

Draft Rented Sector Strategy Consultation
Response from Propertymark
April 2022

Background

Propertymark is the leading professional body for estate and letting agents, commercial agents, inventory providers, auctioneers and valuers, comprising nearly 18,000 members across the UK. We are member-led, with a Board which is made up of practising agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation questions

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

1. Propertymark believes that the Equality Act 2010 provides those with protected characteristics a high degree of protection but considers the lack of suitable property within the private rented sector (PRS) for those with disabilities to be a concern. To ensure that tenants' needs are accommodated as fully as possible the Scottish Government must consider introducing financial measures to encourage landlords who may especially wish to provide a home for those with disabilities by adapting a property, whilst continuing with the support to ensure the property can be returned to its original condition when required.

Question 2: Do you have any suggestions for how we can better meaningfully embed tenant participation within the private rented sector, including for people with protected characteristics, in national and local policy/decision making?

2. We feel that the Scottish Government is already engaging sufficiently with tenants, and by its very existence the 'New Deal for Tenants' exemplifies the tenant-centred approach being taken to reform the PRS. Propertymark does not believe it prudent to consider tenants in isolation and would caution against overlooking the needs, rights, and risks of landlords in any changes to the PRS.

Question 3: What are your views on the future role tenants' unions could have in supporting tenants to actively participate in decision-making at a national and local level in Scotland?

3. We do not consider tenants' unions to be necessary. Organisations already exist that provide tenants with support and advice whilst also engaging in effective lobbying of tenants' needs, such as Shelter Scotland and we would suggest that Living Rent is a tenants' union. We feel the concept of a tenants' union sets a somewhat unhelpful and combative tone which we do not believe to be constructive and have not found activists willing to engage with landlords and agents.
4. In discussions with our members, a key concern with the creation of tenants' unions is the potential for distribution of misinformation. There is a significant amount of information available across industry bodies' websites, news sites and social media and much of it is inaccurate. To be of practical benefit, union members and representatives must have access to valid information and sound legal advice.

Question 4: How best can we ensure people are aware of their rights and how to exercise them in:

- A. **The private rented sector?**
 - B. **The social rented sector?**
5. Propertymark does not have the expertise to comment on the social rented sector but believes current sources of information on tenants’ rights to be sufficient under the Private Residential Tenancy (PRT). This is largely due to requirements to provide a written tenancy agreement, Easy Read Notes or Supporting Notes and deposit protection information notes. We also consider the advice and information provided on the Scottish Government’s website and by organisations such as Citizens’ Advice and Shelter Scotland to be beneficial in raising awareness and understanding of tenants’ rights and responsibilities. By comparison, there is limited free advice for landlords within the PRS and most will rely on an agent or legal professional to provide comparable support, if it is required.
 6. But as one of our members stated: “Firing more information at tenants doesn’t fix the problem if they don’t want to read it.” Many of our members have expressed the concern that it is the potentially vulnerable tenants residing in the lower end of the market who require more assistance in understanding and accessing their rights, and we would suggest that information be targeted to reach these individuals rather than any further focus on distributing more of the same information to the sector.

Question 5: After 4 years of the Private Residential Tenancy being in place, how well do you think the 18 grounds for eviction are working? Is there anything that you would like to see changed?

7. Propertymark considers the Private Residential Tenancy (PRT) – now landlords, agents and tenants are familiar with it – to be functioning well and strikes an adequate balance between landlords’ and tenants’ rights. We do not agree with the removal of mandatory grounds for possession and are deeply concerned that such a change will make the uncertainties around possessions too risky for landlords and that some will leave the sector, reducing private rented accommodation options. We have also previously raised our concerns that the removal of mandatory grounds is likely to have a significant impact on lenders and consequently the sector as a whole, as they will have no certainty of recovering possession of property in instances of mortgage default.
8. A small sample of data collected by our member agents supports the assertion that the possessions process under the PRT is not being abused, with the vast majority of tenancies ended by the tenant and, where instigated by the landlord, grounds 1, 4, 5 or 12 being cited:

Tenancy termination	2019	2020	2021
Tenancies terminated (total)	708	790	841
Terminated by tenant	90.5%	88.9%	85.5%
Terminated by landlord	9.5%	11.1%	14.5%

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

9. We do not consider there to be a need for additional grounds unless further changes are made to the PRT. We would, however, urge the Scottish Government to consider an amendment to aid clarity of existing legislation. We would suggest that the wording on required notice periods be altered to ensure that any notices served providing more than the requisite 28 or

84 days' notice would remain valid i.e., that the notice periods required to be given by landlords serve as minimum required periods. This would not only give many tenants more warning of possession proceedings and afford them more time to find alternative accommodation, but it would simplify the process for landlords and reduce the number of applications rejected by the FTT.

Question 7: Do you have any views on our proposal to clarify the original policy intention in relation to the use of ground 6 for ending a tenancy ('Landlord intends to use for non-residential purpose') – to make clear that this eviction ground cannot be used to evict a tenant in order to use the property as a short-term holiday let?

10. Yes, Propertymark considers a clarification that ground 6 cannot be used to end a tenancy for the purposes of using a property as a short-term holiday let to be helpful. Whilst we acknowledge that behaviour changes during the COVID-19 pandemic may have contributed to a rise in short-term letting and note the licensing and planning requirements being introduced to manage short-term holiday let activity, an amendment to ground 6 would still remove any ambiguity and could help to retain investment in the PRS.

Question 8: What further refinements could be made to either the private rented or social rented sector pre-action requirements in order to further protect and support tenants?

11. Propertymark does not consider the pre-action requirements introduced due to the public health crisis to be beneficial on a permanent basis. Nevertheless, if they are to be maintained we would urge the Scottish Government to consider what financial packages might be made available to sustain tenancies, for example to provide support to a tenant who has built up arrears because of a temporary loss of income.

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

12. Very few of our members have reported a need to use the pre-action requirements. Those that have had cause to undertake them have regarded them as a "tick-box exercise" merely formalising actions that would have been carried out irrespective of the requirement to do so, as agents engage with tenants and landlord routinely to manage and limit the build-up of arrears.

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

13. We feel that experienced, Propertymark members carrying out regular property inspections are likely to be able to identify the signs of potential exploitation or illegal activity. We are unclear what the Scottish Government envisages by "support" – particularly given the differentiation between "small" and other private landlords and the inference that support may be commensurate with resources – and would urge caution in apportioning private landlords with responsibilities that go further than those already prescribed in law.

Question 11: Do you agree with our proposal to amend the 2016 Act to ensure that all joint tenants can end their interest in a private residential tenancy without the agreement of other joint tenant(s)?

14. No, Propertymark does not agree to the proposed amendment to the 2016 Act to ensure joint tenants can terminate their tenancy without the agreement of the other tenants, however we do agree that it is an area of the 2016 Act that requires attention. Whilst it is accepted that there have been many examples of tenants who have considered themselves ‘trapped’ in a joint tenancy, whether that be through a change in circumstances or those who have experienced domestic abuse, we do not feel that the current policy proposal does anything to protect tenants and could in fact leave them in a worse situation.
15. Allowing a joint tenant to be released from a joint tenancy without the consent of the remaining tenant(s) – and further consideration should be applied to HMO properties here – could effectively leave those left on the tenancy in a perilous financial position finding themselves solely liable for the whole rent and perhaps even without the knowledge this was about to happen.
16. Protection already exists for couples under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as there are powers afforded to the court to transfer a tenancy on application by any party and these regulations should be considered by the Scottish Government prior to the proposal of any immediate changes to the 2016 Act.
17. The effect to landlords of any legislation change must also be considered. It is of no benefit to a landlord not to have a tenant occupying their property and generally where there has been a request by one party to end a joint tenancy a pragmatic approach has been taken to ensure the remaining tenants can remain in their home.
18. However, landlords and agents are generally responsible persons, and they must ensure those remaining on the tenancy can afford the rental payments, as well as the rest of their living costs. If the remaining tenant(s) cannot afford to stay, then this only adds to additional stress worry for them and this does not prove to be a successful formula for all.
19. The success of the PRS and tenancy sustainment is partly down to responsible letting agents and landlords, who, for their own peace of mind as well as being able to support tenants who may have difficulty in making a rental payment, will take out a rent guarantee insurance policy at the start of the tenancy. These policies are based on the affordability, referencing and credit checks of the incoming tenants, in the event a joint tenant leaves the tenancy then these policies would become invalid.
20. Propertymark suggests that should a tenant(s) wish to leave a joint tenancy then a new procedure is created at the First Tier Tribunal Housing and Property Chamber simply called “Joint tenant to be released”. This would be discretionary for the tribunal who would consider not only the wish of the tenant(s) looking to end the tenancy but also the alternatives of the remaining tenant(s) including the affordability to remain as well as the effects to the landlord.
21. The Scottish Government should also be mindful, when reflecting policy and legislation changes, that the parameters of the social rented sector are entirely different from those in

the private rented sector with the resources, funding, property stock afforded to Registered Social Landlords being miles apart from landlords operating in the private rented sector. Whilst the intention of the proposal may be for the better, mirroring statutory requirements between sectors clearly will not work unless everything is identical.

Question 12: In the social rented sector, the notice period required for a joint tenant to end their interest is four weeks:

- A. **Should a similar 4 weeks' notice period apply for a joint tenant in the private rented sector to give their landlord and other joint tenant(s) to end their interest in the tenancy?**
- B. **Should there be longer notice periods where there are more than two joint tenants to reflect the greater prevalence of multiple joint tenancies in the private rented sector, for example in student households?**

22. Propertymark would refer to our response to Question 11 regarding social rented sector comparability and our proposal for tenant(s) giving notice and ending a joint tenancy. An amendment to the 2016 Act extending the notice period a tenant must give for the ending of joint tenancies could prove to be advantageous for all parties. This would permit the remaining tenant(s) to either find another tenant, work out their finances to establish if they can remain in the property or alternatively find other suitable accommodation.

23. It should always be remembered, should there be an increase to the notice periods then this would be a maximum period for tenants and can always be reduced by agreement between tenants and landlords.

24. Propertymark does not agree there should be a 'category' of tenant or households such as the reference to student households.

Question 13: Should this proposal be taken forward, are there any additional safeguards that should be put in place for remaining joint tenants in the private rented sector?

25. Propertymark does not agree the current proposal should be taken forward as it is merely an 'out of the frying pan into the fire' scenario and does not provide any additional protection for tenants. Proceeding with the proposal is likely to have more of a detrimental effect on tenants and not provide the desired effect of the policy's intention.

Question 14: Should we introduce a similar ground to that in the social sector, to enable private landlords to initiate eviction proceedings to end a perpetrator's interest in a joint tenancy and transfer the tenancy to a tenant who was subject to domestic abuse allowing the victim/survivor to remain in the family home where they wish to do so?

26. No, Propertymark does not agree to this proposal and considers it a rather preposterous notion. Landlords are providing safe, warm affordable homes for many people and should not be forced by regulations become involved with tenants' domestic situations. Landlords and agents do not have the skills or capacity to carry out such obligations, and tenants must have more specialist support from local authorities, charitable organisations, and law enforcement.

27. Propertymark would refer to our response to Question 11 on the proposed ending of joint tenancies. We suggest that a new procedure should be created at the First Tier Tribunal Housing and Property Chamber simply called "Joint tenant to be released". This would be discretionary for the tribunal who would consider not only the wish of the tenant(s) looking

to end the tenancy but also the alternatives of the remaining tenant(s) including the affordability to remain as well as the effects to the landlord.

28. We would also take this opportunity to remind the Scottish Government of the glaring differences between the social rented sector and private rented sector and suggest that many of the proposed legislative comparisons are unreasonable.

Question 15: Unlike the social rented sector, private rented sector housing cases are heard by the Tribunal. What are your views on the Tribunal's role being expanded to consider transfer of tenancy in relation to cases of domestic abuse?

29. At present, and in the view of PropertyMark, many of the Tribunal members, whether they be the legal member or lay person, lack the requisite knowledge to deal with these issues. The provision to transfer a tenancy falls under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 which comes with its own complexities, hence the myriad of specialist family law solicitors operating in this sector.
30. As per previous responses we would consider the Tribunal to have sufficient expertise to deal with a simple "Joint tenant to be released" application. This also ensures there remains no 'category' of tenant, applications are judged on a reasonableness test and remain balanced and fair for all tenants and landlords.

Question 16: Should we streamline the eviction process (remove the discretion of the Tribunal), where there has been a criminal conviction relating to abuse of another person living with them in the let property (joint tenant or cohabitee) which is punishable by imprisonment in the previous 12 months?

31. We would consider this a sensible amendment, however it does appear to contradict the proposals found (as of 14 April 2022) in the Coronavirus (Recovery and Reform) (Scotland) Bill, where it is the intention of the Scottish Government to ensure all grounds for possession are made discretionary. Whether discretionary or not, ultimate transfer of tenancy must remain subject to affordability checks, as previously stated.

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

32. PropertyMark considers affordability to be the biggest barrier to housing outcomes of domestic abuse victims. In this regard, we suggest that financial support targeted at sustaining tenancies for victims of domestic abuse should be considered, perhaps part-funded by unclaimed deposits (see our response to Question 18).

Question 18: If unclaimed deposits were to be reinvested, do you agree that the period after which the funds would be available for reinvestment should be:

- i. **after all avenues to reunite deposits with their tenants have been exhausted, and**
- ii. **after a period of 5 years?**

33. PropertyMark agrees with the proposed procedure and timeframe. Sufficient guidance must be provided on what constitutes "all avenues" to avoid subsequent challenges but provided this is supplied and adhered to, we do not see a reason why funds could not be reinvested after a period of five years.

34. We would suggest that Scottish Government might consider how such funds could be allocated to best use. Depending on the amounts involved, investment in property might be an option to help ensure a continued supply of rented accommodation. Alternatively – or as well as – funds could be used to supplement the incomes of remaining tenants in instances of domestic abuse to facilitate the Scottish Government’s aim to improve housing outcomes for such individuals.

Question 19: How could a right to keep pets be most effectively introduced for the private sector, for example by the introduction of a statutory right or by amendment to the Model Tenancy Agreement, and should exceptions be allowed?

35. We do not agree with the introduction of a right to keep pets. There are legitimate and varying reasons as to why pets might not be appropriate in a property, as well as genuine cost implications for landlords that must be recognised. In discussions with our members, it is evident that the majority of landlords will consider pets (provided they are not constrained by a title condition prohibiting pets, for example), but each application must be individually reviewed.
36. Propertymark members operating in rural locations have indicated that up to 80 per cent of tenants own pets, and that landlords in these areas accept that an incoming tenant is likely to have a pet. Whilst the decision to let is still done on a case-by-case basis, most take a pragmatic approach where they are able to and respond by charging the maximum permitted deposit of two months’ rent to off-set any potential risks. But proximity to livestock, pet size in relation to property size, allergies, and cost of adaptations (such as cat flaps) are all considerations for a landlord and an absolute right is not the correct approach.
37. The term “pets” is clearly a generic term encompassing not only pet type but pet number and as such each no ‘one size fits all’ approach should be applied. The main reason landlords are inclined to refuse pets is due to a concern regarding property damage, particularly in view of the deposit cap. But there are alternative solutions to encourage wary landlords to accept pets, such as enabling a landlord to advertise two rents: a ‘pet-free rent’ and a ‘pet rent’ which might be up to five per cent higher than the advertised market rent. Alternatively, the introduction of some flexibility in the maximum deposit permitted for tenants with pets could be considered.

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

38. Notwithstanding the concerns highlighted in our response to Question 19, if a right to keep pets is introduced to the private rented sector, Propertymark can see no reason why it should not also be introduced in the social sector.

Question 21: How could the right to personalise a privately rented home be most effectively introduced for the sector and what is an acceptable definition of personalisation? For example, should the property be returned to the original state by the tenant where there is no explicit agreement between the tenant and landlord?

39. Propertymark does not consider there to be a need to introduce a legal right to personalise a privately rented home. Tenants can already request to make changes and undertake them with the landlord’s consent, which is usually granted on the basis that the property is returned to its original standard of decoration at the end of the tenancy notwithstanding fair wear and tear.

40. Our members report varying levels of requests to personalise property, with one member citing just 0.13 per cent of tenants expressing a desire to decorate. What all members consulted agreed on is that the majority of landlords take a pragmatic approach to personalisation in recognition that tenants who make changes and make a property ‘their own’ often stay put longer than those who do not. But we strongly contend that personalisation of privately rented property is only feasible where a tenant agrees to return the property in a comparable state at the end of the tenancy. Whilst this may in practice not be the original décor, the principal of returning a property as it was initially let is fundamental and without such a reciprocal agreement a landlord risks facing potentially considerable costs to re-market it. The alternative is that landlords do not decorate between tenancies if they believe an incoming tenant is simply going to change it, which could have negative consequences for overall property standards.

Question 22: Should different consideration be given where a property is furnished or unfurnished?

41. We do not consider there to be a need to differentiate between furnished and unfurnished property; in either circumstance any changes made by a tenant must be agreed to by a landlord on the basis that the property is returned in a comparable condition.

Question 23: Is there a need to review how a private landlord can be protected against damage to their property caused by personalisation, above the current tenancy deposit limits, and who should resolve disputes?

42. Consideration could be given as to whether an increase in the two-month deposit cap in instances in which a tenant wishes to personalise a property might be feasible. This would go some way to alleviating the costs associated with a tenant failing to return a property to its original state at the end of a tenancy. This could be entered into at the outset of a tenancy if an ingoing tenant stated their preference to personalise a property, or as a deposit ‘top-up’ during a tenancy where a tenant makes a request to make changes once a tenancy has commenced.

Question 24: Do you think additional protections against the ending of tenancies during the winter period are needed? For example, some or all of the following:

- **restricting the service of notices during the winter period;**
- **pausing or extending notice periods so that notices do not expire during the winter period;**
- **pausing or extending the period (following expiry of the notice period) during which eviction proceedings can be raised; and/or**
- **restricting the ability of landlords to raise eviction proceedings (following expiry of the notice period) during the winter period.**

43. Propertymark does not agree that any of the proposed protections are necessary and would ask for clarity on how the ‘winter period’ is to be defined. There are legitimate reasons as to why landlords require possession of their property, and these are not limited to particular points in the year. We believe that restricting possession in the ways outlined could impinge on a landlord’s right to seek it and would question what problem the Scottish Government is seeking to resolve by introducing such changes to the possessions process. We would also suggest that such an approach is likely to lead to increased cases of rent arrears and has the potential to place some landlords in financial hardship, which we believe to be unacceptable.

44. Furthermore, we have concerns that constraints on when notices may be served and/or eviction proceedings raised are likely to have a practical impact on the functioning of agents, landlords and the First Tier Tribunal (FTT), and result in an influx of notices and corresponding activity during the 'non-winter period'. This could have a knock-on effect on timeliness of hearings and possession proceedings unless claims are managed effectively and could undermine landlord confidence in the FTT if delays and uncertainty are increased as a result.

Question 25: If measures to restrict the ability of landlords to commence eviction proceedings during the winter period were introduced, what do you think is a reasonable 'winter period' timeframe?

45. As stated in our response to Question 24, we do not agree that there should be any major variation to possession proceedings throughout the year, however, as the majority of landlords and agents are empathetic, they would likely be amenable to a restriction on eviction notices being issued during the festive period perhaps from 21 December through to 4 January. Nevertheless, local authorities have a duty to house anyone deemed at risk of homelessness and this duty continues irrespective of the time of year, therefore we would question the need to vary a landlord's right to seek possession in this way.
46. We disagree in principle with a ban on 'winter evictions' but have further concerns that the definition of a 'winter period' is at best problematic and at worst unworkable. We would assume that the simplest definition would be based on the meteorological definition and run from 1 December to 28 (or 29 February)¹, however if it is the Scottish Government's intention to 'protect' tenants from extreme weather events, such a definition is unlikely to suffice, and the policy would appear to be easily undermined.
47. It is imperative that in any consideration of a ban on 'winter evictions' the impact on landlords seeking possession is adequately accounted for. The most frequently used ground for possession is for rent arrears, and the financial impact of any halt to possession proceedings upon the landlord must be factored into the Scottish Government's analysis of its proposal. Failure to do so is likely to dissuade landlords from investing in the sector as the risks associated with repossession become relatively more complex and sizeable.

Question 26: What other policies or interventions could be considered to prevent evictions during the winter period?

48. The Scottish Government could consider solutions that mitigate the need to serve notice in the first place, rather than impose delays or bans to proceedings once they have begun. As previously stated, the majority of notices are served due to rent arrears and thus a review into how financial support could be best directed to sustain tenancies (throughout the 'winter period' and beyond) would appear sensible. This must be done alongside implementation of long-term policies that encourage investment in the PRS to ensure that supply is sufficient to meet demand and keep market rents stable.

¹ Met Office Definition of Winter: <https://www.metoffice.gov.uk/weather/learn-about/weather/seasons/winter/when-does-winter-start#:~:text=Meteorological%20winter,-However%2C%20at%20the&text=By%20the%20meteorological%20calendar%2C%20the,up%20of%20three%20months%20each.>

Question 27: Should we introduce a specific requirement for the Tribunal and Sheriff Court to consider delaying the enforcement of eviction orders and decrees during the winter period?

49. No, there is no need for a specific requirement of this nature. The First Tier Tribunal (FTT) already has the power to delay proceedings where it sees fit and Propertymark has seen no indication that the present arrangement is not working.

Question 28: Do you agree the current calculation for unlawful eviction should be reformed and simplified, as proposed?

50. Propertymark has no first-hand experience of this but would suggest that the penalties set by current arrangements do not appear to require extending, given a court can already impose an unlimited fine and/or a prison term of up to two years. We would consider this to be an adequate deterrent for landlords to carry out an illegal eviction and would therefore refute the Scottish Government's suggestion that raising penalties would reduce them further. We are also unclear as to how the proposed reforms will improve tenants' access to justice, given the process is free and the "specialist valuation" required to calculate damages is not a cost borne by a tenant.

Question 29: If the current system for calculating damages was reformed in this way, what do you think would be the appropriate minimum and maximum level of multiplication that the First-Tier Tribunal for Scotland (Housing and Property Chamber) could apply?

51. We do not believe that, in instances where a landlord has genuinely and mistakenly taken possession of a property illegally, the proposed minimum calculation for damages should be levied and would suggest that a maximum penalty only be stipulated. We consider the proposed maximum penalty of thirty-six months' rent to be appropriate in the most severe circumstances. It should also be remembered that any penalty imposed on a landlord for an illegal eviction is likely to result in them losing their landlord registration status and therefore no longer being able to act lawfully as a landlord.

Question 30: What other ways can we make it easier and more attractive for victims of illegal eviction to seek redress and exercise their rights?

52. As indicated in our response to Question 4, Propertymark believes that tenants have good access to information on their rights via the Easy Read and Supporting Notes provided alongside the Private Residential Tenancy (PRT), which include examples of unlawful eviction and wrongful termination and set out the protections afforded to tenants in such instances. Additionally, information supplied on the Scottish Government's website, such as in the PRT Information for Tenants guidance, and further information published by bodies such as Shelter Scotland reiterates the rights of tenants and the route to justice available to them. The fact that tenants can access justice free of charge through the First Tier Tribunal (FTT) is a fundamental benefit and we can see no need to make this "more attractive" to tenants – they can already exercise their rights and access redress at no cost to themselves.

Question 31: In the event of a criminal prosecution not taking place, how best can we ensure that a tenant is compensated, where evidence exists of an unlawful action?

53. Propertymark is not aware that there is an issue with compensation under civil proceedings and where there has been evidence of an unlawful action an aggrieved tenant must make an

application to the FTT as they are sufficiently equipped to determine compensation where it is deemed to be due.

Question 32: Should students living in Purpose Built Student Accommodation (PBSA) be offered similar rights to students who rent from a private landlord? If so, how can we best achieve this without impacting on the supply of PBSA?

54. This question would appear to imply that, should students in PBSA be afforded the same rights as those residing in the private rented sector, the supply of PBSA would decline. We would question why the Scottish Government feels it acceptable to elevate the rights of tenants to a level it concedes may detrimentally affect supply of property in one sector but fail to recognise the same risk in another. We would suggest that all tenants, irrespective of property type, be afforded the same rights and that these rights should be balanced with the needs and risks of accommodation providers to ensure that supply is not undermined in any sector.

Question 33: Are there any particular aspects of the Private Residential Tenancy that are not working for the student market and what, if any changes/amendments, would help to address these or to encourage landlords to rent more to students? Please explain your answer.

55. There is currently a lack of parity between PBSA tenancies and the PRT. Non-PBSA student accommodation suffers under the PRT due to the inability to offer fixed term tenancies, while a tenants' obligation to serve just 28 days' notice can cause considerable issues for landlords around re-letting. We would suggest that fixed term tenancies might be considered for all accommodation offered to students and that the notice period a student tenant be required to give be increased to make re-letting more straightforward.

Question 34: What would be the key features of an effective guarantor scheme?

56. An effective guarantor scheme must protect both landlord and tenant and ensure that tenants who would otherwise be prohibited from accessing accommodation in the PRS can do so, whilst landlords' rental income is assured in the event of a default. Crucially, a successful scheme must include continuing monitoring of eligibility criteria to ensure that breaches do not invalidate any guarantee. We would suggest that Scottish Government undertake a review of the issues to evaluate precisely how many households might be affected and liaise with commercial enterprises to determine how all interests would be best served.

Question 35: How could we support the development of guarantor schemes that meet the needs of those groups who could benefit from them?

57. As indicated in our response to Question 34, we would support a comprehensive review of the need for such schemes with a view to gaining a better understanding of the issue. This could then inform subsequent discussions with current and prospective guarantor scheme providers to ensure long-term sustainability of the schemes.

Question 36: What are the key issues and concerns relating to current pitch agreements for Gypsy/Travellers on public sector sites?

58. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 37: If you rent or let a residential mobile home as a main residence, what type of tenancy do you have and what are the common problems you experience?

59. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 38: What do you believe are the key housing issues facing people with:

1. **A tenant farm or a rented croft house?**
2. **Tied accommodation as part of their employment?**

60. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 39: What can we do to improve the outcomes for those people with a tied house for their employment who are approaching retirement and may face losing their home?

61. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 40: What are the most important factors to be incorporated into a shared understanding of housing affordability (e.g. household size and composition, regional variations, housing standards, treatment of benefits)?

62. Propertymark agrees with the Scottish Government's aim that everyone should have access to a safe, high-quality, and affordable home. We consider housing affordability in income terms to mean that an inhabitant can pay rent without sacrificing other essential spending or falling into debt. In the private rented sector, rents are presently set by the market and are therefore largely a product of supply and demand. There are quantifiable costs associated with the provision of private rented accommodation, including the upfront capital costs of acquiring a property and ensuring it is fit for habitation as well as ongoing mortgage, maintenance and management costs that a landlord should rightly expect to recover through letting, and a functioning market must therefore provide a net return on investment that is viable if that investment is to continue.

63. Rent affordability over the long-term can only be achieved in two ways: there must be sufficient property available to meet demand, keeping rent inflation stable and/or household incomes are commensurate with market rents. We would therefore suggest that any discussion of housing affordability must acknowledge supply of private rented sector accommodation and household income and consider ways in which those on low incomes might be supported to sustain tenancies in either the PRS or social rented sector.

Question 41: If we are successful in reaching a shared understanding of affordability in Scotland, how should it be used and evaluated?

64. Housing is not unaffordable for all, and the Scottish Government must recognise that its interventions need to be focused on those for whom it is unaffordable, rather than across the sector. Propertymark believes it would be more effective and less detrimental to the sector to review financial support options for those struggling to afford housing in the PRS and develop long-term socio-economic policies that provide households with better employment prospects and living standards. If the Scottish Government prioritised elevating household incomes to improve affordability instead of seeking to artificially depress rents at

the expense of investment in private rented property, we believe affordability could be improved without sacrificing a sector that provides accommodation for 340,000 households in Scotland. Such an approach would also be relatively straightforward to evaluate, with affordability of housing inversely proportional to the number of households in receipt of some form of financial support. Any proposal to introduce new legislation to address affordability issues must have longevity and should not be considered as an answer to a current perceived problem.

Question 42: Do you think the data we are proposing to collect will provide all the necessary evidence to inform national and local rent control considerations? Please explain your answer.

65. Propertymark fundamentally disagrees with the principle of rent control. Market rents are predominantly dictated by supply and demand, but ultimately by what tenants are prepared to pay and landlords prepared to accept. For instance, a tenant might be willing to offer more than 'market rent' to secure a property within a certain school catchment area, one that accepts pets or one that is simply close to family – these factors are exogenous to the metrics outlined in the Draft Strategy and we would suggest illustrative of the complexities of rent determination. We would also suggest that any analysis of rent levels should take account of the Consumer Prices Index including owner occupiers' housing costs (CPIH) as well as the Bank of England base rate as an indicator of likely changes to mortgage expenditure.
66. The proposed data for collection also fails to take account of facilities associated with a property, for instance parking, communal or private outdoor space, access to a gym or management services, all of which are likely to have a considerable impact on rental value. The proposed data also appears to overlook whether a property is an HMO or student let, so whilst the data outlined will undoubtedly provide Scottish Government with significant intelligence on rent values based on property location, type, and condition it should be recognised that it is by no means comprehensive.
67. A more pertinent question might be: does Scottish Government and local authorities (assuming they will be tasked with applying any local rent control policy) have the capacity to analyse the volume of data proposed for collection? We would urge the Scottish Government to ensure there are sufficient resources to achieve an end goal (according to some measure of affordability) as without them we fear the exercise will end simply in a wealth of data being captured but for no purpose.

Question 43: What can we do to ensure that landlords and agents provide accurate rental data (and other relevant property information), as soon as any changes are made? Please explain your answer.

68. We would urge the Scottish Government to recognise that much of the data proposed for collection will change infrequently, and that the main determinant of rent inflation is likely to be due to demand and supply. We would suggest that data collection is most practicably linked to landlord registration and that landlords be prompted to update it when renewing every three years or upon change of tenant.

Question 44: What is your view on making rental and property information publicly available for tenants and others to view?

69. Propertymark can see no reason why rent agreed should not be made public, as is the case with house price data provided by Registers of Scotland across property portals. Clearly some of the proposed data for collection could not be made public for General Data Protection

Regulation (GDPR) reasons, and the Scottish Government should consider what impact the availability of rental data could have on rent levels and whether access to the data could in itself be inflationary in a high-demand market.

Question 45: What is your view on enabling Rent Penalty notices to be issued where a landlord fails to provide up to date registration, rent data and property details?

70. Propertymark does not believe that a Rent Penalty Notice (RPN) is a proportionate response to a failure to provide up to date information and does not agree that a tenant should financially benefit from such a failure. Whilst such a sanction might appear a simple mechanism to induce compliance, we have concerns over how it would operate in practice – how would a tenant be notified of a landlord’s failure to submit up to date information; similarly, how would a tenant be notified of the pro-rata rent liable once a landlord had complied with the information requirements; and how could a landlord appeal an RPN if it had been served in error and what mechanism would be in place to claim rent back in such circumstances. Clear guidance would be required on precisely what information is required when to prevent RPNs being served unnecessarily.
71. We feel the only way to ensure that accurate and comprehensive information is provided in a timely manner is via professionalisation of the sector, with suitably qualified and registered agents responsible for supplying it on behalf of landlords. Whilst this would require legislation, it would not only ensure that data is up to date but could be implemented alongside broader improvements to industry standards. Sanctions, if necessary, could be levied at the point of renewal every three years as either an increased fee or rebate if information has been recorded properly.

Question 46: Do you agree that the rent adjudication process should only result in rents being decreased or maintained? Please explain your answer.

72. We do not support the proposed change to the rent adjudication process as we believe it is likely to result in far more unfair rent challenges. The current system is moderated by the fact that a tenant will generally only challenge a rent increase when they are confident that it is objectively ‘unfair’. The suggestion that a Rent Officer be limited to a decision to maintain or decrease a rent removes any risk of an increase and leaves tenants with nothing to lose and all to gain, and we would urge the Scottish Government to consider local authority resources which would invariably be stretched in dealing with an increase in applications.

Question 47: Do you agree with the proposal not to extend any national rent controls to the social rented sector?

73. No, Propertymark does not agree. We disagree in principle with the introduction of rent controls in the private rented sector where investment is generated by individuals who rightly seek some form of return on their investment. We can see no reason why, if the Scottish Government considers it acceptable to impose rent controls in the private rented sector, they should not extend to the social rented sector as well. The consultation document points out that social rented sector rents grew at a faster rate than private rented sector rents (24 per cent versus 12 per cent) between 2014 and 2021, and whilst the baseline may be lower and rent levels remain relatively more affordable than private sector rents, such an increase will surely be felt by those accommodated by the sector and thus a similar system of rent controls should be introduced in the social rented sector.

Question 48: Do you think the current safeguards for rent setting in the social rented sector are sufficient and, if not, how could they be strengthened? Please explain your answer.

74. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 49: Are there elements of the existing Rent Pressure Zone system that could be built upon when designing a new system of rent controls? Please explain your answer.

75. Propertymark views it as unreasonable if the Scottish Government has already considered Rent Pressure Zones (RPZs), which it introduced, to be an ineffective form of rent control. With effectiveness of RPZs being primarily based on collection of data it was naïve at best to expect RPZs to be operational immediately, particularly as there has been little if any data collected to evidence that they are ineffective. Therefore, they have not had the opportunity to be tested and nor are we aware that they have been adequately reviewed. As indicated in our response to Question 42, we do not wish to see additional administrative burdens placed upon landlords and agents without certainty that the data is to be used for a specific purpose and, as with RPZs, our main concern is that there are insufficient resources to process the data.

Question 50: Do you agree with the vision and principles set out above in relation to a future model of rent controls for the private rented sector in Scotland? Please explain your answer.

76. Propertymark does not agree with the proposal to introduce rent controls in the PRS. Varying approaches to rent control have been adopted in various forms across the world for decades, very few, if any, have proved to be successful in the long term but all have been proven to have had unintended consequences. Rent control policies do not just impact rents. The implementation of rent controls reduces house prices and can change landlord behaviour, making them more selective about potential tenants and thus marginalising certain groups, or reducing spending on remediation and improvements, affecting housing quality and degradation.

77. A significant unintended consequence of rent control is the misallocation of space. In a free market, households tend to move when their housing needs change. But under rent control, those benefitting from capped rents have less incentive to move and are likely to occupy property that may not be appropriate for them at the detriment of others who may have greater need for it. Put simply, homes do not go to those who value them the most. This can impact incidences of overcrowding, affect school catchment areas and the provision of local services, and reduce the mobility of labour by constraining the market.

78. Additionally, it has been noted that in some rent-controlled markets where property is scarce, there are those who are willing to pay more than the rent-controlled rent to secure a tenancy, incentivising underhand dealings and further marginalising those that the policy seeks to benefit.

79. Geographically specific rent control policies have sometimes been advocated to tackle localised rent inflation. But such approaches have been shown to affect neighbouring properties that are uncontrolled, reducing the amenity value of those neighbourhoods subject to the intervention and making them less attractive to residents and investors.

80. Rent controls make existing housing more affordable for a certain set of people (existing tenants), but do not improve affordability in the long-term and as such, the costs outweigh the benefits. While the policy might seem to offer a solution to rising market rents, it does not solve the root cause of the problem – that there is an undersupply of homes across all tenures.

81. In a free market, where rents are free to rise in line with demand, investment in the private rented sector is incentivised, and new development, such as build-to-rent is stimulated. This provides a far more effective solution to the problem of affordability and encourages the long-term supply of good quality housing.

82. It is undeniable that, in the long-term, rent control policies only exacerbate the fundamental issue; ensuring adequate housing supply and tackling existing inequalities of income and wealth would therefore appear more appropriate policy objectives, albeit longer-term ones.

Question 51: How do we ensure that we are achieving the right balance between building new properties and acquiring existing properties through the Affordable Housing Supply Programme?

83. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 52: Where has the acquisition of existing stock for the Affordable Housing Supply Programme worked well and are there other opportunities to engage with owners/landlords to allow first refusal to those delivering the Affordable Housing Supply Programme? Please explain your answer.

84. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 53: Beyond the routes already available to deliver MMR homes how could new, additional investment in this be supported?

85. Propertymark does not have sufficient expertise to respond to this question with the required level of detail.

Question 54: What measures can we put in place to help encourage BtR developments in Scotland?

86. Build to Rent (BtR) is an important part of the PRS but should not be prioritised over other forms of investment, and the Scottish Government must recognise the importance of investment by the individual landlords who make up 94 per cent of PRS stock to sustain it. BtR provides accommodation for a particular type of household, predominantly a young demographic, and tends not to be an option for those with children or larger families. Scottish Government should be mindful of this in developing policy designed to encourage its development.

Question 55: Is the approach to allocations achieving the right balance between supporting existing social tenants and those who are seeking a home within the social sector?

87. Propertymark does not have sufficient expertise to answer this question with the required level of detail.

Question 56: What more can be done to support people with protected characteristics trying to access social rented homes?

88. Propertymark does not have sufficient expertise to answer this question with the required level of detail.

Question 57: What is the best way to ensure that landlords undertake essential repairs in a timely fashion?

89. It is again unreasonable to suggest the vast majority of landlords are not undertaking essential repairs in a timely fashion unless there is adequate evidence available to the contrary. The Scottish Government's own Household Telephone Survey 2020 found that 94 per cent of tenants living in the PRS were at least satisfied with their housing. In the event landlords are not carrying out their legislative duties on essential repairs within a 'reasonable time' we would urge the Scottish Government to be more prescriptive on the expectations and provide guidance on timescales.

90. It should also not be forgotten that there are already mechanisms in place for tenants to act against landlords who are not fulfilling their legal obligations around repairs. There should also be a degree of common-sense regarding landlords' obligations to carry out essential repairs, particularly as we exist a pandemic when tradespersons and materials were and still are difficult to obtain. There are also the occasions when tenants delay or prevent access to property.

Question 58: What do you think are the strengths and weaknesses of the current registration systems and what could be improved to help drive up standards of management?

91. Propertymark were pleased to see the Scottish Government leading the way with steps to professionalise the sector by introducing a register of letting agents making a relevant qualification and a client money protection policy mandatory. We would suggest that the requirement for qualification for those working in the sector is expanded to all, other than the current criteria as there are many letting agents who are merely meeting the bare minimum. Considering the regular raft of changes within the PRS it would help drive standards if an agent's CPD requirement was increased from the current regulatory criteria of 20 hours over 3 years. Propertymark would suggest an agent carrying out at least 12 hours CPD annually. Additional knowledge can only help in driving up the standards of property management. Whilst letting agents have embraced the mandatory qualification and the Code of Practice, Propertymark suggests landlords should also be expected to meet the equivalent standards. Consumer protection laws already require letting agents and landlords to ensure material information on the properties being advertised is readily available for prospective tenants.

Question 59: What are the key challenges for landlords in meeting all the housing standard requirements and timescales and what support could be put in place to help landlords overcome barriers?

92. Scottish Government must recognise that there are potentially significant costs to landlords of meeting housing standard requirements, and whilst we agree with these requirements there must be clear direction, unambiguous guidance, and financial support if landlords are to be retained in the sector – without these there will always be some for whom the timeframe was too limited and the financial burden too great and they will either fail to comply or leave the sector. Professionalisation of the sector has a role to play in overcoming barriers as suitably qualified agents can signpost and guide landlords to ensure that they meet their obligations, but financial support and incentives must also be available alongside.

Question 60: What is your personal experience in securing necessary adaptations - either for yourself, or for your tenants - in rented accommodation?

A. What barriers did you face, if any?

B. Did this occur in the private or social rented sector?

93. Propertymark does not have experience of undertaking adaptations in the social rented sector but considers them to be problematic for landlords due to a number of reasons. These include problems with re-letting an adapted property, a reduction in property value and the costs involved in removing the adaptation. Whilst members report that most landlords understand the need for such alterations, they are wary of them due to the aforementioned issues. The Scottish Government should seek to make funding available to remediate adapted property where necessary to provide confidence that landlords can agree to changes without fear that they will lose out financially from the works.

Question 61: Do you consider the vision and principles for the private rented sector Regulator to be the right ones? Are there any additional principles that you think are important? Please explain your answer.

94. Propertymark does not support the introduction of a PRS Regulator and does not see a need for such a body. As the Draft Rented Sector Strategy states, the FTT provides both enforcement and redress which we understand to be akin to improving standards and enforcing tenants' rights – the stated aims of the PRS Regulator. We consider the FTT to be effective in delivering both. A more efficient approach to driving up standards would be professionalisation of the PRS rather than an additional and superfluous body to scrutinise a sector in which the majority of landlords and agents are compliant.