



Consultation Response

Response to the Commission on Housing and Wellbeing Consultation Document

Submitted by:

The Council of Letting Agents

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Commission on Housing & Wellbeing

The Council of Letting Agents (CLA), the letting agent division of the Scottish Association of Landlords (SAL), represents Scotland's leading letting agents and is at the head of the lettings industry in Scotland. It is the largest body of subscribing letting agents committed to adhering to core principles via a code of practice. CLA members offer a service that can be trusted by all consumers.

The CLA welcomes the opportunity to comment on the Commission for Housing and Wellbeing Consultation Document. We recognise the effect that housing has on people's wellbeing and consequently the role that private landlords and their agents can play in enhancing wellbeing.

We have only covered those topics which have a direct impact on our members, namely those related to letting agents acting on behalf of private landlords.

Your details

Please complete the following details below. It is essential that we have a name and the name of any organisation if you are responding on their behalf. Contact details would be helpful if we need to follow up on any points.

Name:	Amanda Wiewiorka, CLA policy group chariman	
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Would you like us to keep your response confidential:	No	

Consultation questions

Below you will find response boxes for each of our consultation questions. If possible, please base your response on answers to these questions.

Some questions may be somewhat irrelevant to your interests, in which case please feel free to answer as many or as few as you like. And please feel free to offer other comments if you think they are relevant to our remit. There is space at the end for you to do so.

You can skip to the section(s) that you wish to respond to through the links below:

1. [Wellbeing](#)
2. [Housing and investment](#)
3. [Housing and the economy](#)
4. [Housing and welfare policy](#)
5. [Housing and the environment](#)
6. [Housing and health and education](#)
7. [Housing and community regeneration](#)
8. [The Private Rented Sector \(PRS\)](#)

Section 2: Does Scotland invest enough in housing?

Q.5. Do you agree with our suggestions for further action in the area of investment in housing?

In regards to the investment in existing homes and the suggestion of applying the SHQS to private homes, it should be noted that private landlords are already required to comply with the Repairing Standard which in some areas sets a significantly higher standard than the SHQS. For example, the Repairing Standard requires a 2 storey house to have at least 4 mains wired interlined smoke detectors whereas in the same property the SHQS requires just one battery operated detector. It is also worth noting that social sector landlords have had nearly 10 years to bring their properties up to the SHQS standard. Much of the private housing stock is harder to treat due to the age and condition of the stock compared to housing stock in the social sector.

There is also a plethora of other legislation (related to safety standards and general tenancy management) that landlords and letting agents have to comply with, and impending regulation of energy efficiency standards. There is a perception among many landlords and letting agents that the level of legislation is already too burdensome and which acts as a disincentive to those looking to enter/further invest in the sector. Consequently additional legislation brings with it the risk of jeopardising much needed growth in the sector.

In light of the above we do not believe that it is prudent to apply the SHQS to the private sector. We do, however, welcome better enforcement of the Repairing Standard via local authorities utilising the new powers made available to them in the Housing (Scotland) Act 2014. We also welcome the amendments to the Repairing Standard included in the 2014 Act.

It is of note that according to the Scottish House Condition Survey 2009 to 2011 combined three year dataset, 95% of private tenants are either very satisfied or fairly satisfied with their home suggesting that disrepair is not a major problem (note that this compares to a figure of 84% in the social rented sector).

Section 8: Do we need a more robust private rented sector?

Q.26. Do you agree with our views on the need for a more effective private rented sector which can make a greater contribution to meeting housing needs?

We agree that the tenancy system needs to be modernised and we welcome the Scottish Government's current consultation on this issue. We also agree that there is a need for further investment to increase the supply of properties as in many areas there is a shortage of private rented properties. Whether this needs to come from institutional investors is debatable (see responses to Q.28 for more detail on this issue).

Q.27. Do you agree with our brief assessment of current policy on the private rented sector?

We agree that much of the legislation imposed on the sector is not particularly effective but argue that this is in large part due to deficiencies in enforcement and poor communication of legislative requirements to landlords and tenants by the Scottish Government/Local Authorities.



Q.28. Do you agree with our suggestions for further action in the private rented sector?

- Replace the current arrangements for landlord registration and house in multiple occupation (HMO) licensing with regulation which is targeted at areas and types of landlords where there are known problems. – a detailed assessment of the risks and benefits of such a radical change in legislation would need to be undertaken before any such change was proposed. We agree that much of the current legislation is ineffective and in some cases overly bureaucratic. Better enforcement is certainly needed along with a review of the intended vs actual benefits of current legislation and procedures.
- Replace the current tenancy arrangements with longer or unlimited security subject to clear criteria for repossession and simplified and easy to use procedures – please see attached our comments on increasing security. We welcome clearer criteria for repossession and simplified and easy to use procedures.
- To take action to encourage “institutional investment” in the sector including tasking the Scottish Futures Trust with identifying new funding models – this could go some way to addressing housing shortages in the sector but it is important to note that not all tenants want to live in purpose built blocks of private rented properties; many prefer traditional buildings, mixed tenure blocks and a more flexible choice of location than institutional investment buildings can provide. Policies should be introduced to encourage a diversity of investment into the sector from institutions, housing associations and private landlords.
- Encouraging existing housing associations to establish subsidiaries to develop good quality market rent housing let on full tenancies – this could go some way to addressing housing shortages in the sector but it is important to note that not all tenants want to live in purpose built blocks of rented properties; many prefer traditional buildings, mixed tenure blocks and a more flexible choice of location than housing association investment can provide. Policies should be introduced to encourage a diversity of investment into the sector from institutions, housing associations and private landlords.
- Consider the options for some limited controls over rent increases which would be fair, both to tenants and landlords – please see attached our comments on rent controls.

Increasing security

There is a popular perception that tenants need more security of tenure. There is particular concern about “retaliatory evictions” – where a landlord ends a tenancy because the tenant has complained about the state of repair of the property. This perception is not supported by evidence, including the following: -

1. Good tenants already experience a high degree of security as landlords rarely take action to end leases. The latest Scottish Housing Survey published in August 2014 shows that average tenancy length in the PRS is 3 years. Given that most leases are for an initial term of 6 months this statistic suggests that the current system is allowing tenants to dictate the duration of their stay; landlords are not exercising their right to end the tenancy at the expiry of the fixed term.
2. According to the Scottish House Condition Survey 2009 to 2011 combined three year dataset, 95% of private tenants are either very satisfied or fairly satisfied with their home suggesting that disrepair is not a major problem (note that this compares to a figure of 84% in the social rented sector).
3. A report on implications for tenants of longer term and more secure tenancy options carried out on behalf of the Scottish Government by Craigforth in 2014 found that: *“Tenants experiencing such property-related concerns were unlikely to believe that greater security of tenure would make them feel any more able or inclined to pursue their right to have the property repaired. In most cases, tenants are disinclined to pursue the right to repairs not because they are concerned about losing their home, but because they cannot face going through formal channels and have little expectation it will prove worth the effort”*. This suggests that tenants are not as concerned about retaliatory evictions as they are perceived to be.
4. A survey of Scottish landlords carried out on behalf of the Scottish Government by Crook et al, published in 2009, revealed that in only 11% of cases the tenancy before the most recent one had been brought to an end by the landlord or agent rather than the tenant.
5. More recent data from the 2012-13 English Housing Survey found that only 7% of households who moved in the last 3 years were asked to leave by their landlord or agent.

In light of the above we argue that there is not a need to amend the tenancy regime to increase security of tenure.

The consequences of increasing tenant security by restricting landlords' rights to repossess

We have serious concerns about the impact on the industry of restricting landlords' rights to repossess and believe it will have the following consequences: -

1. Loss of investment

We believe that restricting landlords' rights to repossess will have serious consequences for the supply of PRS properties and will therefore go against the Government's strategic aim of enabling growth, investment and helping increase overall housing supply.

Restricting landlords' rights to repossess will leave many landlords seriously concerned about their ability to protect their investment by terminating the lease in cases where they need to do so because of breach of tenancy or a change in their own circumstances. For many this concern will discourage them from future investment; others will be sufficiently concerned that they will leave the sector entirely in favour of more secure investments.

Over the last decade initiatives such as voluntary accreditation schemes and training programmes delivered by the likes of Landlord Accreditation Scotland (supported by the Scottish Government) have improved knowledge and management standards amongst landlords in the sector. Any policies that drive landlords out of the sector will result in the loss of this investment in the form of skilled, well informed landlords.

The PRS currently accommodates more households than are housed by either local authorities or housing associations, and its role is expected to increase as household numbers rise amidst a shortage of social sector homes and tighter controls on mortgage lending. Any reduction in the supply of PRS properties will have a serious impact on those living in or wanting to move to the sector; reducing the choice of available properties and increasing rent. A lack of supply could also lead to a reduction in the quality of rental homes as landlords face less competition to let their properties.

Any decline in the number of properties in the sector will also have an impact on the viability of letting agent businesses viability. In October 2014 SAL conducted a survey of its CLA members' views on the Government's proposal to remove the s.33 route to possession. 58% thought the proposal would lead to a reduction in the number of properties managed, 25% to a reduction in staff numbers and 48% felt it would make their business less viable.



In the summer of 2014 the Scottish Association of Landlords conducted a survey of landlord and agent members, asking for their views on how the loss of the natural right to end a tenancy would affect their business. Amongst landlord members just 13% said they would continue at present. 53% said they would be more selective in the tenants they let to, 32% would charge higher deposits, 54% would be less likely to invest in more rental properties and 29% said they would leave the sector entirely.

Amongst agent members 58% said they would be more selective in the tenants they let to, 28% would charge higher deposits and 19% said they would leave the sector entirely.

This comment from a member who took part in the survey sums up the thoughts of many landlords: -

“It is very difficult to evict tenants who have breached the terms of the tenancy and the idea of being tied into a contract with such tenants...is worrying. It is hard to prove a genuine breach of the tenancy to bring the lease to an end during the fixed term.”

Other members commented outwith the survey as follows: -

“Having had a variety of tenants, good and bad in the last 27 years I am horrified to hear landlords may soon be prevented from ending a lease as per current regulations. I have accepted numerous changes which benefit tenants and are detrimental to landlords but if this law is introduced I will sell my properties in Edinburgh and possibly increase my portfolio in England.”

“Every landlord wants to hang onto a good tenant however there is always the odd one who is difficult and the knowledge that they can be asked to leave after the six months is a relief. If this latter policy is implemented by the Scottish Government I will probably pull out of the rental market.”

2. Tenant selection

Faced with concerns about their ability to evict problem tenants, and an excess demand for properties caused by the reduction in investment described above, the natural response of many landlords will be to become more selective in the tenants they choose. Inevitably this will have a big impact on those categories of tenant that landlords perceive to be more risky, including those on lower incomes, single parents, those on benefits and young people who are entering the PRS for the first time without a proven track record. With the lack of social housing these tenants will have limited alternatives to the PRS and in extreme cases could be faced with having



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to present as homeless. This goes against the Government's strategic aim of meeting the needs consumers seeking accommodation.

Comments from SAL members on this issue include: -

"If reforms give tenants more security and if landlords lose the ability to bring tenancies to a natural end be it 6, 9 or 12 months then tenants will lose out if they cannot demonstrate that they will be good tenants, i.e. landlords will become much more selective and void periods may increase in duration. So improving conditions for some tenants will prejudice other (likely poorer) tenants."

"We are a landlord with less than five 1/2 bedroom flats in Aberdeen, all of which are on a 6 or 12 month AST to suit the preference of the tenants. Where the tenants have been good, we have allowed the tenancy to roll-on with 2 months' notice on both parties which suits both parties. Removing the option to be able to give notice as per the current AST arrangement would force us to be far more selective on whom we rent to and/or consider moving our investment to England."

3. Impact on communities suffering anti-social behaviour

Many landlords experience difficulties in evicting tenants who have breached the tenancy terms as it can be hard to prove that a breach has occurred. One of the most difficult breaches to prove is that of anti-social behaviour. Often it boils down to one person's word against another's. Neighbours are often reluctant to report the problem to the proper authorities for fear of retaliatory abuse. In cases where it is reported the behaviour has often stopped by the time that the authorities attend. Problem tenants will come up with all manner of excuses, blaming other residents for the problem or even questioning the sanity and reasonableness of those reporting the problem. If landlords are restricted in their rights to repossess a property and are forced to rely on a breach of the tenancy terms then there is a real danger that communities will be blighted by anti-social behaviour.

Comments from SAL members on this matter include: -

"My Houses of Multiple Occupation (HMOs) provide pleasant, affordable accommodation for professionals. This requires removal, quickly, of the few antisocial tenants. In HMOs, the level of antisocial behaviour profoundly affecting others is well below that of non-house sharing tenancies e.g. not dish-washing, music disturbing housemates. If tenancies cannot end after 6 months and a tribunal is unconvinced that apparently minor antisocial behaviour is significant, HMOs will become uninhabitable for professionals."



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“Evicting anti-social tenants is already a problem, and when this behaviour is contested by everyone except the other neighbours and landlord there can be a lot of unnecessary misery.”

Rent controls

We argue that rent control is unnecessary and will have negative consequences for both landlords and tenants. Mechanisms are already in place to allow tenants who have been notified of a rent increase they believe to be unreasonable to appeal this by application to the Private Rented Housing Panel. Meanwhile data from the web portal Citylets shows that between January 2008 and December 2013 average monthly rent in Scotland rose by just £33. That is less than 1% per year, well below the rate of inflation.

Rents have been increasing more rapidly in recent months but we argue that this is due to the economic recovery, an increasing number of more expensive family homes being let and a shortage in the supply of rental properties in the market place.

Rent inflation is not a problem which is exclusive to the PRS; supply shortages are pushing up social rents and house prices too. The most recent data available from the Scottish Housing Regulator shows average secure and fair rents rose by 5.3% and 6% respectively between 2012 and 2013. Average Scottish local authority rents rose by 3.9% in the same time period and by 17% in the 4 years between 2009 and 2013. Meanwhile data from the Registers of Scotland shows that average house prices in Scotland rose by 5.9% between Q1 2013 to Q1 2014. These figures are all well ahead of inflation.

The only stable long term solution to this is to introduce measures to incentivise and facilitate increases in the supply of properties in the market place. Trying to control rents by regulation will make the supply problem worse as described below.

In September 2014 The Institute of Economic Affairs published a discussion paper entitled "The Flaws in Rent Ceilings". It examined the likely impact of the form of mid tenancy rent control currently being proposed by the UK Labour party amongst others, and described the following negative consequences: -

1. A deterioration in quality - there is little incentive for a landlord to maintain a high quality property if it is let below its market price. For example, why would landlord install a new heating system/bathroom/kitchen if they are unable to adjust the rent mid tenancy to reflect the higher rental value?
2. An increase in rents - since landlords know they cannot adjust rents each year to fully reflect market conditions, they are likely to set rents at the start of the tenancy according to their judgement as to what they expect rents over the lifetime of the tenancy to be. New tenants are therefore likely to face higher rents initially than they would in a free market, in order to compensate for forecast lower future rents.



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3. Reduction in supply - there may be a fall in investment in the private rented sector as a consequence of reducing landlords' ability to manage risks and by alluding to the possibility of further tighter regulation.
4. Loss of tenant mobility – mid tenancy rents below market levels create significant moving costs and incentives for tenants to stay for longer in properties than they might otherwise have chosen to because of changing tastes, demands or circumstances over time. In particular, under rent control there is less incentive for families to reduce their accommodation demands, therefore exacerbating the shortage of properties for others.

The above consequences will go against the Government's strategic aims of enabling growth and investment in the PRS and meeting the needs of the people living in the sector, consumers seeking accommodation and landlords committed to continuous improvement. The above are the likely consequences of a relatively "light touch" form of mid tenancy rent control. If more stringent controls were to be introduced affecting rents between tenancies as well as mid tenancy then the impact on the industry would be much more serious and wide ranging.

In July 2014 the Scottish Association of Landlords conducted a survey of landlord and agent members, asking for their attitudes to rent increase. The landlord survey showed that 78% of landlords do not increase rent mid tenancy. Amongst those who do, 70% last did so more than 12 months ago. 36% said they would be more likely to increase rents if the Government introduced controls on how often increases could be carried out. Amongst CLA members only a third review rents periodically mid tenancy. 39% don't generally review rents mid tenancy and 28% do so only when the landlord requests it. 47% said they would be more likely to increase rents if the Government introduced controls on how often increases could be carried out as reflected in these comments from members who took part in the survey: -

"If rent increases are limited and not related to market a landlord would be foolish not to raise the rent whenever possible."

"If there is legislation in place stating how often and by how much rent can be increased landlords will expect it to be done."