalising those who disregard the law.”

(CIH Scotland)

3.38 A range of respondents, including letting agents, local authorities, private individuals, professional or representative bodies and charitable organisations called for effective enforcement. This may include fines, court action, complaints processes, and banning some agents from practicing.

“Strict penalties / fines must be enforced and breaches must be monitored possibly via local authority landlord registration services...”

(Argyll and Bute Council)

“Various methods could be utilised such as fines, removal of accreditation or licensing, random checks or mystery shopping and contractual obligations to letting agencies and landlords.”

(Aberdeen University Students' Association)

“If premiums are charged, the letting agents should not be entitled to act as an agent.”

(The Moray Council)

3.39 Several representative bodies, charitable bodies and private individuals suggested there is a need for adequate support and information about reclaiming fees and simple processes for pursuing reclaims.

“The provision of a specialist court or tribunal for housing cases would enable consumers more easily to take action.”

(CIH Scotland)

“The Scottish Government may wish to suggest a course of action for a prospective tenant to take if an agent has broken the law by requiring a fee to be paid.”

(Shelter Scotland)

Question 2a: Should Scottish Ministers make secondary legislation that will identify categories of sums that are permitted to be charged to tenants and set maximum amounts for such charges?

Type	Yes (and preferred option at Q4)	Yes (but preferred another option at Q4)	No	Other comments	No response
Private Individual	17	1	112	0	3
Letting agent	24	1	13	0	0
Professional/ representative or trade bodies	2	0	12	0	1
Local Authority	4	0	5	0	1
Other	2	1	2	0	0
Public petitions and campaigns	1	0	3	0	1
Voluntary organisation/Charity	0	0	4	0	0
Total	50	3	151	0	6
<i>Percentage</i>	<i>24%</i>	<i>1%</i>	<i>72%</i>	<i>0%</i>	<i>3%</i>
<i>Percentage of those responding</i>	<i>25%</i>	<i>1%</i>	<i>74%</i>	<i>0%</i>	<i>-</i>

3.40 A large majority of respondents opposed this option with around three-quarters of those responding (74%) saying that Scottish Ministers should not take this course of action. Just over a quarter of those answering the question (26%) said that they agreed with the proposal but, for three of these respondents, it was not their preferred option. While the proposal was opposed by most of the stakeholder groups, it was supported by letting agents with 65 per cent of those that responded agreeing with this option. There was a mixed response from the ‘other’ category of respondents.

3.41 Many of the letting agents that supported the proposal argued that there are legitimate charges that are required for an effective and quality service and that these need to be permitted. In particular, several letting agents stated that pre-tenancy administration charges are a legitimate fee.

“I believe that any pre tenancy administration fees are not a premium as defined or intended under pre existing legislation, rather are charged in fair compensation for work undertaken on the tenant’s behalf pre tenancy.”

(Belvoir Lettings Aberdeen)

- 3.42 Letting agents and some private individuals argued that this type of charging (typically a referencing fee / forfeitable charge) is essential when setting up a tenancy at the application stage.

“If no fee was needed, tenants could apply for multiple properties with landlord or agent meeting references and all other costs, only to have the tenant withdraw their application at no financial loss to themselves. This would have disastrous consequences across the PRS, loss of rent, unfair costs to landlords, it would also encourage creative thinking on the part of the agent / landlord.”

(Steynlettings)

- 3.43 Many letting agents supported the approach arguing that while there are legitimate fees charged for services delivered, there needs to be established maximum levels since there is variation across the industry. Letting agents also supported a maximum as it would protect tenants from exploitation and would *“curb the excesses of a minority of agents who give the sector a bad name”* (Allsop Residential Investment Management).

- 3.44 There was support for the measure from letting agents, local authorities and some private individuals on the grounds that it would bring greater clarity and openness. Some consultees felt that this option should be backed up with guidance and widescale publicity.

“We believe in complete transparency, and charges should be clearly explained and standardised across the industry as a whole.”

(Grant Property Solutions)

“Where permitted charges are created it will be essential that all stakeholders are fully aware of the detail of these charges. Information needs to be detailed and unambiguous perhaps supported by suitable guidance.”

(Dundee City Council)

- 3.45 The University of Edinburgh agreed that some charges (e.g. referencing and credit checks) should probably be chargeable to tenants and noted that the practice of charging is *“now so endemic that total removal would have a huge impact on the financial position of agencies”*.

- 3.46 The Scottish Association of Landlords (SAL) said that allowing certain premiums to be charged would have benefits for all parties involved:

“From a tenants perspective they see a fair and transparent process in which they can see exactly what their money is being spent on instead of it being hidden in rising rent charges. From a landlord or agents perspective this allows lower rents and better clarification on what fees they can charge. This is a more marketable business model for Letting Agents taking on a landlord’s property and as a landlord letting to a tenant.”

(SAL)

- 3.47 The proposal was opposed for a range of reasons. Many respondents opposed the charging of any premiums in the PRS while others supported fees but felt that the proposed approach was not desirable or workable.
- 3.48 Several private individuals argued that the application of premiums in the PRS should remain illegal and felt that secondary legislation would legitimise fees which they consider to be unfair. Some argued that tenants cover letting agency costs through their rents and others felt that it is the responsibility of the landlord to meet these costs.
- 3.49 Some private individuals argued that introducing secondary legislation would confuse the position that is currently clear in law. Several individuals as well as representative groups felt that allowing certain categories of premium would add financial pressure on tenants at a time when there is growing pressure in the PRS.

“With the strain that is already on the sector in terms of high demand for housing and rents increasing with demand, legitimising these added fees would put further strain on financially vulnerable private tenants and could increase homelessness rates and financial insecurity.”

(Private individual)

- 3.50 City of Edinburgh Council supported secondary legislation for categories of permitted charges but argued against setting maximum levels.

“Such caps, if set in legalisation, are difficult to later amend as market costs increase or decrease. A cap would only be effective if it placed a genuine constraint on the amount charged. Such a cap could quickly become outdated, forcing landlords or agents to seek compensation in a detrimental manner...”

(City of Edinburgh Council)

- 3.51 Two local authorities opposed the charging of fees to tenants and one was concerned that the approach could restrict access to the private rented sector.
- 3.52 A significant proportion of letting agents and one representative body argued that the residential letting industry should be able to set appropriate charges without the involvement of government and that the level of charges should be driven by the market.
- 3.53 Some letting agents were also concerned that the proposed approach to setting maximum levels would be inflexible and would need continual review. Several agents argued that the variety of services offered meant that it would be impractical to set a charge level across the industry.

“The Private Rented Sector in Scotland is made up of a vast array of privately run companies, which offer a great variety of properties with varying rental levels, service a whole variety of tenant groups and offer different services to suit.”

(Ryden Lettings)

Question 2b: If you have answered ‘yes’ to question 2a, please identify what tenant charges you believe should be permitted, along with a clear explanation as to why.

Question 2c: For those charges you believe should be permitted, please provide a maximum amount that should be applied to those charges – providing a clear explanation as to how you identified that amount.

- 3.54 There were a range of comments on the charges that should be permitted and the maximum amount that should be applied to these charges. The comments came mainly from letting agents, local authorities and private individuals and there was significant variation in the approaches favoured (and sums that should be applied).
- 3.55 There was strong support for permitting pre-tenancy charges relating to referencing and credit checks among letting agents. While some letting agents argued that these should be the only permissible charge, others included them alongside additional charges. Some letting agents argued that there should be a single ‘simply structured’ charge at the beginning of a tenancy.
- 3.56 Those in favour of pre-tenancy reference and credit checks generally felt these were necessary to ensure that the tenant is “fit and proper” and that it was appropriate for the tenant to meet this cost.
- 3.57 There were mixed views on the appropriate level to set as a maximum for pre-tenancy administration costs. Proposals were generally based on existing practice. Among the letting agents advocating a single pre-tenancy charge proposals ranged from £50 per applicant to £125 plus VAT. However, there was some consensus that £75 to £100 would be an appropriate maximum for reference and credit check fees.

“To administer and process a credit check and two references using external credit reference agencies a charge of £50.00 per applicant should be acceptable and cover the costs to carry out.”

(Glenham Property Management)

“A charge of £75 per tenant would cover the administration costs to check the necessary references from previous or current landlords, employers, character referees and bank / credit checks for tenant or guarantor if applicable.”

(Private individuals)

“General fee to be on a sliding scale depending on the number of tenants to be occupying the property to a maximum of £125.00 +vat. This will take into account some tenants will need less help than others and is therefore seen as an average figure.”

(Aberdeen Property Leasing)

3.58 Some letting agents gave more detailed lists of the charges that they felt should be permissible and the maximum amounts that should be applied. 1LET Ltd. argued that *“it makes sense for tenants to have to make some form of payment in order to demonstrate their interest and commitment”* and felt that the following fees should be permitted:

- Application Processing Fee at a maximum of £50 plus VAT per tenant (refundable if application not accepted);
- Reference Check Fee at a maximum of £25 plus VAT per tenant (non refundable);
- Refundable Holding Fee at a maximum of £100 per property.

3.59 Another letting agency argued that tenants need to pay for direct and indirect costs to the agent as these would otherwise be transferred to landlords. They said that since landlords already have a number of fees to bear (EPCs, safety checks, Landlord Registration, etc.), this would add financial pressure and may choose to leave the sector reducing housing stock availability. They also felt that the knock-on effect could be increases in rental levels, and argued for a proportional approach with no fees applicable to properties under a specific rental level (e.g. £375 pcm). For rent above that level the following fees should apply:

- Tenant Referencing – including credit checks by third party (Maximum £100 plus VAT per person);
- Guarantor Referencing - including credit checks by third party (Maximum £100 plus VAT per person) – would need to be for rents under £375 pcm as well;
- Administration – negotiation on behalf of prospective tenants with landlords – over rent / furnishings / property condition / requested upgrades etc (Maximum of £100+VAT per person);
- Tenancy renewals - negotiation on behalf of prospective tenants with landlords - over rent / furnishings / property condition / requested upgrades / lease lengths (maximum of £60+VAT per tenancy).

Question 2d: How can Scottish Ministers ensure that such a list of permitted charges (along with associated maximum costs) reflects market changes?

3.60 Several respondents to this question said that this will be a difficult task for the Scottish Government to undertake and some reiterated their view that charges should be determined by the market. Some letting agents stressed that the Government would need to liaise with external bodies (in the letting industry) for advice on market changes such as representative bodies or a selection of local letting agencies.

“...regular dialogue with professional bodies such as the Scottish Property Federation, ARLA and the RICS would ensure that the Scottish Government are likely to be kept aware of market forces, particularly in respect of the effect of any legislation or regulation on the markets and how that may effect agents’ costs.”

(Allsop Residential Investment Management)

- 3.61 Many of the respondents felt that permitted charges should be reviewed on an annual basis and there were calls for transparency in the process.

“Provision for review can be inserted into the Statutory Instrument to include annual review of rental level and maximum amount of Tenant Charges to be published by the Scottish Government for communication purposes.”

(Countrywide Residential Lettings)

- 3.62 A number of respondents said that the best approach would be to monitor the actual costs being incurred in the industry for credit checks and other outsourced costs.

“There is a very competitive referencing and credit checking market and it would not be too difficult to compile a study using several regulated letting agents to assess the average time it takes to process applications and add the costs of credit checking at market rates.”

(Private individual)

- 3.63 Some private individuals and letting agents said that the permitted charges should be linked to inflation.

“These charges should be linked to RPI (and not CPI) to reflect any future inflation (including housing cost).”

(Martin and Co. Aberdeen)

Question 2e: What is the likely business impact of your proposals? Please include an indication of likely costs to the industry, where appropriate.

- 3.64 Many of the responses to this question were general and gave a view on the impact of establishing permissible charges rather than the impact of specific proposals.

- 3.65 Some lettings agents said that allowing reasonable charges will have a positive effect and will improve the service delivered to tenants. A number of lettings agents felt that the main impact would be a loss of income for unscrupulous agents that are currently charging unfair fees.

“The current proposal would have the desired impact on unscrupulous landlords and letting agents who will not be able to charge unjustifiable fees.”

(Martin and Co Aberdeen)

- 3.66 Several letting agents put forward proposals that are similar to existing practice and said that, as such, there would be minimal impact on the industry. The status quo would be maintained and letting agents would be able to continue providing their current service. These respondents said that the alternative would be to increase costs and threaten the business model of letting agents.

“Allowing agents to maintain their current practise of charging tenants for certain activities will maintain the current status quo. It is sensible for the economy to ensure that agents’ businesses do not fail as a result of a contracting rental market should landlords choose to reduce their exposure to the Scottish market as a result of increased agency fees.”

(Allsop Residential Investment Management)

- 3.67 A number of letting agents said that the removal of tenant fees would significantly reduce income to the industry and that their proposed approach would mitigate this impact.

“I would suggest that the impact to the industry would be a reduction in agency income in the region of 8 to 10%.”

(Belvoir Lettings – Glasgow North)

- 3.68 One letting agent that proposed the introduction of a blanket fee said that this would result in an increase in costs to his business.

“The impact of my proposals will be to increase my costs by 2% and will likely be a neutral cost to the industry.”

(Northwood Edinburgh)

Question 3a: Should Scottish Ministers make secondary legislation that will identify categories of sums that are permitted to be charged to a tenant, without setting maximum amounts for such charges?

Table 3.3: Responses to Q3a by Stakeholder Group					
Type	Yes (and preferred option at Q4)	Yes (but preferred another option at Q4)	No	Other comments	No response
Private Individual	0	1	128	0	4
Letting agent	12	1	25	0	0
Professional/ representative or trade bodies	2	0	13	0	0
Local Authority	1	0	8	0	1
Other	1	0	3	0	1
Public petitions and campaigns	0	0	4	0	1
Voluntary organisation/ Charity	0	0	3	0	1
Total	16	2	184	0	8
<i>Percentage</i>	<i>8%</i>	<i>1%</i>	<i>88%</i>	<i>0%</i>	<i>4%</i>
<i>Percentage of those responding</i>	<i>8%</i>	<i>1%</i>	<i>91%</i>	<i>0%</i>	<i>-</i>

- 3.69 The proposal to identify permissible charges but not set a maximum level was opposed by the vast majority of respondents to this question (91%). Just 18 respondents (9%) said that they supported the proposal, although two of these respondents did not choose this as their preferred option (at Question 4). Thirteen of the 18 respondents who supported this approach were letting agents.
- 3.70 The arguments put forward were similar to those at Question 2. Several letting agents said that they supported identifying permissible charges since it would increase clarity and stop unscrupulous letting agents charging for unfair or excessive fees.
- 3.71 Respondents that supported the option reiterated arguments against setting maximum levels for fees. Respondents felt that setting a maximum would be impractical due to legitimate variation in costs in the market (with, for example, the price of insurance varying significantly), the impact of inflation over time, and the fact that in exceptional circumstances costs will be higher. Dove Davies Partners was concerned that setting a maximum “*will only encourage landlords and agents to use the maximum figure without encouraging competitiveness in the market*”.
- 3.72 City of Edinburgh Council was also concerned that a maximum limit would distort the operation of the market.

“The maximum level of the fees should be uncapped. This will allow the market to find its own level and give tenants choice in the market place.”

(City of Edinburgh Council)

- 3.73 Many of the respondents that opposed the proposal did not give a detailed explanation for their view. Of those that did, the most common argument was that there needs to be established maximum fees to deter unscrupulous companies from overcharging.

“Not setting maximum amounts for permitted fees will allow rogue landlords and tenants to continue charging unscrupulous amounts for fees.”

(Marncroft Ltd T/a Martin & Co (Livingston & Falkirk))

“A maximum charge is the fairest system for all and sets a standard across the board.”

(Private individual)

- 3.74 Some respondents (including local authorities) were opposed to both elements of the proposal and argued that there is no need for secondary legislation.

“Aberdeen City Council are of the view that once the 1984 Act has been amended to clarify that no fees are chargeable there will be no requirement to identify categories of sums or maximum amounts that can be charged.”

(Aberdeen City Council)

“We believe that secondary legislation to identify categories of sums that are permitted to be charged to tenants, would only act to restrict access to the private rented sector. This would be exacerbated by not setting a maximum charge. In addition, we believe that this does not reflect the objectives within Strategy for the Private Rented Sector.”

(The Moray Council)

- 3.75 Some respondents (from across the stakeholder categories) repeated the view that premiums should remain illegal and not be permitted through secondary legislation.

“We believe that clarifying and continuing the ban on premiums will help student tenants entering the private rented sector, particularly from low income backgrounds, know exactly what they are going to be charged for their tenancy.”

(NUS Scotland)

Question 3b: If you have answered ‘yes’ to question 3a, please identify what tenant charges you believe should be permitted, along with a clear explanation as to why.

Question 3c: In your view, why should no maximum amounts be set in relation to each permitted charge?

- 3.76 There was a limited response to Questions 3b and 3c given the low numbers supporting this option. In terms of charges that should be permitted (and

reasons for this), the responses were similar to those given at Question 2b. The most frequent comments from letting agents related to referencing fees and fees for the production of inventories. Letting agents felt that these should be permitted due to the volume of work involved and the fact they are for the benefit of the tenant. One letting agent argued that the costs of preparing an inventory should be shared between the tenant and landlord as it is for the benefit of both. Letting agents also stressed that holding deposits must be permissible as they establish a commitment to the property – although some respondents were clear that these deposits should not be categorised as a ‘fee’.

3.77 Some letting agents gave more comprehensive lists of the charges to tenants that should be permitted. These included:

- Reference fee – covering credit and reference checking;
- Inventory fee – shared by both parties;
- Agency administration fee – e.g. for support during property search;
- Early exit fee – for unexpected costs due to earlier vacation of property (e.g. re-advertising etc);
- Late payment fees – as a deterrent and to cover costs; and
- Lease assignment fees – for substitution of a tenant within a lease period.

3.78 In response to Question 3c, consultees reiterated arguments against setting a maximum fee. Letting agents broadly felt that there needs to be variation in the system to allow for individual properties, differences in the services delivered and to ensure flexibility in relation to economic circumstances (including inflation). Several letting agents argued that fee levels should be driven by the market since fees are continually reviewed to be competitive.

“We believe that the market is the most efficient method for setting price. If agencies are too expensive then tenants will not use them. If tenants do not use the agent then the landlord will not use them either.”

(The Flat Company)

“An artificial cap, in order to be effective, would have to be set close to the costs of the agency. Thus, it would quickly become outdated or not cover the costs. The landlord or agent would then have to seek compensation elsewhere for the costs associated with any turnover of tenants, to the detriment of the tenants.”

(City of Edinburgh Council)

Question 3d: What is the likely business impact of your proposals? Please include an indication of likely costs to the industry, where appropriate.

3.79 Most of those responding to this question felt that the business impact of their proposals would be minimal since the focus would be on increasing clarity around existing fees rather than changing their business in any significant way. Several of the letting agents that responded said that there would be a positive

impact for tenants but no negative impact for their business or the sector. Some letting agents reiterated concerns that outlawing premiums would see a negative impact on business and significant reduction in income. Estimates of this ranged from a reduction in turnover of 6.5 per cent to a 25 to 50 per cent cut in profitability.

“The benefits of this proposal on business are clear. It will offer transparency to tenants so that they know exactly what they are paying for a service. Clarity on this “grey” area of the law will benefit consumers and business alike.”

(Ryden Lettings)

3.80 Some respondents argued that allowing letting agents to deliver ‘supplementary services’ is desirable in terms of the economic benefits.

“Supplementary services have meant agencies like this one taking on additional staff (e.g. my staff numbers have grown five-fold in the past ten years). If this agency and others like it are debarred from providing such services, or their ability to charge for such services becomes severely limited, then inevitably some or all of the staff employed for this purpose will face redundancy.”

(DJ Alexander)

Question 4a: What is your preferred option?

Type	Option One	Option Two	Option Three	No response
Private Individual	111	17	1	4
Letting agent*	1	25	13	1
Professional/ representative or trade bodies	11	2	2	0
Local Authority	5	4	1	0
Other	2	2	1	0
Public petitions and campaigns	2	1	0	2
Voluntary organisation/Charity	4	0	0	0
Total	136	51	18	7
<i>Percentage</i>	<i>65%</i>	<i>24%</i>	<i>9%</i>	<i>3%</i>
<i>Percentage of those responding</i>	<i>67%</i>	<i>25%</i>	<i>9%</i>	<i>-</i>

*Two letting agents selected two options at this question

3.81 Option One – a customer focused communications exercise to provide clarity on the definition of a premium – was the most popular option with support from two-thirds of the respondents (67%). With the exception of letting agents, there was support for this option from all stakeholder groups. Only one agent said that they supported this option – but they selected it along with Option Two. Option one was supported by the majority of private individuals (86%).

3.82 A quarter of respondents (25%) supported Option Two – secondary legislation clarifying what charges may be permitted with maximum allowable amounts.

This was the most popular option among letting agents with around two-thirds of responding letting agents (67%) selecting the option.

- 3.83 Option Three was the least popular proposal with nine per cent selecting it as their favoured approach. Most support for this option came from letting agents.

Question 4b: Please provide any additional, relevant information that has not been covered in the consultation questions.

- 3.84 Many respondents took the opportunity when answering this question to reiterate points made elsewhere in the consultation. However, there were a number of substantive points in relation to improving approaches.

- 3.85 Some letting agents argued that stopping agents from charging for services will inevitably mean that rents will increase adding pressure to tenants and potentially limiting access to the sector. However, one local authority felt that permissible costs would be better spread across rental payment rather than in a prohibitive up-front payment.

“Given the pressures on the social rented sector, it is important to facilitate access to the private rented sector for certain households who would be most adversely affected by the charging of premiums.”

(Argyll and Bute Council)

- 3.86 Campaignatc was also concerned about premiums limiting access to the sector.

“Tenancy premiums cause real financial difficulties for tenants and may prevent them from entering into a tenancy in the private rented sector. This is a crisis issue given the large numbers of households on housing waiting lists and the lack of social housing.”

(Campaignatc)

- 3.87 Countrywide Residential Lettings felt that the level of household incomes in the private sector is relevant on this issue:

“Consideration has to be made that the Private Sector is not providing social housing – our rents range from £300pcm to £2500 pcm clearly attracting tenants with different disposable incomes.”

(Countrywide Residential Lettings)

- 3.88 Some letting agents argued that there should be greater emphasis on targeting bad agents or landlords rather than developing new approaches for the wider industry.

“I fully accept that there are bad agents / landlords in the industry as there are in any profession / industry, so why not target them rather than the reasonable rest. The local authorities have sufficient powers if they choose to exercise them.”

(Belvoir Lettings Dundee)

- 3.89 Stirling Council stressed that there needs to be appropriate enforcement regardless of the option that is pursued.

“Whatever option the Scottish Government decide to pursue, there should be appropriate sanctions and penalties for Landlords or Letting Agents found to be in breach of the regulations and a fast track process for ensuring that consumers can obtain a full refund of any illegal premiums demanded and paid for by the consumer.”

(Stirling Council)

Question C1 (Annex C): Please provide any comments or feedback in relation to the partial Business Regulatory Impact Assessment contained within the consultation document.

- 3.90 Just under one fifth of respondents (18%) answered this question and some took the opportunity to reinforce general comments rather than give feedback in relation to the partial Business Regulatory Impact Assessment.

- 3.91 A frequent comment from private individuals and some other respondents was that the assessment appears to be fair.

“The impact assessment seems fair and thorough. All relevant issues have been raised by the main stakeholders.”

(Steynlettings)

- 3.92 Several letting agents repeated their view that honest lettings agents will be disproportionately affected by the proposed changes. Belvoir Letting Inverness raised concerns that existing industry standards and voluntary regulation were not considered in the assessment.

“Voluntary regulation and the high industry standards upheld and endorsed by BFA Approved Franchise Networks are not given consideration. The focus is on charities who are misconstruing the differences in legislation between Premiums and Charges. The consumer simply needs to be aware that they should use the services of agencies who have a formal complaints procedure and that are members of the Property Ombudsman.”

(Belvoir Lettings Inverness)

- 3.93 Allsop Residential Investment Management was concerned about the impact on Scotland’s ability to attract institutional investment to the private rented market.

“...investors will look carefully at the return on their investment and anything that affects their costs, particularly in areas where rents are more modest, is likely to affect their decision to invest. Scotland is in competition with the rest of the UK for institutional investment in the private housing sector and if the sector is to flourish in Scotland it is

important that landlords' costs are not disproportionately higher in Scotland to the rest of the United Kingdom."

(Allsop Residential Investment Management)

3.94 Countrywide Residential Lettings agreed with the information gathered in the assessment from letting agent representatives but added that a decision needs to be made on fees that have been charged in advance of the legislation being clarified. They were concerned that *"if agents are forced to refund previous fees, for many this will result in them going out of business"*.

3.95 The Association of Residential Letting Agents (ARLA) said that the Scottish Government should consider the impact on state subsidy if rents increase.

"Whilst some of the engagement meetings indicate a potential rent increase could result if landlords required to bear more costs, no recognition has been made of the potential impact of that on the state subsidy of rents and housing costs. If rents increase, LHA rates will increase and further tenants will qualify for assistance."

(ARLA)

3.96 One representative group also argued that there should be more investigation of the business models used by letting agents that do not charge tenants any fees. They felt that these models should be promoted to agencies that do apply fees.

Question D1 (Annex D): From your knowledge of the diverse needs and experiences of private tenants, can you provide any further information that you think we should know for the purposes of this consultation? How or where should we find this information?

3.97 A fifth of consultation respondents (20%) answered this question and most reinforced views expressed earlier in the consultation. Only a few respondents proposed 'further information' that the Scottish Government should be considering.

3.98 Some respondents mentioned the issue of tenancy lengths and City of Edinburgh Council suggested that the Scottish Government needs to consider the impact of this on different groups.

"The impact on the changes to premiums to consumers is intimately tied to the length of time that the tenants would be in the property. Some groups may be over or under represented in groups that require longer vs. short term lets. As such there may be an equalities impact on the changes to the law, however as the Local Authority does not collect this demographic information, it is not possible to assist further in the equalities impact assessment."

(City of Edinburgh Council)

- 3.99 Some private individuals and Dundee City Council said that foreign nationals could be discriminated against in the current system due to a limited residential and credit history in the UK.

“Overseas students appear to be at a significant disadvantage. As a result of not having any letting history in the UK, with no credit reference and no guarantor, it is not uncommon for some landlords to seek a pre-tenancy deposit as well as admin charges and inventory charges, other fees and an annual rent. This leaves the tenant having to find significant sums of money to obtain accommodation in this country.”

(Dundee City Council)

- 3.100 Citizens Advice Scotland provided evidence (based on a sample of 3,259 seeking advice on a private rented house) that they feel shows the group *“have a number of characteristics that potentially make them more vulnerable to disproportionate charges”*. Their monitoring information showed that *“clients tend to be young, often female, are likely to have caring responsibilities, and live on their own”*.

- 3.101 Simply Let felt that the average income levels of tenants is relevant and could be provided to the Scottish Government.

“Although we have still to run an analysis, we believe that the average income of our agency’s tenants is considerable. This information can be supplied in due course if necessary. We are aware that many of our tenants prefer to rent than buy either for personal reasons or because of short-duration employment contracts.”

(Simply Let)

Question D2 (Annex D): From your knowledge of the diverse need and experiences of private landlords and letting agents, can you provide any further information that you think we should know about for the purposes of this consultation? In addition, is there any other information that you think we should obtain? How or where should we find this information?

- 3.102 As with the previous question some respondents reiterated general points rather than additional information.

- 3.103 Several letting agents felt that the Scottish Government should look more broadly at the operation of the lettings industry as a whole. For some this meant that there should be a focus on unregistered agents and landlords and on unscrupulous companies.

“There are already government approved schemes in place such as the National Approved Lettings Scheme (NALS) whose members protect their tenants and landlords and offer recourse to the Property Ombudsman. The government should consult with these bodies as

well as BFA approved franchise lettings organisations and initiate further consumer awareness in respect to the benefits and protection to the consumer...

(Belvoir Lettings Inverness)

- 3.104 Ryden Lettings said that they would be happy to demonstrate to the Scottish Government *“the work involved in putting together a tenancy from start to finish”*.

“It would also be helpful to compare charges made in similar service industries such as obtaining a mortgage, obtaining a bank reference etc.”

(Ryden Lettings)

- 3.105 Some lettings agents and Dundee City Council said that, if particular fees are permitted, there will need to be further research on current market costs.

“We are not entirely convinced that the small landlord is aware of the charging policy of some Letting Agents, they are only aware of the percentage they are being charged. Should additional fees be classed as permitted charges, some analysis of market costs associated with inventories, credit referencing etc. should be carried out.”

(Dundee City Council)

- 3.106 One private individual said that his own academic research had highlighted a lack of professionalism at some letting agents and concerns about how little regulation there is in the PRS compared with the financial industries. This respondent felt that:

“Regulatory services should include regular “mystery shopping” exercises with agents to ensure the law is not being abused. A central agency could provide this across Scotland on a random basis and as complaint investigation.”

(Private individual)

Question D3 (Annex D): Do you think the proposed changes to the charging of premiums in the private rented sector will have a proportionately negative impact on particular groups of people in our target audience? If so, please explain why.

- 3.107 Several private individuals, campaigning organisations and one letting agent said that the changes would have a positive impact in the PRS and no adverse affect on any particular group.
- 3.108 Some respondents that were not in favour of permitting specified categories of fees felt that ‘legalising fees’ would have a negative impact on tenants in terms of costs and making the private rented sector less secure.

3.109 Several of the letting agents felt that the changes would have a negative impact on good agents and landlords and many said that the costs would be passed on to the landlords. Some agents repeated concerns that increased costs to landlords would see properties leaving the sector increasing pressures on tenants.

3.110 A number of letting agents and some local authorities felt that this would lead to rents in the PRS increasing. Ryden Lettings and others said that rising rental levels would have a disproportionately negative impact on tenants at the bottom end of the market.

“If admin charges are not allowed this will increase rents within the sector. This will impact greatly on the lowest levels of rent, those who can least afford it and ironically those who need greatest protection. This will undoubtedly have a detrimental effect on housing benefit claims.”

(Ryden Lettings)

3.111 One local authority acknowledged that rents may increase but felt that the market will determine the level of rents based on demand. However, another local authority was concerned that the changes would make the PRS more unaffordable and that this would have a disproportionate affect on young private tenants who would be forced out of the sector. And another local authority was concerned about the potential impact on longer-term private tenants.

“The ban on all upfront fees would likely result in increased monthly rent. This would have a negative impact on those tenants who do not change tenancy often, however we do not know if one group is under or over represented in this class of tenant.”

(City of Edinburgh Council)

Question D4 (Annex D): What positive impacts do you think the proposed changes would have on particular groups of people?

3.112 Thirty-one per cent of respondents answered this question. Of these, nearly two-fifths (38%) commented on the greater clarity and transparency in the letting industry that would result from the proposals. Several lettings agents and respondents from other stakeholder categories felt that this will have positive impacts for tenants, landlords and letting agents.

“For tenants, setting a fair and reasonable referencing charge would eliminate uncertainty and confusion. For agents and landlords, this will clarify the ambiguous nature of the legislation and would allow all those within the PRS to work on a level playing field.”

(Steynlettings)

3.113 Lanarkshire Lettings felt that there was previously no confusion for tenants but welcomed action that would clarify the position in terms of legal challenges to agents and landlords.

“There was no confusion; previously, tenants were charged for checks: if they thought the charge was too high they went elsewhere and the landlord or tenant lost the business. Due to the recent publicity, agents and landlords are concerned we have been exposed to legal proceedings. Clearing this up will allow us to concentrate on our business.”

(Lanarkshire Lettings)

- 3.114 Several respondents across the categories said that there will be a positive impact for tenants – including vulnerable tenants and those in the recognised equalities groups.

“ELC believes that the tenants and prospective tenants will no longer have to shoulder the burden of costs which should be met by landlords and agents. This will therefore have a positive effect on private tenants across Scotland, including for tenants from the equality groups. As some equality groups are over represented in the PRS (younger people, some ethnic minorities) there will be increased positive impacts for some.”

(East Lothian Council)

- 3.115 Some private individuals and others that had supported Option One argued that this was the only option that would bring benefits to tenants and landlords. These respondents felt that the only positive impacts from the other proposed options would be for letting agents.

“Option One is a fair proposal for both tenants and landlords because 1) Landlords who use letting agents already charge a level of rent that covers the costs associated with setting up and managing a tenancy and 2) It is easy to understand. The only people who would appear to benefit from Options Two and Three would be letting agents.”

(Campaignatc)

Question D5 (Annex D): What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

- 3.116 Although a fifth of respondents commented on this question very few suggested specific changes that would reduce or enhance identified impacts. Most respondents restated or reinforced the arguments behind their preferred option.
- 3.117 Some respondents said that to harness the benefits of greater clarity it is important that secondary legislation is kept “*clear and simple*” (Ryden Lettings). One private individual said that the updated legislation should be introduced at the same time as the amendments of Section 89A of the 1984 Act to ensure that there are no ‘grey areas’.

3.118 Another private individual felt that clarity would be enhanced by a sustained advertising campaign to ensure that all sectors are sufficiently informed.

Question D6 (Annex D): When we complete our impact assessment of the proposed change to the law in relation to the charging of premiums, are there any other significant issues we need to consider in relation to: age, disability, gender, sexual orientation, gender reassignment, pregnancy or maternity, race, religion or belief?

Type	Age	Disability	Gender	Sexual orientation	Gender reassignment	Pregnancy or Maternity	Race	Religion and belief	No response
Private Individual	5	0	0	0	0	0	5	0	119
Letting agent	1	0	0	0	0	1	0	0	28
Professional/ representative or trade bodies	2	2	2	2	2	2	2	2	13
Local Authority	1	0	0	0	0	0	1	0	8
Other	0	0	0	0	0	0	0	0	5
Public petitions and campaigns	0	0	0	0	0	0	0	0	5
Voluntary organisation/Charity	1	1	1	0	0	1	1	0	3
Total	10	3	3	2	2	4	9	2	181
<i>Percentage</i>	<i>5%</i>	<i>1%</i>	<i>1%</i>	<i>1%</i>	<i>1%</i>	<i>2%</i>	<i>4%</i>	<i>1%</i>	<i>86%</i>
<i>Percentage of those responding</i>	<i>29%</i>	<i>9%</i>	<i>9%</i>	<i>6%</i>	<i>6%</i>	<i>11%</i>	<i>26%</i>	<i>6%</i>	<i>-</i>

3.119 Only 14 per cent of respondents answered this question. For all of the equalities categories listed, some respondents felt that there were significant issues to consider. There was greatest concern about the impact in relation to age (29%) and race (26%).

3.120 Respondents were asked to give an explanation for their answer. Several letting agents felt that there were no specific groups that required consideration.

“No-this consultation is in respect to charges and premiums which are not specific to any of the above groups but specific to tenants in general and not biased towards or not prejudiced to any of the above.”
(Belvoir Lettings Inverness)

3.121 In relation to age, The Moray Council and Lanarkshire Lettings both raised concerns about young people.

3.122 Citizens Advice Scotland were also concerned about young people and felt that there were a number of other groups to be considered.

“Evidence from bureaux suggests that young people, women, and those in single adult households – many of whom have caring responsibilities - are those most affected by problems in the private rented sector. The impact of proposals on these types of tenants should be borne in mind. Equally, the Scottish Government’s Review of the Private Rented Sector showed that many migrant workers live in the private rented sector.”

(Citizens Advice Scotland)

3.123 In relation to disability, the Aberdeen Students’ Association said that:

“Housing for disabled people is already limited and premiums could trap these consumers into poor quality substandard accommodation, especially if uncapped fees allowed agents to charge more for accessible housing.”

(Aberdeen Students’ Association)

3.124 Some respondents highlighted gender and one respondent raised the issue of female single parents.

“Female single parents are commonly increasingly users of the PRS. They would benefit from the transparency and not having unlawful and unadvertised fees to find at each forced move.”

(Private individual)

3.125 Several respondents mentioned race and the need to consider tenants that have moved to this country from overseas. This related to language barriers and limited understanding of rights as a tenant.

3.126 Some respondents, including student representative bodies and a letting agent, felt that consideration needs to be given to the impact on students as a group. The University of St Andrews Students’ Association felt that a consumer focused approach would help support the full range of groups.

“The University of St Andrews welcomes students from around the world, 30% from overseas representing some 120 different nationalities. A consumer focused exercise should ensure that any of the above client groups should not be disadvantaged in the process particularly where English is not their first language.”

(University of St Andrews Students’ Association)

ANNEX ONE – CONSULTATION RESPONDENTS ANALYSED

List of Respondents

The following organisations and individuals responded to the consultation:

Private Individuals:

133 private individuals

Letting agents:

1 LET Ltd
Aberdeen Considine
Aberdeen Property Leasing
Allsop Residential Investment Management
Ardmuir Ltd
Belvoir Lettings (Aberdeen)
Belvoir Lettings (Dundee)
Belvoir Lettings (Falkirk)
Belvoir Lettings (Glasgow North)
Belvoir Lettings (Inverness)
Belvoir Lettings (Paisley)
Bondsave Ltd t/a Braemore Property Management
Clouds Property Management
Countrywide Residential Lettings
Crichton-Stuart Management Company
DJ Alexander
Dove Davies and Partners
The Flat Company
Glenham Property Management Ltd
G M Thomson and Co
Grant Property Solutions Ltd
James Gibb Property Management
Lanarkshire Letting
Lomond Capital LLP
Marncroft Ltd t/a Martin and Co (Livingstone and Falkirk)
Martin and Co. (Aberdeen)
Martin and Co (Kirkcaldy)
Martin and Co (Paisley)
Martin and Co (Shawlands)
Martin and Co (UK) Ltd
Northwood Edinburgh Ltd
Pagan Osborne
Penny Lane Homes
Ryden Lettings
Simply Let
Speirs Gumley Residential Letting Limited
Steynlettings
Trinity Factoring Services Ltd

Professional/ representative or trade bodies:

Aberdeen Students' Association
Association of Residential Letting Agents (ARLA)
Chartered Institute of Housing (CIH) Scotland
Edinburgh Private Tenants Action Group (EPTAG)
Edinburgh University Students' Association
Glasgow University Students' Representative Council
Heriot Watt University Student Union
National Association of Student Money Advisers
National Union of Students (NUS)
Scottish Association of Landlords (SAL)
Scottish Council for Single Homeless (SCSH)
Scottish Property Federation (SPF)
University of St. Andrews Students' Association
University of Strathclyde Students' Association
UK Association of Letting Agents

Local authorities:

Aberdeen City Council
Argyll and Bute Council
Clackmannanshire Council
Dundee City Council
East Dunbartonshire Council
East Lothian Council
City of Edinburgh Council
Falkirk Council
The Moray Council
Stirling Council

Other:

Anonymous response
Campaignatc
Rentfare Ltd
Sutherland Management LLP
University of Edinburgh

Public petitions and campaigns:

Shared 'Shelter campaign' response
Shared 'EPTAG campaign' response
Shared 'private individuals' response
EPTAG Petition 1
EPTAG Petition 2

Voluntary organisations / Charities:

Citizens Advice Scotland (CAS)
Edinburgh Housing Advice Partnership (EHAP)
National Private Tenants Organisation
Shelter Scotland

Social Research series
ISSN 2045-6964
ISBN 978-1-78256-007-4

web only publication
www.scotland.gov.uk/socialresearch

APS Group Scotland
DPPAS13287 (08/12)

