

Response ID ANON-A9A7-4428-4

Submitted to **Consultation on proposals for regulations and policy supporting the Private Housing (Tenancies) (Scotland) Act 2016.**

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About You

What is your name?

Name:

Robert Aldridge

What is your email address?

Email:

robert@homelessactionsotland.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Homeless Action Scotland

If you are responding as an organisation, to assist with our analysis, please indicate what type of organisation you are:

Campaign Body or Group

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Questions on 'Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act'

1 Do you think the proposed 'Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act' is fit for purpose?

Yes

If no, please set out why you think the notification is not fit for purpose.:

2 Do you think the proposed 'Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act' is easily understood?

Unsure

If no, please set out why you think the notification is not easy to understand:

In the notes to landlord (note 1-6) the phrase 'it starts on the later of the day...' is poorly worded and difficult to understand on first reading. WE would suggest translating this sentence into 'plain language'.

There is reference in this section to 'specified information'. The info needs to be listed either in the notes or in an annex to which the landlord / tenant is referred.

More generally in terms of layout, the notes fro tenants are over the page and not easy to find. Perhaps some improvement could be made to the design.

3 Do you think the 'Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act' should have additional content?

Yes – please tell us what that content should be and explain why you think it is required

If yes, please tell us what that content should be and explain why you think it is required:

In the notice itself (Part 2) where the tenant is asked to tick a box there shuld be a note 'you may tick more than one box'.

4 Do you think anything in the ‘Tenant’s notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act’ should be removed?

Yes – please tell us what you think should be removed and explain why you think it is unnecessary

If yes, please tell us what you think should be removed and explain why you think it is unnecessary:

The specific reference to named advice agencies (Citizens Advice and Shelter Scotland should be removed in the notes to landlords. These agencies may also offer advice to tenants and the reference to them assisting landlords may put off some tenants who would believe they had a conflict of interest.

Questions on ‘Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016’

5 Do you think the proposed ‘Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016’ is fit for purpose?

Yes

If no, please set out why you think the notification is not fit for purpose :

6 Do you think the proposed ‘Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016’ is easily understood?

No – please set out why you think the notification is not easy to understand

If no, please set out why you think the notification is not easy to understand:

The part which will be used most is easy to understand and fit for purpose (apart from a minor typo where the word 'only is used twice in the same sentence in note 2 and 3 to tenant).

The part linked to the Rent Pressure Zone is extremely hard to understand and needs to be rewritten to make it comprehensible.

Most people find mathematical formulae difficult at the best of times. Whilst the technical details of how it is calculated need to be included it would make sense for this part to be able to link to an on line 'how to calculate what your landlord can charge' calculator, where the tenant simply fills in the bits they are aware of and the calculator does the rest!

7 Do you think the ‘Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016’ should have additional content?

No

If yes, please tell us what that content should be and explain why you think it is required:

8 Do you think anything in the ‘Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016’ should be removed?

Unsure

If yes, please tell us what you think should be removed and explain why you think it is unnecessary:

Given that the number of RPZs is likely to be very limited, it might be worth keeping the main notice as simple as possible, since it will apply to well over 90% of tenants and having a separate section for RPZs along the lines of:

If you are in a Rent Pressure Zone special rules apply and you should use notice XXX

How do I know if I am in a rent pressure zone?

etc

Questions on 'Tenant’s application form to a rent officer for adjudication on a proposed rent increase’

9 Do you think the proposed ‘Tenant’s application form to a rent officer for adjudication on a proposed rent increase’ is fit for purpose?

Unsure

If yes, please set out why you think the referral is not fit for purpose :

It needs some minor adjustments. See below,

10 Do you think the proposed 'Tenant's application form to a rent officer for adjudication on a proposed rent increase' is easily understood?

Yes

If no, please set out why you think the form is not easy to understand:

11 Do you think the 'Tenant's application form to a rent officer for adjudication on a proposed rent increase' should have additional content?

Yes – please tell us what that content should be and explain why you think it is required

If yes, please tell us what that content should be and explain why you think it is required:

Under Declaration the wording needs to be clearer.

Rather than for joint tenants all tenants 'should' sign, the wording should be 'all tenants must sign'

12 Do you think anything in the 'Tenant's application form to a rent officer for adjudication on a proposed rent increase' should be removed?

Yes – please tell us what that content should be and explain why you think it is unnecessary

If yes, please tell us what that content should be and explain why you think it is unnecessary:

Question 3d. If the property is shared with the landlord the rules do not apply and therefore the form should either state this clearly or this section should be removed.

Questions on 'Notice to leave from a landlord to a sub-tenant'

17 Do you think the proposed 'Notice to leave from a landlord to a sub-tenant' is fit for purpose?

Unsure

If no, please set out why you think the notice is not fit for purpose :

Unsure because it is written in 'legalese' and is hard to understand for tenants.

18 Do you think the proposed 'Notice to leave from a landlord to a sub-tenant' is easily understood?

No – please set out why you think the notice is not easy to understand

If no, please set out why you think the notice is not easy to understand :

The notification needs to be re-written completely in plain language. It is intended as a communication with a sub tenant rather than a dialogue between legally trained professionals and so the language should be as simple and plain as possible.

19 Do you think the 'Notice to leave from a landlord to a sub-tenant' should have additional content?

No

If yes, please tell us what that content should be and explain why you think it is required:

20 Do you think anything in the 'Notice to leave from a landlord to a sub-tenant' should be removed?

No

If yes, – please tell us what that content should be and explain why you think it is unnecessary:

Questions on 'Notice to leave from a landlord to a tenant'

21 Do you think the proposed 'Notice to leave from a landlord to a tenant' is fit for purpose?

Yes

If no, please set out why you think the notice is not fit for purpose :

22 Do you think the proposed 'Notice to leave from a landlord to a tenant' is easily understood?

Yes

if no, please set out why you think the notice is not easy to understand:

23 Do you think the 'Notice to leave from a landlord to a tenant' should have additional content?

No

if yes, please tell us what that content should be and explain why you think it is required:

24 Do you think anything in the 'Notice to leave from a landlord to a tenant' should be removed?

Yes – please tell us what that content should be and explain why you think it is unnecessary

If yes, please tell us what that content should be and explain why you think it is unnecessary:

Under notes 3 to 7 to the tenant point 6 there is a phrase ' your landlord will serve a charge for removing you.' This should be amended to ' your landlord is entitled to serve a charge...' Some landlords may not impose that charge. The new wording would be more accurate.

Questions on 'Recommended Model Tenancy Agreement'

25 Do you think the proposed 'Recommend Model Tenancy Agreement' is generally fit for purpose?

No - please set out why you think the model agreement is not fit for purpose

If no, please set out why you think the model agreement is not fit for purpose :

Homeless Action Scotland has three major general points and a number of specific suggestions.

The specific suggestions will be included in the response forms. The general points need to be addressed throughout.

The first point is that there is a real confusion between 'statutory term', 'mandatory' and 'discretionary'.

The status of 'mandatory' is not at all clear. It is broader than the statutory terms of the tenancy but would appear only to be mandatory if the model agreement is used. However, if a landlord were to use most of the model tenancy agreement, but miss out one or two of the 'mandatory' clauses, it would appear they would not be bound by the 'mandatory' element because they would not be using the model agreement!

It had been the original intention to ensure that all landlords used the model tenancy agreement which would include both mandatory clauses and some discretionary clauses. If the use of the model tenancy agreement is not required the term mandatory becomes redundant. (Effectively the clauses, unless they are statutory terms) are all discretionary, since it is up to the landlord whether they use all or part of the model tenancy agreement.

In our view this is a mess.

In addition some paragraphs with 'mandatory' status are not 'terms' of a tenancy agreement but are explanations. Where possible, explanations should be in notes appended to the tenancy agreement with the agreement being kept as short and clear as possible and focused on contractual terms.

In our view, therefore, ideally all landlords should be obliged to use the formal tenancy agreement and the 'mandatory' elements in the model tenancy agreement should be reflected in regulations linked to the legislation. We do not believe that all the mandatory elements currently listed are necessary, which will be discussed in greater detail below.

Landlord's costs

The second fundamental issue relates to the non mandatory clause 12 in the model tenancy agreement: 'Landlord costs and interest.' This totally undermines the authority of the Tribunal.

If a Tribunal, having heard details of a case, were to award costs against the landlord or partial costs to each party, this clause means that the landlord is contractually entitled to recoup all his costs from the tenant even where it is unreasonable for him to do so and a Tribunal has said that it is unreasonable for him to do so. This is a dangerous clause to include in any model agreement which is a serious threat to tenants' rights and panders to landlords' interests against the principles of the new legislation.

The third significant area is electronic communication. There is a difference between day to day communications between landlord and tenant and the serving of notices. It is reasonable for day to day communications to happen via email. However the serving of a notice should be done physically with proof of receipt of it. It is very likely that if this is a standard clause tenants will not dispute or question it. They will simply sign. In the real world people are not able to question individual clauses. The most serious concern is that a notice to leave is not received by a tenant, perhaps because they are on remand, or the notice goes to their 'junk mail' or the internet malfunctions.

So we propose that all notices must be served in writing. Day to day communication between landlord and tenant, by agreement, could be via email.

26 Do you think the proposed 'Recommended Model Tenancy Agreement' is easy to understand?

No – please set out why you think the model agreement is not easy to understand

If no, please set out why you think the model agreement is not easy to understand:

In addition to the confusion over mandatory and discretionary many of the clauses are explanatory rather than tenancy terms.

The language used can be confusing. Three words: 'can', 'must' and 'may' are used almost interchangeably but should be used with care. Where an issue is a matter of law it should be clearly described as such.

The 'glossary' is more of a reference section for lawyers than a means by which the lay person can understand what is meant by terms. We would suggest having both a glossary (which should explain terms in plain language) and a separate reference section which includes the legal definitions, for example.

In addition, in the glossary, care should be taken in the use of terms. For example the term 'locality' is used. This has a specific meaning under the Health and Social Integration legislation where it can amount to 50% of a local authority area. The glossary should be clear about what is meant by neighbourhood without using a term which is more ambiguous than the original term used.

27 Do you have any comments on the terms numbered from 1 to 9 in the 'Recommended Model Tenancy Agreement'?

Yes – please tell us your comments using the comment box for the relevant term(s)

Term 1 is 'Landlord':

The terms HMO 24 hour contact number and HMO registration expiry date will not apply to most private rented tenancies (which are not HMOs).

Whilst we agree that all HMOs must include this other landlords who are not HMO landlords do not. The fact that it is a mandatory section implies that all landlords have to complete this, which is confusing.

Term 2 is 'Letting Agent/Factor/Managing Agent':

no comments

Term 3 is 'Tenant':

We do not think it should be compulsory for a tenant to give a landlord their email address, because it is not compulsory to allow the landlord to communicate via email with the tenant.

The reference to phone numbers is also confusing: Many people have both a landline and a mobile, and many people's mobile phone numbers change quite regularly. It is right that a landlord should have an agreed and up to date means of contacting the tenant, but it should not be compulsory for the tenant to give all of their phone numbers.

In these comments we are aware that breach of the tenancy agreement can lead to eviction. It is therefore extremely important for any mandatory requirement to be proportionate and reasonable.

Term 4 is 'Communication':

In our view it is extremely important that Notices are served in writing rather than by email to ensure that they are received. Personal or recorded delivery minimises the risk that the tenant does not receive the document timeously and is therefore able to exercise any right to review or dispute resolution.

We believe it should be permissible for the landlord and tenant mutually to agree to supplement the requirement for serving a written notice with a communication by email, but this should not be in place of the serving of a notice directly in writing on the tenant.

Term 5 is 'Details of the let property':**Term 6 is 'Date when tenancy starts':****Term 7 is 'Occupation and use of the let property':****Term 8 is 'Rent':**

There is an inconsistency in this section. If rent is payable in arrears (one of the options) the first payment will not be 'on the date the tenancy starts or before'. The wording needs to be adjusted.

Term 9 is 'Rent receipts':**28 Do you have any comments on the terms numbered from 10 to 19 in the 'Recommended Model Tenancy Agreement'?**

Yes – please tell us your comments using the comment box for the relevant term(s)

Term 10 is 'Rent increases':

The term 'cannot be increased' needs to be made clearer. We would suggest inserting at the beginning of the sentence the words 'By law the rent...!' or use the term 'The landlord must not increase the rent more than once ...!'

Term 11 is 'Deposit':

There should be a cross reference to the glossary so that tenants can understand whether their landlord is one 'who must register with the local council's register of landlords'. It is not something that a tenant is likely to know.

The para beginning 'the deposit amount cannot exceed' should read either 'By law the deposit amount cannot...!' or 'The deposit amount must not..!'

The paragraphs following the contact details are all notes rather than tenancy terms and should not appear in the tenancy agreement but rather in notes for tenants and landlords appended to the agreement.

Term 12 is 'Landlord's costs and interest':

This section should be removed.

It undermines the role of the Tribunal in determining where costs should be apportioned and, as such, represents a fundamental breach of basic rights of a tenant.

It is totally unacceptable as currently written. It gives total power to a landlord regardless of whether there are extenuating circumstances and permits landlords to ride roughshod over a Tribunal decision concerning costs.

Term 13 is 'Notification about other residents':

The section which refers to the tenant being responsible for the actions of those living with them does not take account of situations where there is domestic abuse, and an abuser may seek to get their partner evicted by creating problems. There should be an additional phrase included to ensure that any action is proportionate.

The section where the tenant has to ensure that they do not create an unlicensed HMO is an impossible ask of a tenant who will not know the HMO regulations. It is a matter for the landlord to ensure they have a licence if they need one. The section on seeking prior approval for other people moving in to a tenancy is the protection which a landlord requires against the creation of HMO and it is a matter for the landlord or his agent to take action either to deny permission for an additional person to live in the property or to ensure that it is appropriately licensed as an HMO. In our view it is the tenant's responsibility to seek prior permission from the landlord to have anyone stay in the property as their principal home. It should be the landlord's responsibility to ensure that the property is appropriately licensed (or to refuse permission if it would create an unlicensed HMO)

This places an unfair and impossible burden on a tenant and should be removed.

Term 14 is 'Overcrowding':

This section is contradictory. The second paragraph states that the maximum number depends on age, gender and relationships (and therefore is not a fixed number). The first paragraph states a fixed number.

The final paragraph says that the tenant must not allow the property to become 'overcrowded' but does not define overcrowding, nor is there a definition in the glossary. Perhaps it should say that the tenant must not allow more than the maximum number of people identified in this section to live in the property. Alternatively the glossary needs to define overcrowding (and there are several ways it can be defined).

Term 15 is 'Subletting and assignment':

Term 16 is 'Contents and condition':

In the section the tenant agrees to replace etc there should be a qualifying phrase added:

;where the loss or damage can be attributed to the tenant or someone staying with them. For example, if the house were to be burgled, or the flat above were to flood the property causing loss or damage it would be inappropriate for the tenant to be held responsible.

Term 17 is 'Local authority taxes/charges':

It is possible that a landlord will include the council tax, water and sewerage charges in the rent. This clause does not take account of that possibility.

Term 18 is 'Utilities':

Similar to comments in section 17, there may be rare occasions where all bills are included in the rent paid. So perhaps a phrase such as 'or otherwise agreed' would cover this.

Term 19 is 'Insurance':

This section appears to imply that it is compulsory for the tenant to insure their own contents. We believe the section should make clear that that insuring their personal contents is a matter for the tenant. This might be resolved by inserting the word 'any' before 'contents insurance' in para 2.

29 Do you have any comments on the terms numbered from 20 to 29 in the 'Recommended Model Tenancy Agreement'?

Yes – please tell us your comments using the comment box for the relevant term(s)

Term 20 is 'Absences':

14 days is a very short period. We would suggest using the same period as mortgage lenders use, but certainly longer than 14 days (e.g. 21 days).

Term 21 is 'Reasonable care':

Is the bullet point about sellotape meant as a joke? It would be patently ludicrous for a tenant to be able to be evicted for using a small piece of sellotape on a wall. This sub section should be completely removed.

At every stage of consultation on this agreement we have pointed this out as one of the most ludicrous conditions which some landlords include in tenancy agreements which the new agreement should outlaw. Time and again it reappears. It is simply an outrageous suggestion and must be removed.

We are not convinced it is the headline the government would seek ; 'Evicted for putting a poster up with Blu Tak'. Nor can we believe that such an eviction would conform to the priority in government policy to prevent avoidable homelessness.

A tenant can be evicted for breach of the tenancy agreement. It would be outrageous if this were to be permitted. And it is even included as a mandatory bullet point!

Term 22 is 'Alterations':

Paragraph 2 is impossible to understand for anyone other than a lawyer. It should be written in plain language.

Term 23 is 'Common parts':

Term 24 is 'Private garden':

Term 25 is 'Roof':

We are not convinced that this needs to be included in a model tenancy agreement.

Term 26 is 'Bins and recycling':

Term 27 is 'Storage':

Term 28 is 'Dangerous substances':

We believe this section should be in bold as a mandatory paragraph.

Term 29 is 'Respect for others':

The reference to CD players is a bit antiquated. Most people stream music these days. We would suggest a generic term such as 'amplified speech or music, musical instruments and DIY tools' so that the agreement is not left behind by technology

30 Do you have any comments on the terms numbered from 30 to 40 in the 'Recommended Model Tenancy Agreement'?

Yes – please tell us your comments using the comment box for the relevant term(s)

Term 30 is 'Equality requirements':

The phrasing is not as clear as it could be. We would suggest: 'Under the Equality Act 2010 it is unlawful for the landlord or the tenant to discriminate...

The current wording implies there are circumstances where they could lawfully discriminate.

Term 31 is 'Pets':

Term 32 is 'Smoking':

This is someone's home. However much we may abhor smoking it is a legal activity. This clause represents a disproportionate intrusion into a person's lawful activities at home.

Term 33 is 'Repairing Standard etc. and other information':

This section should include an explanation of how any dispute about whose fault it is that something is not right is resolved.

Term 34 is 'Liquid petroleum gas':

Term 35 is 'Legionella':

Term 36 is 'Access for repairs':

There should be a further sentence which states that the method by which the landlord gives notice that he requires access shall be mutually agreed. It could be email or phone or writing, whichever suits both parties.

Term 37 is 'Data protection':

we would suggest the insertion of the word 'only between 'and ' and 'lawfully'

Term 38 is 'Ending the tenancy':

It is not clear why the landlord would undertake not to act illegally in a tenancy agreement! It seems unnecessary and would appear to imply that it's ok for them act illegally if it isn't in the agreement!

We would suggest rewording the sentence which commences 'The tenancy will come to an end as: 'The tenancy will come to an end on the day specified in the Notice to Leave, or the day on which the tenant actually leaves the property, whichever is the later.'

We believe this is easier to understand.

Term 39 is 'Declarations':

Term 40 is 'The Guarantor':

The guarantor is not a party to The agreement between landlord and tenant. The landlord can have a separate agreement with the guarantor but it should not form part of the tenancy agreement.

31 While users will have the ability to add their own unique tenancy terms, are there any other terms that you think it would be helpful to include as standard terms in the 'Recommended Model Tenancy Agreement'?

No

If yes, please tell us what the term should be and why you think it should be included :

32 Do you have any other general comments on the 'Recommended Model Tenancy Agreement'?

No

If yes, please tell us what they are.:

Questions on 'Serving documents electronically'

33 Do you agree that a landlord and tenant should have the option of serving documents electronically to the electronic mail address provided by the relevant party, provided they have both previously agreed in writing to this?

No - please tell us why you disagree

If no, please tell us why you disagree.:

A landlord should be able to communicate electronically on day to day matters with the tenant and vice versa.

The serving of notices should be done via recorded delivery or personal delivery to minimise the risk that they are not received by the tenant and to ensure they are received timeously. For example a prisoner on remand would not have access to their email account.

Questions on 'Statutory Terms'

34 Are there any other terms that should be included in the regulations as a statutory term applicable to all private residential tenancies?

No

If yes, please tell us what other terms you think should be included and explain why you think they should be statutory terms :

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly dissatisfied

Please enter comments here.:

The platform does not make it easy to share draft responses with our reference group. Adding a means by which it was easy for us to send a latest draft electronically to our expert group for comment before finalising would be helpful.