

Landlord and tenant engagement questionnaire on rented sector reform – Scottish Government

Response from Propertymark

October 2023

Background

1. Propertymark is the UK’s leading professional body of property agents, with over 17,500 members representing over 12,800 branches. We are member-led with an executive Board of practicing agents who we work closely with to ensure that we uphold high-standards of professionalism and are able to advocate for legislative change on behalf of the sector.¹

Overview

2. Propertymark does not agree with the proposal to introduce rent controls in the private rented sector. We see no advantages in restricting rent increases or introducing any rent stabilisation measures. Flexible tenancies and rent prices driven by market forces have led to the success of the private rented sector across the UK. It is vital that landlords are not deterred from the market and have finances to invest and improve property standards. Increasing the supply of properties, rather than capping rents will ensure rents fall and landlords stay in the market.
3. Varying approaches to rent control have been adopted in various forms across the world for decades, very few, if any, including in Finland 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.
4. Instead of focusing on rent control the Scottish Government should be doing much more to make the private rented sector more affordable, ensuring there is an adequate housing supply that meets increasing demand and tackling existing inequalities of income and wealth. These include but not limited to:
 - Reduce 6% surcharge on buy to let property - Under LBTT an aspiring buy-to-let landlord purchasing an additional property for £185,000 (average house price Scotland) can expect to pay £11,900 in Land and Buildings Transaction Tax. A purchaser buying as main resident only would pay £800 in LBTT.
 - Build more social housing - the long-term solution to address the lack of affordability in the private rented sector is to ensure that more social housing is built to reduce housing need. Council house building has risen steadily in recent years, but many

¹ <https://www.propertymark.co.uk/>

existing social rented homes have been demolished or lost through the Right to Buy scheme.

- Lobby the UK Government for changes to Local Housing Allowance – the continued cap in Local Housing Allowance is having a significant impact on its recipients' ability to obtain good quality and well managed accommodation. The cap must be lifted in order to accurately reflect the cost of renting.
 - More action on empty homes - empty homes can lower land values and make it harder to sell other properties nearby. Bringing empty homes back into use can ease the pressure on housing stock and help improve local communities.
5. Overall, the questionnaire is very leading and does not allow for neutrality of responses, it assumes the reader supports rent controls. It is concerning that there is no option to reject the Scottish Government's proposals and there is an assumption that rent control is a fait accompli when this questionnaire and other evidence may suggest otherwise.

Questions

Rent control

6. Do you think rent control should be introduced on a local basis, where assessment shows that there is a need, or should rent control be universally applied across Scotland?

6. Propertymark does not think that rent control should be universally applied across Scotland. If rent control is introduced on a local basis further detailed data local authorities will collect and how consistently this will be applied.

7. Where restrictions on rent increases are being applied, do you think those restrictions should apply to: Both sitting tenants and in-between tenancies

7. Many landlords do not increase rents during tenancies in the knowledge that they will be able to realign the rent with increasing market values at change of tenancy. Landlords and agents should be able to continue with this practice.

8. Do you agree that, if rent controls in a rent control area apply both within and between tenancies, the first rent increase in a tenancy should be possible at any point after the start of the tenancy provided that at least 12 months has passed since the rent was last increased during the previous tenancy?

8. We do not agree with this proposal.

We would also propose to clarify that, in non-rent control areas, there could be no rent increase within the first 12 months of the tenancy starting.

9. We do not agree with this proposal.

9. Which of the following types of tenancy should be classed as “new to market” and therefore exempt from rent control when the first rent is set?

- The first tenancy of a property which has not been let as a principal home before
- The first tenancy of a property following it being purchased with vacant possession by the current landlord
- The first tenancy of a property which has been empty for a prolonged period
- The first private residential tenancy of a property where the previous tenancy was a regulated tenancy under the Rent (Scotland) Act 1984
- None of the above

10. Propertymark agrees that the list of tenancy types presented in the documentation should be classed as “new to market” and exempt from rent control when the first rent is set. In addition any tenancies where historic rental data cannot be obtained should be exempt.

10. It is proposed that any rent control area will be in place for a fixed time period. To what extent do you agree with the following statements?

11. Rent control areas should only last for a fixed amount of time and should only be extended if a new assessment shows they are still needed.

11. Where an area is designated as a rent control area, do you agree that if there are changes in local circumstances there should be a re-assessment before the fixed time period ends so that the designation could be brought to an end earlier than the fixed period?

12. Yes, we agree that if there are changes in local circumstances there should be a re-assessment before the fixed time period ends so that the designation can be brought to an end earlier than the fixed period. The assessment should be linked to an analyses in the reduction of supply and increase in demand for private rented property in an area.

12. If rent control areas are put in place for fixed time periods, which time period would you consider to be most appropriate?

13. If rent control areas are put in place for fixed time periods this should be for one year or as short a time as possible until local circumstances change.

13. Where Scottish Ministers intend to introduce rent control to an area, should there be a duty to consult with landlord groups, tenant groups and local authorities in the local area before introducing rent control to that area?

14. Yes, there should be a duty to consult.

14. Should there be a mechanism that allows landlords to increase the rent above the annual rent cap in cases where they have not previously raised the rent for the let property when they were permitted to do so i.e. if the landlord chooses not to increase rent for a period of years then they would be allowed to increase it by an amount above the cap at the next rent increase?

15. Yes, there should be a mechanism to take these cases into account.

15. If there was a mechanism that allows landlords to increase the rent above the annual rent cap in cases where they have not previously raised the rent for the let property when they were permitted to do so, should this only apply to the first rent increase after a rent control area comes into force or to any rent increase while a rent control area is in force?

16. It should apply to any rent increase while a rent control area is in force.

16. Do you think there should be a mechanism to allow landlords to raise the rent above the rent cap, on a case-by-case basis, in certain circumstances such as where there have been improvements to the let property?

17. Yes, there should be a mechanism to take these cases into account.

17. If there were to be a mechanism to allow landlords to raise the rent above the rent cap on a case-by case basis, which of the following circumstances do you think this should apply to?

18. If there were to be a mechanism to allow landlords to raise the rent above the rent cap on a case-by case basis, the following circumstances should apply:

- Improvements to the quality of fixtures and fittings (beyond cosmetic changes such as painting the walls) e.g. new kitchen, upgrades to appliances etc.
- Improvements to the energy efficiency of the property such as heating systems, or insulation.
- Where the landlord's costs incurred in letting the property have increased.

19. We would also include circumstances where the landlord has obtained a Home Energy Scotland loan, increased mortgage costs and where the fees for the Scottish Landlord Register and Scottish Letting Agent Register have increased.

18. We propose to introduce a route by which tenants in a rent control area can verify that any proposed rent increase is in line with the rent cap. This could cover cases where the tenant believes their landlord may be proposing to increase the rent by more than the amount allowed. Do you agree with this proposal?

20. Yes, there should be a route by which tenants can check whether a proposed rent increase is allowed under the rent cap.

19. Do you consider that any of the categories of housing below should be considered for exemption from rent controls?

21. If rent controls are introduced, we consider that no categories of housing should be exempt from rent controls.

20. Given PRTs were introduced in Scotland more than five years ago, should consideration be given to setting a future date by which remaining assured and short assured tenancies should be phased out?

22. No, consideration should not be given to setting a future date by which remaining assured and short assured tenancies should be phased out.

Ending Joint tenancies in the Private Rented Sector

21. Do you agree that the notice period which the departing joint tenant must give to the other joint tenants should be 2 months?

23. We do not agree that the notice period which the departing joint tenant must give to the other joint tenants should be 2 months. Rather, the notice period should be negotiated by all parties before the commencement of the tenancy in order to strike the right balance between flexibility and security of tenure for all.

Greater flexibility to personalise a home in Private Rented Sector

22. Do you agree that some small changes (for example putting up pictures and posters) should not require consent?

24. No, we do not agree that some small changes should not require consent. Communication between all parties should be encouraged and based on feedback from our members, on the whole landlords do not refuse consent for small changes.

23. Do you agree that other bigger changes (for example painting walls and installing wall shelves) can be requested and not unreasonably refused?

25. We do not agree because we do not think it is necessary to put this right of request into law because 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 condition at the end of the tenancy notwithstanding fair wear and tear. The Scottish Government should realise that without consent or a reciprocal agreement for small or bigger changes a landlord risks facing potentially considerable costs to re-market the property. The alternative is that landlords do not decorate or furnish between tenancies if they believe an incoming tenant is simply going to change the property, which could have negative consequences for overall property standards.

24. How long should landlords have to respond to a request for a change that cannot be unreasonably refused?

26. Where a request for a change is made, landlords should be given 30 calendar days to respond. The focus on 'working days' will cause confusion.

25. How long should the tenant have lived in the let property before they can request bigger changes that cannot be unreasonably refused?

27. If this policy is pursued then we think a tenant should have lived in the let property for a minimum of 12 months before they can request bigger changes that cannot be unreasonably refused. This allows all parties to have built a strong relationship and rapport.

26. Do you agree that private tenants should have a right to request and not be unreasonably refused to keep a pet?

28. Yes, we agree that private tenants should have a right to request and not be unreasonably refused to keep a pet as long as private landlords have the ability to request an increase in the tenant deposit if appropriate. If the Scottish Government is to increase the supply of pet-friendly homes then it is vital that landlords and agents have confidence they can recover the cost of damage and repairs. Allowing an increased deposit would provide this confidence and give tenants with pets more options in the private rented sector.

27. How long should private landlords have to respond to a request to keep a pet?

29. Private landlords should have 30 calendar days to respond to a request to keep a pet. The focus on 'working days' will cause confusion. Our members with offices across the UK and have landlords in England, they have to object in writing within 28 days of a written pet request from a tenant and provide a good reason.²

Unclaimed tenancy deposits in the Private Rented Sector

28. To what extent do you agree with the following uses of the funds?

30. From the options provided by the Scottish Government we strongly agree that unclaimed deposits should be used for:

- the prevention of homelessness from the private rented sector.
- advice, information and assistance to private tenants.
- funding to persons or bodies that can assist private tenants to address barriers to the private rented sector and support access to private rented housing.

² <https://www.gov.uk/government/news/new-standard-tenancy-agreement-to-help-renters-with-well-behaved-pets>

31. Additionally, depending on the amounts involved, the Scottish Government should consider grant funding applications to allow landlords to apply to invest in property maintenance and energy efficiency improvements.

Greater protections during the eviction process

29. Do you agree that in the private sector the Tribunal should be required to consider whether it is reasonable to delay the enforcement of an eviction at any time of year? Please note, this proposal will not apply to cases of antisocial or criminal behaviour.

32. We strongly disagree that in the private rented sector the Tribunal should be required to consider whether it is reasonable to delay the enforcement of an eviction at any time of year. There are three reasons why we think this. Firstly, there are legitimate reasons as to why landlords require possession of their property, and these are not limited to particular points in the year. Secondly, any 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 Tribunal, and result in an influx of notices and corresponding activity during a defined period. Thirdly, 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 Tribunal if delays and uncertainty are increased as a result.