

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux
www.cas.org.uk



generations of good advice

Scottish Government: Second Consultation on a New Tenancy for the Private Sector

Response from Citizens Advice Scotland

May 2015

Fraser Sutherland, Policy Officer

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer service, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. We are champions for both citizens and consumers and in 2013/14 the Citizens Advice Service in Scotland helped over 330,000 clients in Scotland deal with over one million issues overall. In addition, the Scottish zone of our self-help website Adviceguide which provides information on rights receives approximately 4.2 million unique page views annually. In 2013/14, our citizens advice bureaux recorded a financial gain for clients of over £125 million and independent research shows the Scottish CAB Service contributes an annual total benefit to the common good in Scotland of nearly £170 million.

Context of Response

Citizens Advice Scotland (CAS) welcomes this second opportunity to respond to the proposed creation of a new tenancy for the private rented sector in Scotland. We welcome the additional consultation with renewed proposals from the Government which gives clearer detail on the proposals for the new tenancy.

In 2013/14, Citizens Advice Bureaux (CAB) in Scotland advised clients on 10,991 new issues directly related to private rented housing. This represented almost a third of new issues regarding housing¹. This has increased on the previous year (2012/2013) where 7,316 new private renting issues represented 25% of housing work². In addition there were 1,608 issues regarding the arrears of rent on private rented properties in 2013/2014. Overall issues with private tenancies was the fifth biggest consumer issue the service provided advice on ahead of other large workload areas such as mortgages or rights on goods and services³. Our response is shaped by evidence from citizens advice bureaux in Scotland on the many and varied issues related to housing that CAB clients seek advice on.

Summary of Previous Consultation Response

CAS responded to the Scottish Government's initial consultation at the end of 2014 on the proposed new tenancy. We welcome that the government has listened to our concerns and that the Housing Minister took the opportunity to speak with Citizens Advice Scotland staff in February 2015 to hear our views. Below is a summary of our views on the initial consultation:

- We strongly support the removal of the no-fault ground which we believe makes tenancies insecure for tenants and evidence suggests this can stop them from asserting their rights
- We strongly oppose making all repossession grounds mandatory and believe this could have serious consequences if introduced
- We strongly oppose increasing tenants' notice period to eight weeks as we have serious concerns about the impact this will have on some vulnerable tenants
- We strongly support the introduction of a model tenancy agreement
- We support increasing the length of notice given to tenants the longer they have lived in a property
- We support decreasing the number of grounds for repossession but have concerns over how these are worded and will work in practice especially with regard to anti-social behaviour
- The minimum notice period to tenants should be increased to eight weeks
- The ability to introduce shorter than six month initial leases will be especially useful for seasonal workers

¹ CAS, Advice in Scotland 2013/14

² CAS, Advice in Scotland 2012/13

³ CAS, Consumer Snapshot, 2013/2014

- The flexibility of month-to-month rolling contracts after the initial lease term should remain
- We support the move to make all notice of proceedings a single length
- We agree pre-tenancy notices should be scrapped
- Although linked, any possible rent controls should be considered separately and not attached or dependent on reforms of tenancies

Unchanged proposals from first consultation

No-fault ground for repossession

We are pleased that the Scottish Government intends to proceed with the plan to scrap the no-fault ground for repossession. As we stated in our previous response we believe this will substantially improve the security for tenants and allow the private rented sector to be able to provide not just accommodation but homes for individuals and families.

Pre-tenancy notices

In our original response we supported the scrapping of pre-tenancy notices as we believe they are confusing for both tenant and landlord and in many cases are not served correctly or timely resulting in problems in a lease. We support the Government's intention to no longer require notices.

Model Tenancy Agreement

CAS have supported the aim to create a model tenancy for use by prospective and current landlords. Indeed we have seen cases where landlords have come to citizens advice bureaux looking for such a template only to find no such model tenancy exists. We believe a standard lease, subject to allowable discretionary clauses, will make the private rented market easier to understand for both tenants and landlords.

We note the Government's intention on page 16 of the consultation that if the mandatory clauses of model tenancy are not used a tenant can appeal to the tribunal. We would support this approach however also ask that the Scottish Government allow for the Tribunal to make penalties on persistent landlords who fail to comply with this in the same way that non-lodging of deposits can result in a financial penalty.

Further developed proposals

Initial tenancies and roll-overs

Question 1a: Do you agree there should be an initial tenancy period during which tenants and landlords would be unable to give notice unless one of the specified circumstances existed?

We would support an initial term of six months which would be easy to understand for tenants. We also support the ability to negotiate a longer or shorter lease if in both tenant and landlords' interests. Currently the wording in the consultation is slightly unclear as it says "tenants will be unable to give notice in the first six months of a tenancy". While we agree that a tenant should be required in most cases to stay the first six months the current definition could be read that they cannot give notice to leave until the first day after the initial six months. In practice this would mean all tenants would be required to stay the further eight week notice period, as they had been in the property longer than six months before they can give notice.

CAS would support that tenants can give notice in the first six months but that the date of leaving cannot be before the six month initial lease. While this may be the Government's intention we believe this could be made clearer as the current text has ambiguity which we know the Government are keen to remove from the current system.

Question 1b: Do you agree that after the initial period, a tenant or landlord may serve notice at any time with the relevant notice periods?

Yes, given the change that landlords can no longer evict on no-fault grounds we support this move.

Notice to leave

Question 2: Do you agree that Notice to Quit and Notice of Proceedings should be combined into one Notice to Leave?

Yes, we would support this streamlined and simplified model. We also appreciate the simplified language used making it clearer to the tenant what such a document is.

Question 3: Do you agree with the proposed notice periods a landlord should give a tenant?

No, while we would accept there may be issues with introducing a 16 week notice period for longer tenancies we oppose the shortening of the current notice period of 40 days to 28 days for tenants who have been in the property less than six months. We believe this is an inadequate timescale for a tenant to source and move properties. We believe that 8 weeks is not an unreasonable timescale to expect from landlords and would also allow for tenants to find alternative accommodation. Therefore we would be supportive of the Government's two tier approach if the following was proposed:

Six months or less = 8 weeks notice

More than six months = 12 weeks notice

Notice to leave from tenant to landlord

We note that the Government have not changed their plans regarding the requirement for tenants to give eight weeks' notice if they have been in the property longer than six months. We set out in our original response the significant concerns

we have regarding locking tenants in including the inability to take up other leases or the need to pay double rent on two properties to be able to move. We also have very serious concerns about those who are victims of domestic abuse and may be locked into tenancies and unable to move away from an abusive relationship for eight weeks or be faced with an unaffordable bill to do so.

We continue to advocate the position we set out in our previous response that a flat four week notice period from tenant to landlord should apply.

Question 4a: Do you agree that a landlord may serve a Notice to Leave when a tenant has been in rent arrears for two consecutive months?

Yes, we believe that this could act as an early warning system to a tenant that their tenancy is in danger and we support the Government's intention that such a notice would contain information on where a tenant can get help, advice and support.

Question 4b: Do you agree that when a tenant has reached three consecutive months of rent arrears, a landlord should be able to refer a case to the First-tier Tribunal?

Yes.

Grounds for repossession

Question 5a: Do you agree that the list of repossession grounds now covers all reasonable circumstances where a landlord may wish to recover possession?

Yes, we also believe that the detail provided by the Government with regard to each of the grounds has made it clearer where they would be engaged appropriately. CAS originally raised concerns regarding the anti-social behaviour ground but given this new definition we believe it will be effective.

With regard to evidence required to raise some of the repossessions there may be a requirement for landlords in some cases to supply third party evidence, for example a home report if the selling ground is used. This would strengthen the application and notice to leave to a tenant. We believe that this should be added as a right of the tenant to request such third party information on being given a notice to leave rather than a requirement on all landlords.

Question 5b: Do you agree that the First-tier Tribunal should have an element of grounds 6, 7 and 8?

Yes, CAS stated a number of reasons previously as to why we feel that discretion was needed with regard to these grounds including taking account of mitigating circumstances out with the tenant's control. We are therefore supportive that tribunals will have discretion with these cases. Following our initial concerns, we also support the decision of the government to include new provisions to protect tenants who have had housing benefit payment delay being evicted for rent arrears. We still

have reservations regarding how this guidance will be interpreted by a tribunal given there are many different circumstances that may apply.

Question 6: From the details provided above, do you agree that each of the repossession grounds will work effectively?

We have concerns regarding how some of these grounds will work in practice when brought before a tribunal. Specifically we are concerned where a tenant has rent arrears that have been brought about due to an issue out with the tenant's control. While we welcome the developments made since the last consultation which will introduce discretion in some cases we would hope that tribunal judges are able to exercise this discretion where appropriate. There may be examples where it would not be in the public interest to evict a tenant, for example where reasonable attempts have been made to pay rent especially where they are being supported by an advice agency. Carrying out an eviction proceeding may on some occasions lead to individuals having to seek homelessness support thus in the long term using high cost services and support. It may be useful for the Government to stipulate a pre-action warning period for tenants to receive notice from a landlord for rent arrears. This would have the effect of reducing the number of cases that would get to tribunal where rent arrears were small or accidental in nature.

CAS are also concerned about the routes of recourse open to the tribunal and whether what is stipulated at the moment would be effective enough. We note for example that where repossession happened under false reasons that tenants would have first refusal of taking the property back. We believe while this is a well-meaning change by the Government, in practice many tenants will have moved on to a new property and it would be too late to be offering such redress. We note there is the ability to make financial compensation rewards however in addition we would like to see the ability of a tribunal to raise a penalty against those landlords who have continually breached their tenants' rights.

Rent Controls

Question 7a: Do you agree that rent reviews should take place no more than once a year?

CAS made clear in our initial response to the Government's first consultation that we understood that some tenants were finding increasing rent levels difficult to afford. However we made clear that any introduction of rent controls should be considered much more in depth with robust research to establish the impacts of any rent controls. We still believe that the Government should carry out such a review to establish why some areas of Scotland's private rented market have become unaffordable to many Scots and which models that work elsewhere in Europe could or could not work in Scotland.

With regard to the specific proposals CAS supports the intention to protect tenants from unfair rent hikes aimed simply at removing a tenant. We therefore support the Government's move to ensure that rents can only be increased once a year. This will provide certainty to tenants and their families of how much the rent for that property will be in a long term.

Question 7b: Do you agree that a tenant should receive 12 week' notice in advance of a change in the rent?

Again we support that tenants should have certainty when it comes to the rent they are required to pay. Therefore introducing a notice period will allow tenants to make adjustments and plans in response to any rent increase. We believe that twelve weeks is necessary to allow the tenant the option to give notice to leave if they feel that the new rent is fair but unaffordable.

Question 7c: Do you agree that tenants should be able to refer what they regard as unreasonable rent increases for adjudication?

Yes, we agree that tenants should be protected from unfair price increases and be allowed to appeal such an unfair increase. We would regard that this should be in line with other similar property rates in the area so that tenants are able to compare their rent to what others are being charged.

Question 7d: Do you think there is a role for the additional regulation for area-based rent limits we discuss above?

Question 7e: If we were to legislate for this proposal, what types of evidence should local authorities have to present to Ministers when applying to designate an area as a 'rent pressure area'?

As stated previously we believe that the Scottish Government should be reviewing the state of rent prices across Scotland and the possible models of control that could be introduced in the future. Local controls could only ever be a temporary measure that may not provide the wanted outcomes.