Consultation on a Strategy for the Private Rented Sector

The Scottish Government

CONTENTS

MINISTERIAL FOREWORD

Our vision for housing is that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs. We are clear that all housing, no matter what the tenure, is crucial to our country's health, well-being and economic prosperity.

We recognise the vital role that private rented housing plays in providing people with a flexible housing option. It can meet a range of needs, for some people it is a long term housing solution that suits their own personal needs and for others it is a short term solution as they move towards other tenures. Following on from the commitment made in Homes Fit for the 21st Century, we want to help create a private rented sector in Scotland that offers accommodation of a high standard, both in terms of physical condition and management, whilst being able to meet the increasing demands being placed on it.

Therefore, over the last 6 months, we have been working in partnership with the Scottish Private Rented Sector Strategy Group to develop a consultation that will seek your views on how we can work together to create a flourishing private rented sector (PRS). I would like to thank the members of the Group and the wider, virtual network of stakeholders who supported the Group's work.

This consultation document describes the Group's vision and strategic aims for the sector over the next 10 years and the results of the consultation will inform a final Scottish Government strategy for the sector, which we will publish later this year. A key theme throughout this document is consumer empowerment. We are clear that increased consumer awareness and knowledge is crucial in helping to drive up standards within the sector.

We feel the time is right to set out a strategic vision for the private rented sector. The current, challenging economic times have impacted heavily on individuals and businesses. Therefore, we want to be clear about the role the Scottish Government can play in making the private rented sector a more attractive housing option for a wider range of households.

I would urge you to take part in this important consultation. We want to gather a range of views and perspectives, from a range of stakeholders across Scotland. This will enable us to develop a strategy that will help create a private rented sector that meets the needs of both tenants and landlords.

Keith Brown MSP
Minister for Housing and Transport

CHAIR'S FOREWORD

A few years ago the question asked of the private rented sector (PRS) was 'Can it play a more significant role in meeting future housing needs, something the sector achieves in other European countries?'. Following the 2007 'Banking Crisis' and consequential collapse in both mortgage lending and the public financing for new social housing, the PRS finds itself being asked to do that much more. Everyone is assuming the PRS will take up the slack, but is this realistic?

The Scottish Government's PRS Strategy Group was asked to address this head on and offers its deliberations. Established in October 2009 the Strategy Group has had two tasks. The first was to bring forward proposals for legislative change. Drawing on the broad range of perspectives represented on the group and informed by the extensive evidence-base provided by the government's sector review, a set of proposals went out for consultation in Spring 2010, which became the basis of the Private Rented Sector Housing (Scotland) Act, 2011. This Act's ambition is to encourage a better functioning PRS market. It thus first sharpened up on existing local authority powers in respect of registration, for both landlords and HMOs, while also introducing new ones on overcrowding. Ensuring better informed consumers and providers is to be secured via the introduction of pre-tenancy information packs. Further, the government also brought in a Tenancy Deposit Scheme designed to address a major issue affecting the sector: protecting tenants' deposits by placing them with an independent third party. This first task can best be described as a housekeeping exercise, tidying up the many loose ends left by the ad hoc legislation approach accorded to the PRS previously.

Thus the second task, devising a PRS strategy, has proved that bit more challenging, given this is the first time it has ever been attempted. What this has involved is a complete re-think as to what exactly we want from the sector. Out of this thinking has emerged three inter-related core elements; a need to re-consider the current tenancy arrangements, a further rethink about how best to ensure quick and clear redress where tenant, landlord and local authority relations break down and, finally, the need for more consideration about how best to deliver and ensure clear and accessible information about renting privately entails. While each element makes its own distinctive contribution, each supports the other to ensure a well functioning and flexible tenure, an essential given the new housing world we have entered.

Short assured tenancies, introduced in 1988, gave landlords the option to grant a fixed-term tenancy of just six months. This became the tenancy of choice and although it is possible to specify a longer term, or use an assured tenancy, this is rare. The reason is quite simple: should problems arise with the tenancy the landlord achieves automatic repossession on the tenancy's conclusion so tenancy problems never become protracted and expensive legal redress is avoided.

While survey evidence suggests that the majority of tenants like this arrangement some caution needs to be applied, given the survey population was biased towards city-based students. Given the marked increase in demand for private renting is now coming from those excluded from other housing options is such a tenancy arrangement still suitable? As this group are older, in employment and more likely to have children, then longer-term tenancies become more relevant.

Thus there appears merit in considering a new tenancy regime capable of accommodating differing tenancy periods, thus embracing flexibility, while at the same time properly protecting landlord business interests. Stable uninterrupted long-term cash flow would enhance the funding prospects of the sector. However, clearly any such change demands careful consideration of redress powers.

As Civil Courts currently see few cases much of the legislative protection offered to both tenants and landlords cannot be accessed. The short tenancy period fails to comply with the time frames operated by Courts. So any future redress arrangements need to be both quick and easy to access. Given the ambition set by the Gill Report, to reduce the cost and time of legal action, there may be a case to have redress matters considered by an appropriate third party organisation.

Finally, the pre-tenancy information pack which will contain tenancy and possession documentation, as well as additional information that set down the differing legal rights and responsibilities for both tenants and landlord (and their agents). Once the contents are agreed it is essential to ensure this material is housed somewhere that it can be easily accessed and regularly and properly reviewed. Landlords and tenants need to be able to access contractual information that is legally sound, and up-to-date.

Consumer empowerment, encouraging flexibility and fostering growth underpin this strategy. It also recognises the fact that the vast majority of landlords own but one property and would, therefore, welcome some support. Further, we also acknowledge that the PRS is best understood not as a single sector, but rather as one that exhibits great complexity, operating in highly segmented localised markets. However, we are also well aware that current constitutional arrangements ensure the Scottish Government has no power to alter either the fiscal or welfare environment which, taken together, exert enormous influence on the functioning of the PRS.

Professor Douglas Robertson
School of Applied Social Science, Stirling University and Chair of the Scottish Private Rented Sector Strategy Group

CHAPTER ONE: INTRODUCTION – A VISION FOR THE PRIVATE RENTED SECTOR IN SCOTLAND

1.1 The Scottish Government wants to set out a vision and strategic aims that will grow and improve the quality of the private rented sector (PRS) in Scotland over the next decade.

1.2 This consultation document has been produced in partnership with the Scottish Private Rented Sector Strategy Group (see Annex B). The findings from this consultation will inform the final Scottish Government strategy for the sector, which will be published later this year. It should be noted that this consultative document does not necessarily reflect the independent policy positions of the individual members of the Group.

1.3 The final strategy will fit within the context of the Scottish Government's overall Housing Strategy and Action Plan for the next decade - Homes Fit for the 21st Century, published in February 2011.

1.4 This paper seeks your views on the proposed content of the final strategy and poses a series of questions on the issues identified by Strategy Group members.

1.5 The consultation document should be read in conjunction with the supporting 'Evidence Review of the Private Rented Sector in Scotland', which provides updated information on key statistics and trends.

1.6 The public consultation process runs from Tuesday 17 April 2012 to Tuesday 10 July 2012. The views you provide on the questions posed in this consultation document will help to frame future action by the Scottish Government.

Vision, Aims and Strategic Questions

1.7 The vision proposed by the Scottish Private Rented Sector Strategy Group is:

> **"A thriving and professional private rented sector that offers good quality homes and high management standards; inspires consumer confidence; and encourages growth and investment to further develop and improve the sector".**

1.8 This supports the overall Scottish Government housing vision of having "*a Scotland where all people live in high quality sustainable homes that they can afford and which meet their needs"*.

1.9 In order to achieve this, we propose three strategic aims for the decade ahead. These are:

1. For **growth and Investment**: to increase overall housing supply, and for more investment to develop and improve the existing sector;
2. For **better quality**: of property management, condition and energy efficiency; to be enabled by smarter, more targeted regulation; and
3. For **more informed choices**: to support and encourage consumer driven improvement of the sector.

1.10 There are a number of strategic challenges for the sector that this consultative strategy aims to consider through the consultation questions. We recognise that there are inherent tensions and trade-offs required between some of these challenges, and that a careful balance will need to be struck between how they are prioritised and addressed:

Strategic Challenges

1. How to bring in more investment to increase the supply of housing and to improve quality, against a backdrop of challenging and uncertain economic times.
2. How to create a regulatory framework which is effective and proportionate, sets standards to ensure quality but is affordable and does not constrain growth.
3. How to tackle the minority of landlords who act unlawfully and have a disproportionate impact on the reputation of the sector overall.
4. How to take account of and support the needs of vulnerable tenants.
5. How to ensure that the sector meets the new and growing demand for rented housing, and provides an affordable housing option.
6. How to respond to the need for better energy efficiency and property condition.
7. How to empower tenants as consumers to drive improvement in the sector.

1.11 We see opportunities to tackle these challenges in partnership. Ultimately, through implementation of this strategy, we can achieve a more prosperous, better quality sector which works for and benefits all tenants, landlords and their agents.

Question 1a: Do you agree with the vision and strategic aims proposed by the Scottish Private Rented Sector Strategy Group for the sector over the next 10 years? If not, please explain why, offering your own views.

Question 1b: Do you agree with the key strategic challenges for the sector? Are there any other key strategic challenges that should be highlighted in the strategy? Please explain why, offering your own views.

The Private Rented Sector in Scotland

1.12 The total number of dwellings in Scotland in March 2010 was estimated at 2,483,000, including 273,000 that were privately rented. In the period since 1999, the PRS has more than doubled its share of the total housing stock, rising from 5% to 11%. At the same time, Social Housing (Local Authority and Housing Association combined) as a proportion of tenure has declined, from 32% to 23% (see table 1 below).

Table 1 – Percentage tenure breakdown of Scottish housing stock

	1999	2001	2003	2005	2007	2009	2010
Owner Occupied	61	64	65	66	66	66	65
Social Rented	32	28	26	25	23	22	23
Private Rented	5	6	6	8	9	10	11
Other	2	2	2	2	2	2	2
Total	100	100	100	100	100	100	100

Column percentages. Source: Scottish Household Survey

1.13 The PRS serves a diverse and varied customer base including students, migrant workers, young professionals, tenants that are in receipt of housing benefit, older people and those that would have, until recently, looked to enter the owner occupied sector. Many PRS tenants are single or small adult households (31% and 27% of PRS tenants respectively[1]), although increasingly more households with families are occupying the sector. For example, in 1999 just 3% of all small families and 4% of all large families in Scotland lived in the private rented sector. This had increased to 10% and 7% respectively by 2010[2] .

1.14 Landlords in the PRS tend to own a small number of properties. Recent evidence found that just over 4 in 5 (84%) of PRS dwellings were owned by 'individuals, a couple or a family', while 14% were 'owned by a company, partnership or property trust', and 2% owned by an institution[3]. Many of these landlords, in particular those entering the sector in recent years, might be described as 'reluctant landlords', who are renting out a property they have been unable to sell. There are also a significant number of 'Buy-to-Let' landlords in the sector, who invested in the sector during the housing boom years and were a significant driver in the expansion of the sector.

1.15 Consequently, the letting agent industry has also grown in recent years and provides a range of property management services to many landlords in the sector. The agent sector is a varied one comprising solicitors, estate agents and accommodation agencies. It is estimated that there are around 500 letting agents businesses in Scotland, representing around 50% of the entire lettings market. These businesses are involved in around 150,000 private lettings in Scotland per year[4] demonstrating the scope of this expanding business.

[1] Scottish Household Survey (2010 data)
[2] See Reference 1
[3] Scottish Government Review of the Private Rented Sector (2009)
[4] CityLets Data Source (www.citylets.co.uk)

1.16 Current projections suggest that there will be an increased demand on the private rented sector and this will be one of the key challenges facing the housing market. Clapham et al (forthcoming) used trend-based projections to demonstrate that by 2020 there is likely to be a significant increase in the PRS population alongside a significant decrease in the owner occupation population, as shown in figure 1 below.

The analysis concludes that there will be an increased demand by young people and this will be one of the key challenges facing the private rented sector. The authors predict the sector will house more than 37% of all young people by 2020, with an increase of approximately 1.5 million people (across the UK).

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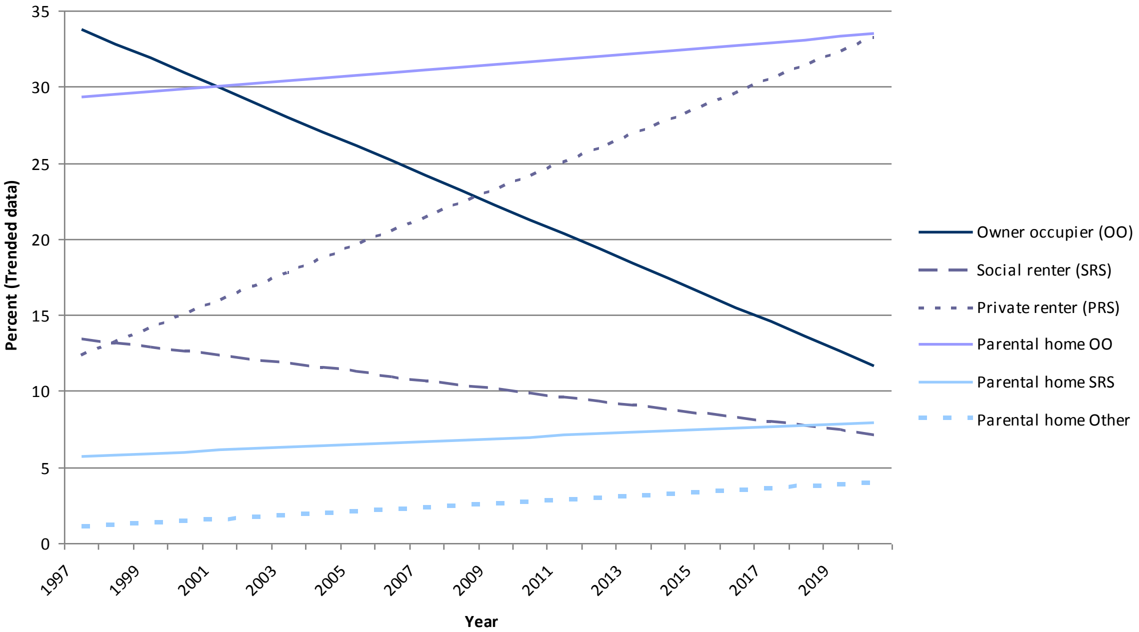
Figure 1 - Trend-based tenure change and projections 1997-2020



Source: Clapham et al (forthcoming)

1.17 For a generation after the 1980s, the private rented sector played an important role in providing choice and flexibility for a limited number of household types. More recently the sector has undergone fundamental structural change.

<u>Younger Households</u>

1.18 Cultural changes have impacted on the sector, with more young people possibly choosing to put off ‘settling down’ until later in life. The proportion of households aged 16-34 accommodated in the private rented sector has expanded dramatically, from 13% in 1999 to 33% in 2010. While owner occupation remains the most important tenure for this age group, its share has decreased by 10 percentage points to 43%, in 2010. Within the PRS, over half of the households (57%) are in the 16-34 age group, 36% are aged 35-64 and 6% are aged 65 and over. For many younger households, flexibility and mobility will be valued highly, although home ownership may still remain an aspiration for later in their life[5].

Household Formation

1.19 In addition, the housing system in Scotland has been affected by changes to household formation, with an increase in the formation of smaller households. For example, the formation of one adult households is expected to increase from 36% in 2008 to 45% by 2033[6]. These figures indicate that in Scotland in excess of 20,000 homes each year need to be built just to accommodate projected household growth.

Constrained Access to Owner Occupation and Social Rented Housing

1.20 Recent barriers to home ownership have left many unable to get onto the property ladder. These include constraints in mortgage availability and the size of deposits required to access first-time buyer mortgages.

1.21 This has had a major effect on the private housing market in reducing sales and flat lining average house prices. On the supply side, this has also fuelled the growth of 'reluctant' landlords in the private rented sector who cannot or will not sell their property (so instead rent it out). On the demand side, growth in the sector can also be attributed to those households seeking private rented accommodation who would otherwise have looked to home ownership as their preferred housing option.

1.22 Decline in the relative supply of social housing has constrained choice for those that would see this as their first housing option. The private rented sector is also playing an increasing role in accommodating those that might otherwise have chosen to be housed in the social rented sector. The private rented sector has always played a key part in accommodating those that are homeless or at risk of homelessness, a role that has increased over recent times.

Looking beyond the Scottish Private Rented Sector

1.13 As demand for accommodation in the private rented sector is projected to grow over the coming years in Scotland, we can look to learn from our European neighbours where the sector often has a better reputation and is a popular tenure choice for a wide range of households.

1.14 In France, Germany, Sweden and Austria, private renting is viewed as a mainstream long-term tenure choice. Similar to Scotland and the UK, landlords tend to be private individuals owning a few properties. However, in all these countries the sector is larger than that in Scotland or the UK.[7]

1.15 Specifically, we have chosen to highlight the private rented sector in Germany and the Republic of Ireland, for comparison with Scotland and to provoke comment

[5] Data from Scottish Household Survey; age of household is the age of the highest-income householder.
[6] Scottish Government (2011) "Evidence Review of the Private Rented Sector in Scotland"
[7] Towards a Sustainable Private Rented Sector, Scanlon & Kochan (2011)

on the sector features in these countries, which might help us achieve our strategic aims.

The Irish Private Rented Sector: An Overview

1.16 The cultural context within which the sector operates in Ireland is similar to Scotland and the UK, where there remains a preference towards owner occupation.

1.17 The recent economic recession has had a significant impact on the housing sector in Ireland, in particular for owner occupiers and house builders. It should be noted that much of the reform of the private rented sector in the Republic of Ireland took place before the recession.

1.18 Ireland has experienced similar levels of growth in the PRS in recent years to Scotland and the UK. The PRS in Ireland accounts for 10% of the total housing market, with the vast majority of landlords operating on a small-scale.

1.19 The introduction of the Residential Tenancies Act 2004 was a landmark in the regulation of the private rented sector in Ireland. This Act improved security of tenure with the introduction of:

- 4-year cyclical tenancies (which can only be terminated on limited grounds once a 6-month initial probationary has expired);
- defined notice periods depending on the duration of the tenancy;
- introduction of greater rent certainty and provision of a clear statement of the obligations of landlords and tenants, and
- a dispute resolution service outside of the courts system.

1.20 There have also been significant moves in recent years to improve the minimum standards expected of the conditions in private rented housing. New regulations introduced in 2009 provide for improved standards, including minimum space and storage provisions to facilitate family living, with a commitment to completely phase out the traditional ‘bedsit’ (with shared facilities) by 2013 (Government of Ireland, 2008 and 2009)[8]. To assist with this, registered landlords are also entitled to improvement grants.

The German Private Rented Sector: An Overview

1.21 With low levels of home ownership and a relatively small social housing sector, the German private rental market is the largest in Europe, representing just under half of the total German housing market. It is often cited as being an ‘exemplar’ private rented sector model.

1.22 In Germany, renting has a common cultural tradition as ‘the standard option’ amongst all groups in the population[9], and is viewed as an option with parity to owner occupation.

[8] The Private Rented Sectors in Northern Ireland and the Republic of Ireland: A Case Study in Convergence Analysis; Aideen Hayden et.al. p13
[9] See Reference 7

1.23 German households' propensity to rent can be partly explained by a strong regulatory framework which gives tenants a high degree of security of tenure, and long-term tenancies as standard. This has resulted in a high level of demand for rented accommodation from financially better-off households, including middle-aged older households (who might otherwise have been prompted to consider home ownership).

1.24 German tenancies include high levels of security against eviction by the landlord as well as strong protection against unexpected rent increases. Tenancies for family households and the elderly are particularly secure and are governed by regulated rents. The sale of a rented unit does not affect the tenancy, which binds the new owner.

1.25 German house prices are significantly less volatile compared to the UK and the housing market has been more stable (meaning less capital return on the sale of property). As a result, the purchase of residential property is less likely to be viewed as a way to generate wealth in the short term. So the rental income stream is a core consideration for landlords.

1.26 The tax regime is also more favourable to landlords and encourages longer-term investment in the sector, for example, treating property that is rented out as an investment. Private landlords can receive tax-free status on residential rental property after ten years or, if the proceeds are reinvested in real estate, within four years.

Question 2: What can Scotland learn from the approach to the private rented sector taken in either of these two case study examples or other countries? Please state what specifically would be transferrable from these countries to Scotland and why.

CHAPTER TWO: GROWTH & INVESTMENT

2.1 Growth and new investment are crucial to improvement of the quality of property condition in the sector, as well as meeting the demands placed on the sector by those likely to be seeking housing over the course of the next decade.

2.2 This chapter examines how we can encourage greater investment in both the existing private rented sector and to build new private rented homes.

Market Context

2.3 The housing boom in the decade prior to the Credit Crunch was based on increased demand arising from the ready availability of credit. The private rented sector expanded as part of this boom, through the growth of 'Buy to Let' mortgages. This period of rapid growth led to a burgeoning and volatile housing market, where returns on investment were seen primarily through the lens of capital accumulation from the sale of property.

2.4 The current market context is one where credit is much harder to secure (in particular for first-time buyers), and the 'Buy to Let' mortgage market is now more constrained. House sales have halved over the past few years, and house prices have stagnated. The Scottish economy experienced a sharp recession during 2008 and 2009, and subsequent growth has been weak. This has led to increasing numbers of empty properties as people are left with homes they cannot sell. Often these homes may be suitable for private renting, but many of these 'reluctant' landlords require guidance and support from agents or others. This, along with the demand side changes highlighted in Chapter One, has fundamentally altered the housing market and led to a further growth in the proportion of private rented houses in the market.

2.5 The UK Government's Welfare Reform agenda could also potentially impact on the levels of investment within the private rented sector. Investors may view the changes impacting on the structure of the private rented sector, as being too high risk.

2.6 Although the overall backdrop presents a series of challenges, growth in demand offers an opportunity for the sector to adapt and to develop a more sustainable business model, based on a steady income stream from rents and more gradual capital appreciation over time.

Increasing Supply

2.7 The Housing Strategy 'Homes Fit for the 21st Century' sets out the Scottish Government's tenure neutral approach to increasing the supply of housing in Scotland. In order to meet growing demand for housing, new ways to increase the overall supply of private rented housing in Scotland need to be identified and existing innovative models and practice built upon.

2.8 The Scottish Government and its partners are already working to increase the supply of privately rented housing being offered at a variety of rent levels. Initiatives include:

- with local authorities, encouraging multi-tenure housing developments with proportions for private sale or rent cross-subsidising the social sector;
- amending limits on the length of residential leases and related standard securities[10];
- delivering the National Housing Trust initiative, brining in new build homes into the private rented sector for intermediate rent;
- supporting the establishment of ‘Rent to Buy’ schemes;
- supporting Housing Associations that wish to provide market rental property; and
- bringing private sector empty homes back into use by funding an empty homes co-ordinator and part-funding pilot Empty Homes Officers shared by seven local authorities as part of the Scottish Empty Homes Partnership, managed by Shelter Scotland.

2.9 Local authority initiatives such as ‘Private Sector Leasing’ can also provide a range of benefits to consumers, landlords and local authorities. Under such schemes, properties from the private rented market can be let to a Local Authority, to be sublet to people who are homeless or in need of housing. The property and tenancy management functions may be contracted out by the Local Authority to another specialist provider.

2.10 Although this will not produce new housing supply it can assist in bringing homes into use and in meeting the demand for accommodation in the private rented sector. Other potential benefits include:

- provide a workable solution to landlords who are worried about rental voids or ongoing maintenance costs;
- help increase affordable rented housing supply within a local authority area and help address issues such as emergency homelessness accommodation; and
- ensure that consumers are provided with good levels of standard and service.

Institutional Investment

2.11 The Scottish Government wants to enable new approaches to re-invigorate private sector investment in housing. Institutional investors such as annuity and pension funds prefer long-term steady returns, and the Scottish Government is committed to working with pension funds and life assurance companies to bring more investment from these sources into the private rented sector. Amongst further options for capital market investment is the potential for Sovereign wealth funds to

[10] Sections 8 and 11 in the Land Tenure Reform (Scotland) Act 1974, amended by the Housing (Scotland) Act 2010 and Housing (Scotland) Act 2011

enter the sector, and for forms of investment to be developed or adapted in order to draw these funds' interest. The ultimate goal is to achieve more sustainable long term investment within the sector, whilst also increasing the supply of housing stock and improving quality.

2.12 International comparison suggests that institutional investment is relatively low in the UK. Contrasts can be drawn with the USA where institutional investors have a larger proportion of the market with significant portfolios, often including purpose-built single tenure rental developments.

2.13 In other western European countries such as France, Germany, Sweden and Austria, the sector is far larger than in the UK – and attracts greater institutional investment (however proportionately, the levels of institutional investment are still relatively small in each of these countries). Only Switzerland is dominated by institutional investors, largely as a consequence of the Swiss tax system and laws that ensure institutions favour investment in real estate[11].

2.14 There are niche sectors of the private rented sector in the UK, including Scotland, where significant institutional investment has been achieved. For example, there has been growth in the student accommodation market, mirroring the increased demand given the rise in students requiring accommodation.

2.15 Universities have formed partnerships with institutional investors to build new bespoke accommodation for rent, for example, as rental income is guaranteed by high student demand for this form of accommodation.

Institutional Investment in Student Accommodation: A Case Study

The UNITE UK Student Accommodation Fund (USAF) is an open-ended, non-listed real estate fund that focuses on acquiring and operating high quality student accommodation in the UK. USAF is the largest specialist student accommodation fund. It currently holds a portfolio of 58 properties valued at over £1 billion which are located in 18 markets across the UK, providing 19,468 bed spaces.

Established in December 2006, USAF initially raised equity capital totalling £370 million from UK and European institutional property investors. It was initially seeded with a £515 million portfolio comprising 31 properties acquired from UNITE group.

USAF completed its most recent capital raise in December 2009, raising £167 million of equity. The capital raise was oversubscribed, reflecting the appetite from investors for the student accommodation sector.

Scottish Government Action to Stimulate Growth

2.16 The Scottish Government is currently delivering a range of activities which could help encourage growth within the Scottish private rented sector, including:

[11] Towards a Sustainable Private Rented Sector, Scanlon & Kochan (2011)

- calling on the UK Government to amend Stamp Duty Land Tax rules so that bulk purchases are based on the applicable rate for each property, ahead of devolution of this power to the Scottish Parliament;
- establishing a Financial Innovation Unit focussed on supporting and developing new funding models and a more risk-based approach to investment which the housing sector can access and that support Scotland's economy; and
- lifting barriers on residential leasing in order to make this a more attractive option and encourage institutional and larger-scale investment. Housing associations, local authorities and rural Housing Bodies are now exempt from the 20 year limits on residential leases in Scotland and related standard security provisions.

2.17 However, the principal fiscal levers for influencing institutional investment are reserved to Westminster and the UK Government recently asked Sir Adrian Montague to conduct a 'Review of the Barriers to Institutional Investment in Private Rented Housing in the UK'. This Review is due to be published in the Spring of 2012 and the Scottish Government will carefully consider the findings.

Role of Local Authorities

2.18 Local authorities have a key role to play in facilitating growth and investment, at a local level, within the private rented sector.

2.19 The Housing (Scotland) Act 2001 places a statutory requirement on local authorities to prepare a local housing strategy supported by an assessment of housing need and demand. The local housing strategy provides the strategic direction to tackle housing need and demand and to inform the future investment in housing and related services across the local authority area. It addresses:

- the prevention and alleviation of homelessness;
- meeting housing support needs, fuel poverty and the new statutory requirements in the Housing (Scotland) Act 2006 on private sector house conditions;
- the role of the private rented sector in meeting housing need and demand; and
- the challenge of climate change.

2.20 The potential role of private rented housing in affordable housing provisions may not be fully realised. There may be an opportunity for local planning authorities to drive this agenda forward, particularly at a time when developers are finding it increasingly difficult to find viable ways of delivering affordable housing and when it is increasingly difficult for people to secure mortgage lending from banks to purchase new homes.

Question 3: What more could the Scottish Government and Local Government do to encourage investment or to grow the supply of new homes in the private rented sector?

Investing to Improve Quality

2.21 In this section, we consider how property condition and energy efficiency can be improved through investment. Later in Chapter Three we will examine the role of smarter regulation in meeting the challenge to improve property condition and energy efficiency in the sector over the next decade.

2.22 Property condition is a key challenge for the private rented sector, where conditions and disrepair are generally worse than in other sectors. There are many reasons for this, including the nature of the private rented sector housing stock (with a larger proportion of older stock than other tenures) and historic under-investment in property condition by some landlords. Property condition needs to improve and should be viewed as an investment in the property, as well as for the benefit of tenants.

2.23 Institutions offer one source of potential funding for the private rented sector to grow. However, the sector itself, and existing landlords in particular, will still offer a source of additional investment. This will be particularly important in addressing the range of challenges ahead, for example, in improving quality of property condition including energy efficiency. As we have already proposed, we see opportunities for all in addressing these challenges, for example, for landlords (by improving capital value of property) and for tenants (through improved living conditions).

2.24 Landlords, as owners of properties, have responsibilities to maintain the physical condition of their properties to reasonable standards, including the Repairing Standard. But we recognise that there may be situations where landlords need assistance to enable them to invest in their portfolios, to ensure long term sustainability and higher standards of service for consumers.

2.25 There are a range of national and local government powers; quality initiatives and funding schemes to help tackle this major issue within the PRS. A number of Scottish Government schemes offer support to landlords to invest in their properties, particularly in relation to increasing the energy efficiency of their properties, including Private Sector Landlord Loans; Energy Assistance Package; Home Loans Scheme; and Boiler Scrappage Scheme[12].

2.26 Other potential measures include using a targeted VAT reduction on building maintenance and repair, as set out in the Scottish Government Strategy and Action Plan for Housing 'Homes Fit for the 21st Century'. This would benefit the construction industry and also make it easier for people and businesses to improve the energy efficiency of their properties. This is a matter reserved to Westminster, and the Scottish Government will continue to make the case to the UK Government.

Question 4: What more can be done to support and encourage private landlords to invest in

a. maintaining and improving their properties condition; and
b. the energy efficiency of their properties?

[12] See www.energysavingtrust.org.uk for further information on all of these schemes

CHAPTER THREE: BETTER QUALITY

3.1 To better meet housing need and respond to consumer demand for higher levels of service, improving quality within the sector is crucial.

3.2 This chapter examines how we can continue to improve standards of service provision and the physical quality of properties, and what might need to change to meet our strategic aims.

SMARTER REGULATION

3.3 The Scottish Government wants to create a more targeted regulatory system for the private rented sector, focusing enforcement action on those areas and landlords who give tenants a poor deal, cause safety and management concerns and tarnish the image of the sector. Enabling this approach will require development of a modernised regulatory framework balancing the need to take firm action to tackle bad practice, while at the same time facilitating growth overall.

3.4 The current private rented sector regulatory framework is the product of successive policy responses to a complex range of issues that have arisen within the tenure over time, including antisocial behaviour, environmental health concerns, tenants rights and landlord responsibilities. This has led to the regulatory framework being viewed by many as being difficult for both landlords and tenants to understand and difficult for local authorities and other agencies, such as the courts, to enforce.

3.5 Listed below are the main provisions governing regulation of the private rented sector in Scotland:

- **Landlord Registration***:* to assess whether someone is a *'fit and proper person'* to be a private landlord and to create a database of private landlord contact details;
- **Houses of Multiple Occupancy (HMOs)**: to ensure basic minimum property and management standards and the suitability of a property for renting to three or more unrelated tenants;
- **The Assured and Short Assured Tenancy**: to provide a framework for appropriate tenancy agreements for those that entering into a private tenancy after 1988. (the Short Assured tenancy being by far the most common tenancy in the PRS);
- **The Private Rented Housing Panel**: to provide a mechanism for tenants to seek redress if their landlord fails to meet the Repairing Standard and certain rent assessment obligations;
- **Tenancy Deposit Scheme** (planned from 2012): to safeguard deposits and offer free access to an independent adjudication service to provide quick resolution to disagreements over the return of a deposit;
- **Tenant Information Pack** (planned from 2012): for landlords to provide to all tenants, at the start of the tenancy, with key information about the property, their rights and responsibilities;

- **The Property Factors (Scotland) Act 2011**: to provide protection for homeowners in Scotland who receive services from a Property Factor by the introduction of a compulsory register of all property factors, a statutory Code of Conduct which all registered factors must comply with and a new dispute resolution mechanism to be known as the *Homeowner Housing Panel*; and
- **Other legislative powers**: there is a broad range of legislative powers available to enforce standards in the sector, including powers contained within the recently enacted Private Rented Housing (Scotland) Act 2011, and the Housing (Scotland) Act 2006.

3.6 As part of its work to develop this consultative strategy, the Scottish Private Rented Sector Strategy Group identified a number of key issues for landlords, tenants and local authorities in relation to the current regulatory framework. Progress on these issues will help make achievement of our strategic aims more likely.

3.7 Key issues identified by the Group include:

Tenants	• access to more effective redress and/or dispute resolution when disagreements arise between landlord and tenant; • current tenancy regime not providing adequate security; and • poor quality of service and illegal charging by some letting agencies.
Landlords	• swift access to legal redress when issues arise (i.e. evictions, antisocial behaviour etc); • improved arrangements for recovery of possession; and • tackling the small minority of landlords who operate illegally and are linked to wider criminal activities.
Local Authorities	• lack of financial resources to effectively enforce the law to tackle poor landlords (i.e. evidence gathering, monitoring, time required to be spent on processing and administrative tasks disproportionate to enforcement etc); • effect of length of time for cases to be dealt with by the court (difficulties in retaining witnesses to provide evidence); and • lack of priority given within the criminal justice system to housing related cases (number of cases not proceeded or dropped, no deterrent due to low fine levels, often contradictory decisions being made by Fiscals and Sheriffs etc).

Question 5: Is better regulation of the private rented sector in Scotland required to improve standards of management and access to redress for consumers? If so, in what areas do existing regulations fall short and how could this be improved?

Question 6: Are there non-legislative alternatives to improving quality of service within the private rented sector that may be as effective?

Regulation in Focus: Review of Landlord Registration

3.8 In 2011, an independent review of the Landlord Registration system was published by the Scottish Government. The review noted that overall, the creation of the landlord register has brought about a systematic approach to the supervision of the private rented sector and has provided useful data on the scale of the sector.

The research also suggested that:

- the legislative framework is broadly accepted. However, some confusion remains as to the overall purpose of landlord registration, given its genesis in anti social behaviour legislation;
- landlords are now more aware of their obligations, but the worst landlords have not yet been removed from the sector;
- the most commonly used sanctions were Rent Penalty Notices and fees associated with late applications for registration. Reports to the Procurator Fiscal were used but only in a small number of cases;
- in the main local authorities reported that the fees associated with landlord registration do not cover actual local authority costs; and
- the current legislative framework for landlord registration should be tested further before any legislative change is undertaken.

3.9 The Review also suggested that the focus of Landlord Registration tended to be on the administrative side, with less of a focus on enforcement by Local Authorities. The main reason suggested for this was resource constraints in local authorities to provide further effective enforcement, given the time and cost required to take such cases through the Courts.

3.10 Work is now underway with local authorities and other key stakeholders to develop an action plan to address the reviews recommendations.

Question 7:

a. What more can landlord registration do to improve the quality of management in the sector?

b. What further action can be taken to ensure that landlord registration can be effectively enforced?

c. Are there ways of simplifying the burden for good landlords?

IMPROVING RIGHTS AND ENCOURAGING RESPONSIBILITY

Landlords

3.11 A small group of exploitative and unprofessional landlords bring the reputation of the private rented sector into disrepute and undermine the work done by the many good landlords who provide good quality homes with high management standards. The Scottish Government is committed to enabling effective action to help remove the small minority of rogue landlords from the private rented sector and to ensure that local authorities have the powers that they need to tackle this problem.

3.12 The Private Rented Housing (Scotland) Act 2011 will help to address the problems caused by rogue landlords by enhancing powers in relation to Landlord Registration and Houses in Multiple Occupation (HMOs) and introducing Overcrowding Statutory Notices to address the worst effects of overcrowding within the private rented sector.

3.13 However, a deeper rooted problem exists in relation to those landlords who engage in criminal activity. Such landlords are likely to be unregistered, provide housing that is below acceptable living standards and prey on some of the most vulnerable members of our society. In order to begin to tackle the problems caused by these landlords, clearly the use of housing legislation alone is not enough.

3.14 Effective partnership working between a range of public services such as housing, social work, education and police has to be established in a co-ordinated effort to identify and prosecute such landlords and also to identify and assist vulnerable adults and children living within their properties.

Case Study: Govanhill Hub

Govanhill is a traditional tenemental area in the south side of Glasgow which faces a complex set of challenges including: a significant problem with ‘bad’ landlords, major overcrowding, a large proportion of private rented housing in a poor state of repair, problems with factoring, persistent problems of crime, antisocial behaviour, fly tipping and other environmental hazards. The area has historically long been home to migrants, and is currently home to a new wave of migrants, mostly from eastern Europe. Many of the private rented tenants living within this area suffer from a range of financial, health and social issues – an already complex range of issues further compounded by language barriers.

In 2011, the Govanhill ‘Hub’ was established, bringing together a multi-disciplinary team comprising of police, council, housing association officials and other services in order to remove unregistered landlords and strictly enforce environmental health laws. The Hub is starting to have a positive impact and to date has resulted in an increased number of landlords complying with landlord registration regulations, increased engagement with vulnerable tenants (including those who do not have English as a first language) and improving environmental health issues.

Question 8: What further action can be taken by local authorities and their community planning partners to help remove the worst landlords from the private rented sector in Scotland?

Tenants and Prospective Tenants

3.15 Non-payment of rent, refusal to vacate a property after eviction is granted and anti-social behaviour by tenants in the private rented sector are examples of other important issues that need to be addressed.

3.16 Anti-social behaviour can have a serious negative impact on neighbours, neighbourhoods and communities. Landlords must take responsibility for any anti-social behaviour that occurs in or around their properties, whilst tenants must also recognise their own responsibilities and those of any visitors they may have to their homes.

3.17 Landlords have concerns about the time and costs associated in evicting a tenant on grounds of anti-social behaviour. Since anti-social behaviour is a breach of the tenancy agreement, landlords are required to go through the usual eviction process, however time delays in securing Court action often prolongs the problems for neighbours and others affected, whilst also resulting in high legal costs for the landlords, often compounded by prolonged rent arrears.

3.18 The apparent difficulties in securing an eviction for anti-social behaviour is a contributory reason why landlords offer tenants a Short Assured Tenancy.

3.19 Anti-social behaviour is not a mandatory ground for eviction. Landlords have stated that having the ability to evict someone involved in serious anti-social behaviour more quickly could encourage landlords to offer longer tenancy periods to prospective tenants.

3.20 Potential action to help address anti-social behaviour within the sector could include improved access to mediation services and other legislative reforms to improve access to effective redress in the Courts or via a Housing Panel model. These ideas are explored further, and your views sought, later in this chapter.

Question 9: How can problem tenants living within privately rented properties be more effectively dealt with to help both neighbours and landlords?

ROLE OF LETTING AGENTS

3.21 Professional letting agents have a crucial role to play in facilitating a thriving and professionally run sector. Professional organisations such as the Association of Residential Letting Agents (ARLA) and the Property Ombudsman provide members with a Code of Practice and Rules of Conduct to adhere by, encouraging responsible business practice and providing a route of recourse for landlords and tenants should any disputes or grievances arise.

3.22 The majority of letting agents in Scotland operate in a professional manner, complying with voluntary Codes of Practice and ensuring high quality levels of service for the tenants and landlords they assist. Such good practice from the majority is not shared by all however, and further consideration on the role of letting agents may be required, with many stakeholders, tenants and landlords calling for legislation to be introduced to regulate letting agents in Scotland. In light of this, the Property Ombudsman has just called for the regulation of all Letting Agents in light of the marked growth in private renting across the UK.

3.23 The main risks arising from bad letting agent practice are:

1. agents going out off business, and losing all monies held on behalf of landlords and/or tenants;
2. poor and in some cases illegal management practices, including not following the legal requirements in respect of the service they provide e.g. in drafting legally accurate tenancy agreements, charging illegal premiums or not following correctly the regulations set for the sector in the service they provide.

3.24 The Scottish Government already has work underway to address some of these issues, including the introduction of the mandatory Tenancy Deposit Scheme (from 2012) and consultation on the provision contained within the Private Rented Housing (Scotland) Act 2011 regarding clarifying the charging of Premiums. The introduction of Tenancy Deposit Schemes will mean that agents will no longer hold deposits during the term of any tenancy. In addition, there will be a legal obligation on every individual landlord to ensure that a deposit is sent to an approved safeguarding scheme.

Illegal Premiums

3.25 The charging of premiums by letting agents is a matter about which many tenants and prospective tenants have expressed serious concerns. The Rent (Scotland) Act 1984 states that it is an offence for any person to charge or receive any premium or make any loan in addition to rent, a condition of the grant, renewal or continuance of a protected tenancy.

3.26 However, recent research reports by Shelter Scotland[13] and the Resolution Foundation[14] involved 'mystery shopper' exercises conducted in order to identify the wide ranging fees being charged up front to tenants. The majority of the fees were described as 'administration fees' or in relation to:

- reference checks;
- credit checks;
- tenancy renewal fees; and/or
- continuous affordability checks.

3.27 This highlights a perceived ambiguity, on the part of letting agents, over the definition of premium with interpreting a premium only as a charge to *grant* the tenancy, and they continue to charge tenants administration and other fees. In response to this, Section 32 of the Private Rented Housing (Scotland) Act 2011 allows for clarification of what are legal, reasonable charges. The Scottish Government have launched a separate consultation on this provision, with the consultation period running from Monday 2 April until Monday 28 May 2012.

Question 10:

a. In addition to action on tenancy deposits and illegal premiums - what more can be done to address the problems identified from poor letting agent practice?

b. Is further regulation of letting agents in Scotland required? If you think that it is, please provide reasons for your answer, explaining what the best format might be for regulation. For example:

- expansion of landlord registration to include all agents;
- a separate system for agents similar to that proposed for property factors due for implementation in October 2012; and/or
- a legal obligation that all agents must be a member of a recognised professional body.

BETTER ACCESS TO JUSTICE

3.28 To provide effective legal redress, the current private rented sector regulatory framework relies largely on cases being brought before the Courts by local authorities, tenants or landlords.

[13] Shelter Scotland Research Report: Premiums in the Private Rented Sector, November 2011
[14] http://www.resolutionfoundation.org/media/media/downloads/Renting_in_the_Dark.pdf

3.29 The Private Rented Housing Panel (PRHP) has jurisdiction over a limited number of matters, including enforcement of a landlord's duty in relation to the 'Repairing Standard' and also in relation to the determination of 'fair rents'.

3.30 A number of issues have been raised by members of the Private Rented Sector Strategy Group, regarding difficulties experienced with accessing redress through the justice system, these include:

- a general view that there is often a lack of awareness of housing issues and legislation by those involved in the judicial system: this includes Sheriffs; the Procurator Fiscal, and the Police;
- difficulty for local authorities in pursuing landlords through the Courts, with particular issues in relation to time and financial costs; and
- difficulty for landlords in gaining possession of their property through the Courts, in particular time and cost associated with this.

3.31 Such issues have led to frustration within local authority enforcement staff and an increasing reliance from both landlords and tenants on the ending the 6 month short assured tenancy as a means to addressing difficulties that arise through the term of a tenancy. This could be viewed as the consequence of a system not functioning as it was intended. Furthermore, this may pose a barrier to tenants, landlords and local authorities in accessing legal redress in cases where this is required, as this can often take longer than the length of the tenancy.

3.32 Some of the above issues were addressed by the Lord Justice Clerk, the Rt Hon Lord Gill, as part of his wide ranging review of the Civil Courts system in Scotland. In September 2009, Lord Gill published a recommendations report as a result of the Review, suggesting the introduction of simplified Court procedures, more advice on legal rights and increased use of mediation. The Scottish Government is currently taking forward Lord Gill's recommendations.

3.33 During 2012, Ministers also intend to consult on the feasibility of creating of a new housing panel model to adjudicate on disputes arising between landlord and tenant. Any new model would work with a reformed Court system by providing an alternative means of solving the most common disputes in a more efficient way.

3.34 Many housing disputes may be resolved prior to Court or other judicial proceedings. These may be a result of misunderstandings or lack of awareness of respective rights and responsibilities. The Scottish Government's mandatory Tenant Information Pack (to be introduced later in 2012) and other information raising activities across the sector will go some way to addressing this.

3.35 In addition, access to independent mediation services when problems arise between landlord and tenant may also help resolve disputes and prevent lengthy and costly court proceedings.

Question 11: What more can be done to provide better access to justice for tenants, landlords and local authorities pursuing housing related cases?

IMPROVING PROPERTY CONDITION AND ENERGY EFFICIENCY THROUGH SMARTER REGULATION

Property condition

3.36 We have already considered property condition and energy efficiency in the previous chapter with regard to investment. This section looks at the challenge to improve property condition and energy efficiency in the sector over the next decade, through smarter regulation. These issues, including potential policy options, are currently being considered by the Sustainable Housing Strategy Group.

3.37 Private landlords are responsible for ensuring that their property complies with the Repairing Standard both at the start of the tenancy, and at all times during the tenancy. The Repairing Standard is a basic standard of repair that all privately rented houses must meet. Private tenants who think that their landlord has failed to comply with the Standard will be able to make an application to the Private Rented Housing Panel for a determination.

3.38 'Homes Fit for the 21st Century', which sets out the Scottish Government's housing vision and strategy for the decade to 2020 intends to achieve major housing condition related targets set by the Scottish Government and Scottish Parliament, including:

- by April 2015, all social landlords must ensure that all their dwellings pass all elements of the Scottish Housing Quality Standard; and
- by December 2020, improved design and greater energy efficiency in housing will have made a contribution to Scotland's commitments to reduce our energy consumption by 12% and our greenhouse gas emissions by 42%.

3.39 The Scottish Housing Quality Standard (SHQS) was introduced in February 2004 to provide a common minimum standard for which to aim for when improving social housing stock. It should be noted that the SHQS is applicable to property within the private rented sector only as a measure and not a standard. Key component parts of the Standard are:

- being above the tolerable standard;
- being free from serious disrepair;
- being energy efficient (effective insulation and fuel efficient central heating);
- having a modern kitchen and bathroom in good condition;
- having basic measures to ensure the health, safety and security of tenants is not compromised (such as appropriate security measures).

3.40 Currently 67% of private rented dwellings fail SHQS. A majority of these fail to meet the energy efficiency criteria, although the number of fails because of elements of the tolerable standard or serious disrepair being relatively low.

Energy Efficiency

3.41 Energy efficiency ratings are thus less favourable than either socially rented or owner-occupied properties, with around one in six privately rented sector properties rated poor. Private-rented dwellings are over twice as likely to have a 'poor' National Home Energy Rating than owner-occupied dwellings, with 8% of the total dwellings in the private rented sector rated as 'poor', compared to 1% in the social sector and 3% in the owner-occupier sector[15].

3.42 Scottish Ministers have powers under the Climate Change (Scotland) Act 2009 to set minimum standards for energy efficiency of properties. The Energy Act 2011 also provides powers to set minimum standards (within the private rented sector only). This power will apply for Scotland not before 1 April 2015.

3.43 In England and Wales, the intention is that the minimum standard for PRS properties from 1 April 2018 will be an EPC rating of E or above (or F&G properties where all Green Deal finance has been taken out). The report "Regulation of Energy Efficiency in Housing", published in March 2011[16] stated that Scottish Ministers do not intend to regulate for minimum energy efficiency standards, for the PRS and owner occupiers, before 2015.

3.44 It is clear that the energy efficiency of properties in the private rented sector requires to improve substantially if the Scottish Government's 2020 Climate Change Targets are to be met.

3.45 The Scottish Government is currently considering the issues regarding property condition and energy efficiency of private sector housing (including the private rented sector) in support of the work of the Sustainable Housing Strategy Group. These are likely to be included in the Sustainable Housing Strategy which will be consulted on over the summer of 2012.

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[15] Scottish House Condition Survey (2010)
[16] http://www.scotland.gov.uk/Publications/2011/03/22093051/0

CHAPTER FOUR: MORE INFORMED CHOICES

4.1 Improved tenant and landlord awareness is central to developing a better functioning and more consumer focused PRS, a sector where evidence suggests that knowledge of how the sector should operate, including rights and responsibilities, is limited.

4.2 This chapter considers consumer awareness, including commentary on the specific area of tenancy options, and how more vulnerable tenants or prospective tenants can be better empowered.

Consumer Driven Improvement

4.3 Encouraging greater consumer empowerment is central to this strategy's aim of achieving a thriving, professional private rented sector. Together with a smarter more targeted regulatory regime, consumers can help drive improvement through their choices as well as help identify illegal practice. Those landlords and letting agents that provide a professional service will ultimately benefit from this, while those that do not should feel the impact of this on their business.

4.4 An empowered consumer may be more inclined to engage with their landlord or their letting agent to improve service and the condition of their property. For those landlords that already provide a high quality of service, greater consumer empowerment can only benefit their business – as consumers feel more confident moving into the private rented sector and therefore increase the demand for good quality and well managed rented accommodation. Furthermore, if landlords are encouraged to improve the physical standard of their properties, this will help increase the overall capital value of their property.

4.5 The Private Rented Housing Panel provides an existing mechanism for consumers to ensure their landlord meets required repair, maintenance and certain rent obligations. Yet we know from previous research[17] that many consumers are simply unaware of their rights to challenge a landlords failure to comply with the Repairing Standard duty by applying to the Private Rented Housing Panel.

4.6 This alone is not enough, and we recognise that a well functioning sector, including a smarter targeted regulatory regime, is required to fully empower well informed consumers of the private rented sector. This has been addressed elsewhere in this strategy.

Question 12: Do you think that consumer empowerment can succeed in providing improvement in quality and standards in the private rented sector? Please provide reasons for your answer.

[17] Scottish Government Review of the Private Rented Sector, 2009

Question 13: What more can be done to support and empower consumers in the private rented sector?

Improved Consumer Awareness

4.7 During 2010, an estimated 109,000 new private tenancies were entered into in Scotland[18]. However, despite the scale of this important housing sector, most of those entering into these legally binding contracts have very little awareness of their rights and responsibilities during this contractual period.

4.8 We recognise that there is much to be done to raise consumer awareness to achieve our vision for a consumer focused private rented sector over the next decade. There are currently a range of organisations who provide support, advice and guidance to tenants, landlords and letting agents and, as part of overall government activity, we would look to the sector itself to further raise awareness.

4.9 Charities such as Shelter Scotland, Citizen's Advice and many community organisations have an important role to play in providing independent housing advice to private rented tenants, whilst landlords can access member organisations such as the Scottish Association of Landlords, Scottish Land and Estates or the Association of Residential Letting Agents to obtain information on their rights and responsibilities. Local authorities can also provide valuable advice to landlords, agents, tenants and their neighbours in order to improve compliance with PRS property and management standards.

4.10 Under a Short Assured Tenancy Agreement, for example, landlords are legally obliged to provide tenants with a wide range of information about their rights and responsibilities. These include:

- information on the length of the tenancy and the level of rent;
- guidance on who is responsible for the repair and decoration of the property along with information about the repairing standard;
- details of any conditions or restrictions affecting the use of the property;
- information on tenants' rights to have a market rent determined by the private rented housing panel.

4.11 We know from previous research conducted in 2009 that landlords generally do provide this information but there remains much work to do to promote an understanding amongst tenants about all of their rights[19]. In particular, there is a low level of awareness amongst tenants about key initiatives that have been introduced to try and protect them. For example, in the tenants' survey conducted as part of the 2009 Review it was found that only:

[18] Estimate based on 2010 data from the Scottish Household Survey, and based on whether someone has moved into a property in the last year rather than the actual number of signed tenancy agreements

[19] The 2009 Scottish Government Review of the PRS

- four in 10 tenants had heard of landlord registration;
- three in 10 had heard of the mediation services available to them; and
- one in 10 had heard of the Private Rented Housing Panel and the repairing standard.

4.12 Work has already begun to improve consumer awareness in the private rented sector. The new mandatory Tenant Information Pack will be introduced in Autumn 2012. The pack is a provision in the Private Rented Housing (Scotland) Act 2011, and will legally oblige landlords to provide the pack to all new tenants at the start of their tenancy. It is intended that this will help raise consumer awareness, and will contain key consumer information for tenants, including information about the property, the tenancy agreement, and their rights and responsibilities.

4.13 A separate public consultation on the Tenant Information Pack, including the packs contents and the process by which it can be produced and provided to tenants, is running from 27 February to 14 May 2012.

Question 14: What more can be done to improve consumer awareness of rights and responsibilities in the private rented sector?

Improving Tenancy Options

4.14 The Private Rented Sector Strategy Group recognises that different tenants and prospective tenants have varying needs in relation to the form of tenancy they require.

4.15 The tenancy regime is central to the efficient functioning of the sector, as it establishes the legal agreement between tenant and landlord. Two key issues have been identified by the group with regards to tenancy:

1. the length of the tenancy: how long the tenancy agreement is for; and
2. security of tenancy: the conditions in which then landlord may legally seek to regain possession of their property subject to the terms of the tenancy agreement.

4.16 The recent changes in the dynamics of private rented sector, outlined in Chapter One (and the supporting evidence paper to this Strategy), have prompted the question of how the existing tenancy arrangements can meet the new demands being placed on the sector.

4.17 The current tenancy regime in Scotland originates from the 1988 Housing (Scotland) Act which introduced Assured and Short Assured tenancies for all new private rented tenants. The Short Assured Tenancy (SAT), which runs for a minimum of six months, is by far the most common rental contract. The Assured Tenancy was intended as the ‘default’ tenancy contract but in practice is less commonly used. There remain a small number of tenants on Regulated Tenancies that pre-date the 1988 Act.

4.18 In addition to measures to protect tenants rights, the tenancy agreement is crucial for Landlords in their setting out their ability to rent their property, and in particular for their access to regain possession of their property. Opinions on the advantages and disadvantages of the Short Assured Tenancy, including what this tenancy can offer, vary amongst the members of the Scottish Private Rented Sector Strategy Group.

4.19 A number of housing stakeholders[20] have recently highlighted that certain households may be more likely to express a preference for greater security of tenure and therefore there may be a need to re-consider the suitability of the current tenancy regime, especially given the radical changes experienced by the housing market. More families with children are now renting privately, and people who had previously sought the stability and security of owner occupation or social tenancies are now turning to the private rented sector to make a home.

4.20 Longer tenancies might benefit both tenants and landlords. For landlords, this can offer greater security of rental income, less 'transaction costs' associated with finding new tenants, whilst benefiting the tenant who wants the property as their longer term home. However, an important consideration of a longer SAT, is the effect it may have on the setting of rent levels. Currently the SAT six month tenancy offers an opportunity to re-set the rent at the end of the tenancy. The rent agreed for longer term tenancies, including how this may be reviewed against changing economic circumstances, would need to be considered.

4.21 Whether a tenant gets tied into accepting liability for the rent for the duration of the tenancy length also requires careful consideration.

4.22 Security of tenure is a crucial issue, in particular when compared with owner occupation and renting in the social sector, where there is greater security of tenure. The Scottish Secure Tenancy Regime, which is used by Social Landlords, provides security of tenure to tenants who pay rent and meet other obligations of the tenancy, while still allowing flexibility for tenants to leave the tenancy with appropriate notice. Some stakeholders have questioned whether the SAT framework in the private rented sector will suit new types of tenant who wish to have greater security to stay in the property for as long as they wish, but still want the flexibility to move should their circumstances change.

4.23 As a tenancy agreement, the SAT does offer some flexibility for landlords and tenants to agree a tenancy which suits them. This need not always be the minimum six month Short Assured Tenancy, and many in the sector do regularly agree initial tenancies longer than six months. The sector has the ability to alter practice under the current tenancy regime. This includes increasing the length of tenancy agreed, the notice periods for serving notice, rent to be paid and tenant's liability for paying rent until the end of the tenancy. Raising awareness of what is possible under the existing tenancy framework can help both tenants and landlords to agree a tenancy which is suitable for their circumstances.

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[20] Shelter Scotland Briefing for Stage 1 Debate of Private Rented Housing (Scotland) Bill – 27 January 2011

4.24 The most recently available national evidence[21] suggests no preference for a change to the current six month length of the SAT tenancy agreement, however it should be noted that this evidence predates the Credit Crunch. Almost half of existing tenants (49%) favoured the current six months tenancy length, whilst a smaller proportion, around a quarter, preferred a minimum of one year and a further tenth preferred a minimum of two years. Preference for extending the tenancy length did increase with age and with those who had a proportion of their rent covered by Housing Benefit. There was no difference in preference across different household types, including those with a family.

4.25 The private rented sector continues to be a sector with a dynamic range of tenants, often looking for different requirements from the sector. As stated in the introduction to this strategy, a key challenge will be how to ensure that the sector meets the new and growing demand for rented housing. The tenancy arrangements between landlords and tenants are crucial to ensuring that the sector can rise to this challenge.

Question 15: What more can be done to meet the demand for longer tenancies and greater security of tenure through the existing Short Assured Tenancy, for those tenants and prospective tenants that desire it?

Question 16: Should the Scottish Government consider alternatives to the Short Assured Tenancy in order to enable greater tenancy security? If so, what would be the conditions that would need to be met for this to work for landlords as well as tenants? Please provide reasons for your answer.

EMPOWERING VULNERABLE TENANTS

4.28 The private rented sector caters for a diverse range of tenants and that diversity is set to further expand. Looking to the next decade, we recognise that this strategy will need to cater for all those housed in the sector. This will include those who could be classed as more vulnerable tenants, including those:

- migrant workers entering the country for the first time, often encountering language barriers and with little knowledge of private renting;
- low-income households who cannot access social housing and therefore privately rent but often encounter affordability issues;
- households currently in receipt of Housing Benefit, where UK Government welfare reform will have an impact of levels of Local Housing Allowance paid to them; and
- Households that contain older members or those with a disability

[21] Scottish Government Review of the Private Rented Sector (2009)

4.29 The aim of improving consumer awareness is to support and encourage consumer led improvement. This allied to an effective and proportionate regulatory framework can help drive up and maintain high standards.

4.30 However, for some more vulnerable consumers, engaging in the sector as a consumer may be harder to achieve, in particular if they are in a disadvantaged position and it is, therefore, essential that the regulatory regime is effective in protecting their rights.

4.31 The sector is increasingly being looked at as a housing option for homeless households. Local authorities are working with the PRS to help provide settled accommodation for households assessed as homeless through the relevant legislation, and to provide a potential housing option to those provided with advice and assistance.

Question 17: What more can be done, and by whom, to ensure that vulnerable tenants living within the private rented sector are protected and are aware of their rights and responsibilities?

Housing Benefit

4.32 The private rented sector has a key role in providing housing for lower income families and those dependent on housing benefit. These consumers tend to be much more settled in their accommodation than the typical tenant living in the sector. Housing Benefit in the private rented sector is currently paid as the Local Housing Allowance, which during 2010-11 provided an estimated £421 million to the sector. As at November 2011, there were 92,400 housing benefit recipients in the PRS.

4.33 The proportion of households on Housing Benefit in the private rented sector in Scotland is 26%, which is the same as the proportion for England (26%) and lower than in Northern Ireland (33%). UK Government reductions in Housing Benefit will have a direct and harmful effect on this client group living within the private rented sector in Scotland.

4.34 The Scottish Government established an Advisory Group to help assess the impact of the proposed welfare reform changes. Comprehensive analysis of the impacts on Scotland highlighted that:

- £150 million will be removed from the economy annually as a result of the changes;
- 60,000 private rented sector claimants in Scotland are directly affected by the cuts;
- There is an acute shortage of shared accommodation available for the 4,400 people, mainly single, affected by changes to the Single Room Rate;
- The benefits cap will affect around 4,000 adults in Scotland and between 7,000 and 8,000 children. The average loss is around £250 per month;
- 19% of claimants in the private rented sector dependant on housing benefit are in work.

4.35 These changes will mean that fewer properties will be available for which full rent can be covered by Housing Benefit, with those currently in receipt of Housing Benefit and living within the private rented sector, having to make up the rent shortfall. Ultimately this could lead to more households falling into debt, homelessness or being forced to move to other areas, with cheaper rents, which may be further from the employment market and potentially increase concentrations of poverty.

Question 18: What more can be done by the Scottish Government to mitigate against the UK Governments Welfare Reforms that affect the private rented sector?

HOW TO RESPOND

We are inviting written responses to this consultation paper by Tuesday 10 July 2012.

Please send your response, along with the completed Respondent Information Form (see 'Handling your Response' below) to PRSStrategy2012@scotland.gsi.gov.uk or by post to:

The Scottish Government
Private Rented Sector Team – PRS Strategy Consultation
Highlander House
58 Waterloo Street
Glasgow
G2 7DA

If you have any questions, please contact Yvonne Gavan on 0141 271 3782.

When responding, we would be grateful if you would use the Consultation Questionnaire provided in Annex A, or could clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at http://www.scotland.gov.uk/consultations.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form, which can be found at Annex A, as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential and treat it accordingly.

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

Following the closing date, all responses will be analysed and considered along with any other available evidence, which will then directly feed into the final draft of the strategy, due to be published in late summer 2012.

ANNEX A

CONSULTATION ON A STRATEGY FOR THE SCOTTISH PRIVATE RENTED SECTOR

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ ***Please tick as appropriate***

Surname

Forename

2. Postal Address

Postcode	**Phone**	**Email**

3. Permissions - I am responding as…

Individual ☐ / Group/Organisation ☐

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ **Yes** ☐ **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

Please tick as appropriate ☐ **Yes** ☐ **No**

(d)	We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise? ***Please tick as appropriate*** ☐ **Yes** ☐ **No**

CONSULTATION QUESTIONS

1a. Do you agree with the vision and strategic aims proposed by the Scottish Private Rented Sector Strategy Group, for the sector over the next 10 years?

Yes ☐ No ☐

If not, please explain why, offering your own views.

Comments

1b. Do you agree with the key strategic challenges for the sector?

Yes ☐ No ☐

Are there any other key strategic challenges that should be highlighted in the strategy? Please provide reasons for your answer.

Comments

2. What can Scotland learn from the approach to the private rented sector taken in either of the two case study examples or other countries? Please state what specifically would be transferrable from these countries to Scotland why.

Comments

3. What more could the Scottish Government and Local Government do to encourage investment or to growth the supply of new homes in the private rented sector?

Comments

4. What more can be done to support and encourage private landlords to invest in:

   a. maintaining and improving their properties condition; and
   b. the energy efficiency of their properties?

Comments

5. Is better regulation of the private rented sector in Scotland required to improve standards of management and access to redress for consumers? If so, in what areas do existing regulations fall short and how could this be improved?

Comments

6. Are there non-legislative alternatives to improving quality of service within the private rented sector that may be as effective?

Comments

7a. What more can landlord registration do to improve the quality of management in the sector?

Comments

7b. What further action can be taken to ensure that landlord registration can be effectively enforced?

Comments

7c. Are there ways of simplifying the burden for good landlords?

Comments

8. What further action can be taken by local authorities and their community planning partners to help remove the worst landlords from the private rented sector in Scotland?

Comments

9. How can problem tenants living within privately rented properties be dealt with more effectively?

Comments

10a. In addition to action on tenancy deposits and illegal premiums – what more can be done to address the problems identified from poor letting agent practice?

Comments

10b. Is further regulation of letting agents in Scotland the answer?

Yes ☐ No ☐

If you think that it is, please provide reasons for your answer, explaining what the best format might be for regulation. For example:

- expansion of landlord registration to include all agents;
- a separate system for agents similar to that proposed for property factors due for implementation in October 2012; and/or
- a legal obligation that all agents must be a member of a recognised professional body.

Comments

11. What more can be done to provide better access to justice for tenants, landlords and local authorities pursuing housing related cases?

Comments

12. Do you think that consumer empowerment can succeed in providing improvement in quality and standards in the private rented sector? Please provide reasons for your answer.

Comments

13. What more can be done to support and empower consumers in the private rented sector?

Comments

14. What more can be done to improve consumer awareness of rights and responsibilities in the private rented sector?

Comments

15. What more can be done to meet the demand for longer tenancies and greater security of tenure through the existing Short Assured Tenancy, for those tenants and prospective tenants that desire it?

Comments

16. Should the Scottish Government consider alternatives to the Short Assured Tenancy in order to enable greater tenancy security? If so, what would be the conditions that would need to be met for this to work for landlords as well as tenants? Please provide reasons for your answer.

Comments

17. What more can be done to ensure that vulnerable tenants living within the private rented sector are aware of their rights and responsibilities?

Comments

18. What more can be done by the Scottish Government to mitigate against the UK Governments Welfare Reforms that affect the private rented sector?

Comments

ANNEX B

SCOTTISH PRIVATE RENTED SECTOR STRATEGY GROUP

The remit of the Scottish Private Rented Sector Strategy Group is to advise the Scottish Government on the development of a strategy for the private rented sector in Scotland that will support tenants, landlords, local authorities and others to continue to encourage a flourishing, professional and high quality PRS equipped to provide sustainable housing solutions for Scotland in the 21st century.

Re-established by Scottish Ministers in September 2011 and independently chaired by Professor Douglas Robertson (School of Applied Social Science, Stirling University), the group is made up of representatives from the following organisations:

- Shelter Scotland
- Scottish Association of Landlords
- Scottish Land & Estates
- Chartered Institute of Housing
- City of Edinburgh Council
- COSLA
- Association of Local Authority Chief Housing Officers

Minutes of all six of the meetings which took place to inform the development of this consultative strategy are available on the Scottish Government website. Alternatively, you can request copies by contacting Yvonne Gavan on 0141 271 3782.

In order to support the work of the group and the development of a strategy for the sector, the Scottish Government has also established a virtual Private Rented Sector Strategy Group which comprises of a wide range of individuals and organisations who have an interest in the future of the sector. During the development of this consultative strategy, the views and opinions of this virtual group were sought on a regular basis, in order to inform the discussions of the Scottish Private Rented Sector Strategy Group.

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