

Consultation on a New Tenancy for the Private Sector

The Scottish Government produced proposals for a new tenancy system. In October 2014 it launched a *public consultation* outlining a new type of tenancy for the private rented sector. The overarching aim of the proposed new tenancy is to improve security of tenure for tenants, while providing appropriate safeguards for landlords, lenders and investors.

The Scottish Government received more than 2,500 responses to the first consultation which came from a range of interested parties including tenants, tenant-representative organisations, landlords, landlord-representative organisations, letting agents, investors and local authorities. The Scottish Government had the responses analysed independently and a *report on the consultation exercise* was published on the 24 March 2015.

The Scottish Government used the findings from the analysis to help them develop the proposals in their *Second Consultation on a New Tenancy for the Private Sector*, which explained in more detail how they expect the new tenancy system to work in practice and sought views on these. This closed on 10 May and they received over 7,500 responses which are currently being analysed by an external contractor. They expect to publish their report in the near future.

This table shows a summary of the proposals and any developments from the policy set out in the first consultation and formed the basis of their second consultation.

The **bold text** shows areas where they have changed or developed their policy compared to what was in the first consultation. They have made these changes and developments in the light of their consultation analysis and ongoing discussions with colleagues and stakeholders.

Subject	Current provisions	Policy in the first consultation	Proposed policy in this consultation
'No-fault' ground for repossession	Under a Short Assured Tenancy, landlords can reclaim their property simply because the fixed term has ended. This is called the 'no-fault' ground for repossession.	The 'no-fault' ground for repossession will be removed.	The 'no-fault' ground for repossession will be removed.
Tenancy roll-over arrangements	Tenancies can roll over on a monthly basis after the initial lease period expires.	Tenancies will not be able to roll over on a monthly basis.	Tenancies will not be able to roll over on a monthly basis.
Length of tenancy	Under a Short Assured Tenancy, the shortest tenancy duration is six months. There is no minimum for an assured tenancy.	Landlords must offer a minimum tenancy of six months. No maximum is proposed. The new system will not allow tenancies to roll over on any basis that offers a shorter duration than the current tenancy agreement. If the initial lease period ends without a Notice to Quit being issued, either automatic renewal will apply or a new contractual tenancy will be needed. A tenant will be able to request a tenancy agreement shorter than six months to meet their personal circumstances, e.g. a seasonal or travelling worker.	Landlords must offer a minimum tenancy of six months. No maximum is proposed. A statutory 'Scottish Private Rented Tenancy' (SPRT) will be the new tenancy agreement. For the first six months of the tenancy a tenant will be unable to give notice and a landlord will be unable to regain possession of the property unless the tenant is at fault or the mortgage lender is intending to sell because the landlord has broken their loan conditions. After the initial six-month period either the tenant or landlord can serve notice to end the tenancy at any time, subject to a statutory notice period, unless they agree a shorter period. A tenant will be able to request a tenancy agreement shorter than six months to meet their personal circumstances, e.g. a seasonal or travelling worker.



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Subject	Current provisions	Policy in the first consultation	Proposed policy in this consultation
Notice to Quit periods	Currently landlords and tenants must give each other Notice to Quit of between 28 and 40 days.	<p>The Notice to Quit period will be linked to how long the tenant has lived in the property. Landlords will have to give tenants the following notice:</p> <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months up to two years in the property = eight weeks' notice. • Over two years up to five years in the property = 12 weeks' notice. • Over five years in the property = 16 weeks' notice 	<p>To further simplify the process, we now propose two notice periods (rather than four) based on how long the tenant has lived in the property. Landlords will have to give tenants the following notice:</p> <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months = 12 weeks' notice. <p>Rather than having a separate Notice to Quit and Notice of Proceedings, we now propose introducing a single document called a Notice to Leave. This means that under the new tenancy system a landlord will only need to issue a tenant with one notice document. See page 18 for further information on the 'Notice to Leave'.</p>
Grounds for repossession	There are 17 grounds under which a landlord can repossess their property. About half of these are mandatory - in other words, the court must give a possession order if the ground is proved. The rest are discretionary. All need a Sheriff court order	<p>Reduce the number of grounds for possession to eight, all of which will be mandatory.</p> <p>The new proposed repossession grounds are:</p> <ol style="list-style-type: none"> 1. landlord wants to sell the home 2. mortgage lender wants to sell the home 3. landlord wants to move into the home 4. refurbishment 5. change of use of the home 6. tenant failed to pay three full months' rent 7. tenant is antisocial 8. tenant has otherwise breached the tenancy agreement 	<p>Reduce the number of grounds for possession to 11, some of which will be mandatory and some discretionary.</p> <p>The new proposed repossession grounds are as follows:</p> <ol style="list-style-type: none"> 1. The landlord is selling the home. 2. The mortgage lender is selling the home. 3. The landlord or a family member of the landlord wants to move into the home. 4. Refurbishment. 5. Change to business use. 6. The tenant has failed to pay full rent over three consecutive months. 7. The tenant has displayed antisocial behaviour. 8. The tenant has otherwise breached the tenancy agreement. <p>9. Abandonment.</p> <p>10. The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.</p> <p>11. The house is normally needed to house a full-time religious worker of any denomination and is required for this purpose.</p> <p>As As under the Housing (Scotland) Act 2014, all civil PRS cases will be considered by the First-tier Tribunal rather than a sheriff.</p>

Subject	Current provisions	Policy in the first consultation	Proposed policy in this consultation
Shorter Notice to Quit period in certain circumstances	No current provisions	If repossession grounds 6, 7 or 8 above apply, landlords will be able to give tenants 28 days' Notice to Quit regardless of how long the tenant has lived in the property	For grounds 7 or 8 above apply, landlords will be able to give tenants 28 days' Notice to Leave regardless of how long the tenant has lived in the property. For ground 6 (rent arrears), we propose a different approach, which is covered at page 26. The Notice to Leave will replace both the Notice to Quit and the Notice of Proceedings. See page 18 for more about the Notice to Leave.
Pre-tenancy notices	Landlords must give advance notice to tenants if they intend to use some of the repossession grounds.	Pre-tenancy notices will not be required.	Pre-tenancy notices will not be required.
Notice of Proceedings	The length of notice required before a landlord can take legal proceedings is two weeks or two months, depending on the ground being used.	A standard four-week notice period will be required before proceedings can be raised.	A Notice of Proceedings will no longer be needed. A Notice to Leave will replace the Notice of Proceedings and Notice to Quit. See page 18 for further details on the Notice to Leave.
Notice to Quit	Currently landlords and tenants must give each other Notice to Terminate of 28-40 days.	Tenants will be have to give landlords the following notice: <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months in the property = eight weeks' notice. 	Tenants will be have to give landlords the following notice: <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months in the property = eight weeks' notice. The Notice to Quit will be replaced by the Notice to Leave.
Model tenancy agreement	No prescribed tenancy agreement.	<ul style="list-style-type: none"> • We will introduce a model tenancy agreement containing mandatory and discretionary clauses and a statutory guidance note that outlines the clauses in plain language. This will remove the need to issue a Tenant Information Pack, so we propose to remove this requirement. 	We will introduce a model tenancy agreement containing mandatory and discretionary clauses and a statutory guidance note that outlines the clauses in plain language. This will remove the need to issue a Tenant Information Pack, so we propose to remove this requirement. We expect the content of the model tenancy agreement to be specified in secondary legislation.

These proposals will be discussed more fully at our conference on the 14th of November 2015.