

**The Highland Council**  
**Community Services Committee**  
**6 November 2014**

Agenda Item	24
Report No	COM 50/14

**Consultation on a New Tenancy for the Private Sector**

**Report by the Director of Community Services**

**Summary**

This report provides details of a Scottish Government consultation paper on changes to legislation affecting tenancies in the private rented sector. The report summarises the proposals set out in the consultation paper and recommends a response to the Scottish Government.

**1. Background**

1.1 Reform of the private rented sector is part of the Scottish Government's broader strategic aim of making the sector more professional. Tenancy reform should be viewed in the context of:

- the Scottish Government's Private Rented Sector Strategy 'A place to stay, a place to call home. A Strategy for the Private Rented Sector in Scotland' (PRS Strategy); and
- the action we are taking to improve quality in the sector.

1.2 The Scottish Government Private Rented Sector Strategy was published in May 2013. It was informed by the work of the Private Rented Sector Strategy Group, which helped the Scottish Government to produce and consult on a draft Strategy in 2012. The Strategy aims to improve and grow the sector by enabling more effective regulation, applying tougher enforcement action and attracting new investment. It is considered that a more professional sector will benefit tenants, landlords and those who work or are thinking of investing in the sector.

1.3 The overall vision of the Private Rented Sector Strategy is:

*'A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.'*

1.4 The following aims are set out:

- To improve the quality of property management, condition and service;
- To deliver for tenants and landlords, meeting the needs of the people living in the sector; consumers seeking accommodation; and landlords committed to continuous improvement; and

- To enable growth and investment to help increase overall housing supply.

1.5 Reforming the tenancy system is an important part of achieving the Scottish Government vision for the private rented sector, and a consultation paper setting out proposals for a new tenancy and consideration of rent levels in the private rented sector was issued in early October 2014. The consultation paper can be viewed at:

<http://www.scotland.gov.uk/Publications/2014/10/9702>

1.6 This report summarises the proposed changes and presents a draft response to the consultation paper.

## 2. Proposed changes

2.1 The current form of tenancy in the private rented sector originates from the Housing (Scotland) Act 1988, which was introduced for all new private rented tenants from 2 January 1989. This Act introduced the Assured Tenancy Regime, which covers two types of tenancy - an assured tenancy and a short assured tenancy.

2.2 The consultation paper proposes increased security of tenure through a new private rented sector tenancy. A summary of the current and proposed schemes is contained in **Appendix 1**.

## 3 Summary of Response

3.1 A draft response to the consultation questions is contained as **Appendix 2**. The response is to welcome and endorse the changes proposed to the tenancy system for the private rented sector. It is considered that these changes will improve security of tenure for tenants, while giving suitable safeguards for landlords, lenders and investors.

3.2 The consultation paper also poses some questions about rents and affordability within the private rented sector. Currently, for all assured tenancies the rent is market led. The rent will usually depend on factors such as the type of house; where it is located; whether it is furnished or unfurnished; its general condition; the services provided by the landlord; and the demand for housing in that area.

3.3 Rent levels form a complex picture that can vary over time by area and size of property. The sector has always catered for a broad range of tenants and met a wide range of demands. Tenants include young professionals and people who move often for their work, as well as students and newly formed households. However the number of families living in the sector on a long-term basis has been increasing. There are a number of complex issues in relation to rent levels in the private rented sector. These relate to the balance between reasonable public policy measures aimed at affordability for tenants without creating disincentives for landlords and lenders to maintain supply.

#### **4. Implications**

- 4.1 Resource: there are no specific implications.
- 4.2 Legal: the proposals will create a new legal framework for the private rented sector in Scotland.
- 4.3 Equalities: a thriving and professional private rented sector will increase housing options for all equalities groups.
- 4.4 Carbon Clever/ Climate Change, Risk and Gaelic: there are no specific implications.
- 4.5 Rural: the private rented sector plays a very important role in rural communities, and often operates on an informal basis. The change of tenancy type should not impact adversely on the sector in rural communities.

#### **Recommendation**

The Committee is invited to approve the response to the consultation paper set out at **Appendix 2**.

Designation: Director of Community Services

Date: 23 October 2014

Author: David Goldie, Head of Housing

## Appendix 1: Summary of changes proposed

### Improving security of tenure

<i>Subject</i>	<i>Current provisions</i>	<i>Proposed new provisions</i>
No-fault ground for repossession	Under a short assured tenancy, landlords can reclaim their property simply because the fixed term has ended. This is called the 'no-fault' ground for repossession.	The 'no-fault' ground for repossession will be removed.
Tenancy roll-over arrangements	Tenancies can roll-over on a monthly basis after the initial lease period expires.	Tenancies cannot roll over for a duration less than the original tenancy agreement.
Length of tenancy	Under a short assured tenancy, the shortest tenancy duration is six months. There is no minimum for an assured tenancy.	Landlords must offer a minimum tenancy of six months. No maximum is proposed.  A tenant will be able to request a tenancy agreement shorter than six months to meet their personal circumstances, e.g. a seasonal or travelling worker.
Notice to Quit periods	Currently landlords and tenants must give each other Notice to Quit of between 28 and 40 days.	The Notice to Quit period will be linked to how long the tenant has lived in the property. Landlords will have to give tenants the following notice: <ul style="list-style-type: none"> <li>• Six months or less in the property = four weeks' notice</li> <li>• Over six months up to two years in the property = eight weeks' notice</li> <li>• Over two years up to five years in the property = 12 weeks' notice</li> <li>• Over five years in the property = 16 weeks' notice</li> </ul>

## Safeguarding landlords, lenders and investors

<b><i>Subject</i></b>	<b><i>Current provisions</i></b>	<b><i>Proposed new provisions</i></b>
Grounds for repossession	There are 17 grounds under which a landlord can repossess their property. About half of these are mandatory - in other words, the court must give a possession order if the ground is proved. The rest are discretionary. All need a sheriff's court order.	<p>Reduce the number of grounds for possession to eight, all of which will be mandatory.</p> <p>The new proposed repossession grounds are:</p> <ol style="list-style-type: none"> <li>1. landlord wants to sell the home</li> <li>2. mortgage lender wants to sell the home</li> <li>3. landlord wants to move into the home</li> <li>4. refurbishment</li> <li>5. change to the use of the home</li> <li>6. tenant failed to pay three full months' rent</li> <li>7. tenant is anti-social</li> <li>8. tenant has otherwise breached the tenancy agreement.</li> </ol> <p>Under the Housing (Scotland) Act 2014, all civil PRS cases will now be considered by the First Tier PRS Tribunal rather than a sheriff.</p>
Shorter Notice to Quit period in certain circumstances	No current provisions.	If repossession grounds 6, 7 or 8 above apply, landlords will be able to give tenants 28 days' Notice to Quit regardless of how long the tenant has lived in the property.

<b><i>Subject</i></b>	<b><i>Current provisions</i></b>	<b><i>Proposed new provisions</i></b>
Notice of Proceedings	The length of notice required before a landlord can take legal proceedings is two weeks or two months, depending on the ground being used.	A standard four-week notice period will be required before proceedings can be raised.
Notice to Quit	Currently landlords and tenants must give each other Notice to Quit of 28-40 days.	<p>Tenants will be have to give landlords the following notice:</p> <ul style="list-style-type: none"> <li>• Six months or less in the property = four weeks' notice.</li> <li>• Over six months in the property = eight weeks' notice</li> </ul>
Model tenancy agreement	No prescribed tenancy agreement.	We will introduce a model tenancy agreement containing mandatory and discretionary clauses and a statutory guidance note that outlines the clauses in plain language. This will remove the need to issue a Tenant Information

## APPENDIX 2

### CONSULTATION ANSWER FORM

**Question 1:** Do you agree that the no-fault ground for a landlord to repossess their property should be excluded from the new tenancy system?

Yes  No  Don't know

Please explain your answer.

We believe this will improve security of tenure. We have no specific comments.

**Question 2:** Do you agree that the ability to roll over tenancies on a monthly basis should be excluded from the new tenancy system?

Yes  No  Don't know

Please explain your answer.

We believe this will simplify the process for tenants and landlords and improve security of tenure.

**Question 3a:** Do you agree that the new type of tenancy should have a minimum duration of six months?

Yes  No  Don't know

Please explain your answer.

We agree with the proposals but with some reservations. There is a danger that the minimum duration becomes the default position, in the same way that Short Assured Tenancies became the default in the current system. A minimum period of 6 months may not achieve the desired outcomes of increasing security of tenure from a tenant point of view.

**Question 3b:** Do you agree that the tenancy should have no maximum period?

Yes  No  Don't know

Please explain your answer.

We agree with this subject to reasonable notice provisions set out in the consultation paper.

**Question 3c:** Do you agree that a tenant should be able to request a shorter tenancy?

Yes  No  Don't know

Please explain your answer.

We agree with the proposal but there would need to be a way to ensure that this was a genuine tenant choice.

**Question 4a:** Do you agree that the notice period should be linked to how long the tenant has lived in the property?

Yes  No  Don't know

Please explain your answer.

We believe it is fair to link notice periods to length of tenancy and that longer notice periods should apply where tenants have occupied private rented tenancies for long periods as their main homes.

**Question 4b:** Do you agree with the four proposed notice periods?

Yes  No  Don't know

If you do not agree with all four of the notice periods, please tell us which ones you disagree with and why.

We have no specific comments.

**Question 5a:** Do you agree that all the proposed repossession grounds should be mandatory?

Yes  No  Don't know

Please explain your answer.

We agree the proposals appear fair.

**Question 5b:** Do you agree with the proposed list of new repossession grounds?

Yes  No  Don't know

Please explain your answer.

We agree that the current grounds are outdated and that the proposals will simplify and modernise the grounds.

**Question 5c:** Are there other repossession grounds we should include in the list?

Yes  No  Don't know

Please explain your answer.

We have no specific suggestions.

**Question 6:** Do you agree that landlords should be able to recover possession of their property with a 28-day notice period in the circumstances proposed?

Yes  No  Don't know

Please explain your answer.

This provides the right safeguards for landlords and neighbours to enable repossession more quickly in the case of serious breaches of tenancy conditions.

**Question 7:** Do you agree that landlords should no longer have to issue pre-tenancy notices to recover possession of their property?

Yes  No  Don't know

Please explain your answer.



This will simplify an existing provision which is not currently always used as intended.

**Question 8:** Do you agree that the notice period for all proceedings should be four weeks?

Yes  No  Don't know

Please explain your answer.

This will simplify current arrangements.

**Question 9:** Do you agree with the proposed timescales for a tenant giving notice to a landlord to leave the property?

Yes  No  Don't know

Please explain your answer.

This is consistent with proposals to vary notice periods set out elsewhere in the paper.

**Question 10:** Do you agree that a model tenancy agreement should be introduced?

Yes  No  Don't know

Please explain your answer.

We agree with this proposal, which will help provide consistency of practice and contribute to the objective of a professional and well managed sector.

**Question 11a:** What are your views on rent levels in the private rented sector in Scotland?

Highland contains a diverse mix of urban and remote/rural communities and the private rented sector contains a wide range of range of properties, tenants and landlords.

Most areas of Highland have high demand and acute housing pressure that cannot be met within the social rented sector. The council would like to see a thriving private rented sector that could play an increasing role in meeting local housing needs.

In general there is an issue of affordability within the sector for people on low or moderate incomes. Tourism and the associated demand for holiday lets affect rent levels and availability of private sector tenancies to meet local housing needs on a seasonal basis.

Although rents in the private rented sector are market led, the levels of local housing allowance used to calculate Housing Benefit and Universal Credit are not reflective of the market.

We believe that issues of affordability for low income families is equally as important as security of tenure if the private rented sector is going to contribute to meeting long term housing needs and become a tenure of choice.

**Question 11b:** What action, if any, should the Scottish Government take on rent levels in the private rented sector in Scotland?

Please explain your answer

The Scottish Government could take action to ensure that more data is collected on rent levels from private landlords that let properties on an individual basis. This could be achieved through Landlord Registration and reported to the Scottish Rent Service.

Currently there are in excess of 10,000 private landlords registered in Highland. Obtaining data from private landlords who do not let through agents would provide a more representative picture of rents in the sector.

Greater promotion around the benefits and importance of collecting rent data would give a greater understanding of markets in the area. Increased levels of data would also provide more accurate information for the setting of local housing allowance rates.

Local Housing Allowance rates are calculated using the data collated on rents in a Broad Rental Market Area (BRMA). The Scottish Government could lobby for the BRMA boundary areas to be reassessed to present a more realistic reflection of the rental markets in an area.

Welfare Reform also affects affordability and access to the sector.

This is a difficult policy area that needs to balance the needs of landlords and lenders as well as tenants. We believe there is scope for a more detailed national debate about private rented sector rents

**Question 11c:** What rent review conditions, if any, should the new tenancy system include?

Please explain your answer.

It is difficult to impose conditions while there is a market led approach to rents. This should be considered in more detail as part of a national review of rents and affordability in the Private Rented Sector.

**Question 12:** Overall, do you feel that the proposed new tenancy system strikes the right balance between the interests of landlords and tenants?

Yes  No  Don't know

Please explain your answer.

We support the proposals, which should simplify the system and enhance tenants' rights and security of tenure.

**Question 13:** Do you have any (other) suggestions/comments on the new tenancy system for the private rented sector? If so, please tell us.

We do not have any other comments / suggestions.