



Crisis submission to the Scottish Government's consultation on A New Deal for Tenants: Draft Strategy Consultation Paper

April 2022

Crisis is the national charity for homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help homeless people to transform their lives. Our eleven UK Skylight Centres offer holistic support across a whole range of issues, including support to secure access to adequate and affordable housing and employment support to help people prepare for, find, sustain and progress in work. Ensuring that homeless people can get access to affordable, decent, secure housing is central to our work.

Key points

The Scottish Government should have a clear vision of the role they see the PRS playing in meeting current and future housing need. Whilst the Scottish Government has a commitment to increasing overall housing supply, the headline targets are not accompanied by a long-term vision for tenure mix that is informed by a robust assessment of need. Given changing demographics and the integrated nature of the housing system, where dwellings shift across tenures in response to demand and investment opportunities, Crisis recommends that the Scottish Government explicitly sets out its strategy for housing provision which meets the needs of local/regional populations. This should specify targets for the proportion housed in different tenures, based on projections of population changes and the housing needs and aspirations of different groups. Without a vision for the size and role that the PRS should play in the future tenure-composition of housing, it risks remaining the 'residual' tenure which absorbs demand from other tenures without being fit for purpose to meet the needs of those it is housing.

- To help future proof the Government's commitment to ending homelessness and ensure that homelessness prevention and rapid rehousing initiatives continue to receive the funding they require, as well as cross sector support, action on ending homelessness should be expressly included in the National Performance Framework. This was also supported by the Homelessness and Rough Sleeping Action Group (HARSAG) in 2020. To support delivery of the Housing to 2040 vision, Crisis strongly recommends that the Scottish Government consult on options for top level indicators that demonstrate national progress in preventing homelessness and delivering a rapid rehousing response. Success in ending homelessness should be a key indicator of the success of future housing policy in Scotland.
- The commitment to eradicate homelessness needs to be underpinned by a sustained strategic response to implement effective prevention, as set out in the proposals of the Homelessness Prevention Review Group. This is not just about getting the right homes in place in sustainable communities, but also ensuring that tailored support is in place to meet

people's individual needs, and there is effective collaboration between statutory agencies underpinned by a "no wrong door" approach.

- Crisis recommends that the Scottish Government should support LAs more robustly in both guidance and practice to work more productively with the PRS to reduce homelessness from it and resolve more homelessness using it. We recommend that the Rented Sector Strategy includes a commitment to improving access to the PRS for households with experience of homelessness whose informed preference it is to move into a Private Residential Tenancy. PRS access schemes should be available in every local authority across Scotland and should be delivered by integrated PRS teams, where all the local authorities' functions relating to the PRS are brought together to deliver strategic improvements to the tenure and ensure the PRS is the best that it can be for both tenants and landlords.
- Crisis does not propose major changes to the existing eviction grounds, however we recommend consideration of whether a tenant can retain their tenancy even where the landlord intends to sell. Crisis' primary concern is preventing people from experiencing homelessness, so rather than changing the grounds on which a landlord can seek to repossess a property, we believe it is more important to introduce a stronger focus on the role of landlords in preventing homelessness, with advice and support to help prevent eviction. Our recommendations for achieving this are discussed throughout this response and in our response to the Prevention of Homelessness Duties Consultation.
- Scottish Government may wish to give further consideration to introducing a minimum term for certain grounds, but with careful consideration of whether there would be an impact on landlords' willingness to enter into the sector.
- Crisis recommends that landlords are obliged to give tenants four month's-notice for all the no-fault grounds.
- Crisis supports proposals to allow tenants to end their interest in a joint tenancy.
- Crisis supports mechanisms by which domestic abuse victim-survivors can apply to the court for the transfer of the perpetrator's sole or joint tenancy rights to the survivor solely, and regardless of marital status or the presence of children, and recommended that any new mechanism should *apply equally* across the social and private sectors.
- Crisis strongly welcomes the proposal to legislate to enable the reinvestment of unclaimed tenancy deposits. We believe the best use of this fund would be to invest it in PRS access schemes across the country, targeted at those with experience of homelessness.
- Crisis welcomes Scottish Government's efforts to tackle affordability. However, we are clear that rent controls alone will not end homelessness, and serious consideration should be given to mitigating unintended consequences on housing supply. To solve the overarching problem of inadequate availability of homes that people can afford, the most important change that we must see is the delivery of affordable homes, including an increase in the supply of social housing, taking into account local demand and size and type of properties needed.
- In our 2018 *Plan to End Homelessness*,¹ Crisis called for the introduction of limits on annual rent increases linked to an inflationary measure, alongside longer tenancy security. This remains our position although we have since highlighted the importance of improving enforcement alongside such measures.
- To avoid any counterproductive unintended consequences, any system of rent controls must be carefully designed. One way of achieving this would be to create an expert panel,

¹ Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018) *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

independent of but accountable to relevant governments, with responsibility for reviewing all the relevant evidence and setting any limitations on rent increases/rent levels.

1. Introduction

The role of the private rented sector in preventing and ending homelessness

The social and the private rented sectors are central to both preventing homelessness, and providing routes out of homelessness.

For many years, Crisis has promoted the responsible use of the private rented sector (PRS) for those at risk of or experiencing homelessness. We support schemes throughout the UK which seek to improve access to the PRS, sharing examples of good practice, delivering training and producing a range of toolkits and guides for housing practitioners.

Crisis recognises that there are issues around **affordability, security and standards** in the PRS, often as a result of lack of enforcement of existing tenants' rights. Illegal evictions from the PRS are still a problem, which is often wrongly treated as a civil rather than a criminal matter.

Crisis welcomes any steps to improve standards in the PRS which has positive outcomes not only for low-income households in that tenure who may be at risk of homelessness, but also for those with experience of homelessness who are supported into their own private tenancies. We welcome, for example, the proposals to make the discretionary grounds for eviction permanent, and the introduction of pre-action requirements on landlords in the PRS seeking to evict tenants on grounds of rent arrears. The Rented Sector Strategy and forthcoming Housing Bill represent important opportunities to improve security, affordability and standards.

Affordability can act as a barrier to accessing the PRS, where those on low incomes – and especially young people subject to the Shared Accommodation Rate – face a shortfall between their Local Housing Allowance and their rent. **Measures intended to improve the affordability of the PRS are welcome, but need to be cognisant of the implications for housing supply.**

In every part of Scotland, but especially in pressurised housing markets in the major cities, **the private rented sector (PRS) can and must play a role as a housing option for those experiencing homelessness.** This does not diminish the need for social housing, however, those with experience of homelessness have told us that social housing should not be the sole housing option available to them. This is especially important in the context of record high numbers of households in temporary accommodation, and people spending longer on average in the homelessness system. The PRS already does play a major role in the homelessness system, through Private Sector Leasing of properties to provide temporary accommodation, although households in this situation do not have the rights that are offered through a Private Residential Tenancy (PRT). Scotland's direction of travel should be towards making improvements to the PRS so it can play a greater role as a settled housing option, and less as a form of temporary accommodation.

The best way to allow the PRS to play a role in ending homelessness is to have well-functioning local PRS access schemes, which rely on good partnership working between local authorities, landlords and third sector intermediaries, underpinned by rent deposit guarantee schemes.

A route out of homelessness – PRS access schemes

Why is it important for the PRS to play a role? People experiencing homelessness should have access to the same housing options as any member of the public. This principle reflects the importance of choice and a person-centred approach in responding to homelessness. The

Prevention Commission,² which informed the development of the Prevention Review Group's proposals,³ noted that people in the greatest housing need often had fewest housing options and felt that people should have the same options as other members of the public, whilst balancing this with safeguards to give people stability. They identified tenure as just one of eight factors which may influence people's decisions regarding housing choice, alongside things like location, size, accessibility and cost.

Is the PRS an appropriate choice for someone with experience of homelessness? The PRS can and does provide a positive – and often rapid – housing option for some people, including people who've experienced homelessness.

It is true that some who want to rent privately experience barriers accessing the tenure. Groups who are less able to compete on the open market can end up with the worst standards, little security, or in some cases, criminal exploitation. That's where PRS access services come in. By building trusting relationships with landlords and agencies, they offer a supported and managed pathway into the sector, procuring affordable properties which meet standards and are generally let on a long-term basis. Such services reduce barriers and risks to tenants, and also reduce the risk of renting to lower income groups from the perspective of the landlord and/or agency.

What is a private rented sector access (help to rent) scheme? Private rented access schemes help people who are homeless or at risk of homelessness to access and sustain a tenancy in the private rented sector. Schemes work with local private landlords to set up a tenancy and ensure it is sustainable for the tenant by providing ongoing support. Services provided might include helplines for landlords and tenants, inventory services pre- and post- tenancy, and financial support for tenants, such as a deposit guarantee. Tenants can also access 'Renting Ready' training. This all helps to provide assurance to landlords and mitigate the risks that might otherwise be associated with letting to tenants with experience of homelessness or who are in receipt of benefits.

In Edinburgh, Crisis has worked in partnership with the council, local landlords and other third sector agencies for a number of years to provide such schemes.

The reconvened Homelessness and Rough Sleeping Action Group included a recommendation for "all areas to develop a private rented sector access scheme and rent deposit guarantee scheme which dovetails with national schemes." And the updated Ending Homelessness Together Action Plan said:

*"Many local authorities already work with the private rented sector to increase the availability of private rented stock for people who are at risk of homelessness either through rent deposit guarantee schemes or private rented sector access schemes. Local authorities will continue to consider ways to facilitate access to the private rented sector where appropriate, and how to help people sustain tenancies there. **We will support local authorities to build stronger relationships with the private rented sector and to develop their empty homes services and private rented sector access schemes.**"*

² <https://homelessnetwork.scot/prevention-commission/>

³ Reid, B. (2021) *Preventing Homelessness in Scotland: Recommendations for legal duties to prevent homelessness: A report from the Prevention Review Group*. Online: Prevention Review Group. Available here: <https://www.crisis.org.uk/ending-homelessness/scotland-prevention-review-group/>

In Scotland, the great majority of PRS access services offer a bond only model. It's rare to find flexibility in options offered to landlords. A report published by Crisis' Best Practice Team⁴ sets out the different access models that could be introduced, which go beyond the basic model. These include things like in-house social lettings agencies, housing coaches in pressurised markets, rent deposit guarantee services, Shelter Scotland's Letting Agent Plus (LAP) project, and guaranteed rent models such as those offered by Oxford City Council's Home Choice team.

What is the evidence that PRS access schemes work? Private rented sector access schemes have a track record of enabling people to leave homelessness and reintegrate in their communities.⁵ Every area with a high proportion of private rented accommodation can benefit from this approach. Participants in the national consultation informing Crisis' Plan to End Homelessness⁶ identified PRS access schemes as key in providing a quick and effective response to help people out of homelessness. In Edinburgh, our PRS access schemes now have tenants who have been in their tenancies since June 2019 (over 2.5 years).

Such projects build good relationships between landlords and their tenants, encouraging longer tenancies, and helping to prevent homelessness. In England between 2010-2014, with funding from the then Department for Communities and Local Government (DCLG), Crisis ran the Private Rented Sector Access Programme. It created more than 8,000 tenancies; 90 per cent lasted over six months. Evaluation on the programme showed that in three months, 92 projects saved more than £13 million in non-housing costs to the public purse. These projects also help tenants to gain employment, along with the support they receive to help make Universal Credit more sustainable.

What are Rent Deposit Schemes and how do they work? Rent deposit guarantees provide a written commitment from a council or help to rent project to mitigate the risks landlords face when letting a home to a low-income household. The guarantee covers certain costs that the landlord may incur at the end of a tenancy including damages and in some cases rent arrears. Such guarantees or bonds are commonly used by local authorities and not-for profit providers to enable homeless people to access private tenancies.⁷

Access to a rent deposit guarantee is essential for clients who have been homeless and cannot afford to pay a cash deposit. It is also vital to reduce the financial risk to the landlord in case of any damage to the property.

Which groups in particular can benefit most from PRS access schemes? It is a minority of those who seek assistance from the homelessness system who have complex needs and require intensive housing support. The majority of those who experience homelessness are able to manage their own tenancy. This can be particularly beneficial for young people who may wish to share a tenancy. For example, there is a project provided by Action for Children in West Dunbartonshire that matches young people with other peers, and supports them to house-share and manage a tenancy together,

⁴ Dunn, L. (2019) Rapidly Rehousing Scotland: the potential role of the Private Rented Sector (PRS) Conference & Good Practice Report. Online: Crisis. Available from: <https://www.crisis.org.uk/media/240363/rapidly-rehousing-scotland-the-potential-role-of-the-prs.pdf>

⁵ Dewison, N. (2016) Improving Access to the Private Rented Sector: A Best Practice Report Scotland 2016. London: Crisis. Available from: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/housing-models-and-access/improving-access-to-the-private-rented-sector-a-best-practice-report-scotland-2016/>

⁶ Hughes, N. (2018) Have your say policy consultation: summary report. London: Crisis.

⁷ Gousy, H. (2016) Home: No less will do. London: Crisis.

which not only provides a route out of homelessness but also supports the development of independent living skills and tackles isolation.

Are there any barriers to PRS access schemes working? Affordability is a major issue for access to the PRS, especially in pressurised markets. Shortfalls between rents and LHA rates and the Shared Accommodation Rate that applies to young people, are major barriers in making a PRS tenancy affordable and sustainable. It is welcome that efforts are being made to tackle affordability through the Rented Sector Strategy. However, there may be further scope to help address the shortfall between rents and LHA rates, that young people especially face, through the Scottish Government's social security powers.

What does Crisis recommend? The Scottish Government previously recommended in statutory guidance that all LAs should have a rent deposit scheme. Despite HARSAG direction to strengthen such schemes, the updated Code of Guidance weakened that recommendation. **Crisis recommends that the Scottish Government supports LAs more robustly in both guidance and practice to work more productively with the PRS to reduce homelessness from it and resolve more homelessness using it.**

We recommend that the Rented Sector Strategy includes a commitment to improving access to the PRS for households with experience of homelessness whose informed preference it is to move into a Private Residential Tenancy. Support to access the PRS should be available in every local authority across Scotland and should be delivered by integrated PRS teams, where all the local authorities' functions relating to the PRS are brought together to deliver strategic improvements to the tenure and ensure the PRS is the best that it can be for both tenants and landlords.

What we know about PRS access schemes in Scotland

Note: the below information is based on Crisis surveys of local authority staff and landlords, and our own understanding.

- **How many Scottish LAs have some way of helping people into PRS?** Almost all (+90%) have some way of helping people on low incomes/housing need into PRS, however the way they do this varies from a cash deposit with no landlord liaison or follow-up, to a 6-person staffed team running a bond scheme, in-house social lettings agency and preventative service.
- **How many Scottish LAs have a more dedicated PRS scheme?** 25% of LAs commission a service, 25% have their own internally staffed service. Staffing ranges from a team of 6+ to 0.5 dedicated officer. About half of LAs (to best of our knowledge) have no dedicated staff working on PRS access, though we are aware at least 4 intending to recruit/explore recruitment to this type of role. Most of those do have a bond scheme, but with no dedicated staff to administer it, hold landlord relationships/tenant support etc. **Most LAs have no dedicated PRS prevention offer, or linkage between access and prevention.** Whilst some LAs have developed services and others have run them down, overall the above picture has not changed radically in Scotland in many years
- **How much does a PRS scheme cost?** practice insights suggest the most valuable feature of any PRS scheme is a single point of contact for landlords/agents, tenants and referrers. Relationship management and communication are key to negotiating access and acting on problems with tenancies. That requires a human being - not just a pot of money. From a costings perspective, for many Scottish LAs running a PRS access scheme this would be cost of 1 staff member. For larger LAs with a large PRS and small social sector, more staff may be

needed, whereas in small LAs with small PRS, the role could be expanded to include prevention as well as access (as Aberdeenshire and Angus Councils have done) It is in theory cheaper to run a bond scheme than offer cash deposits, though flexibility is a valuable tool for the LA to have when negotiating access.

2. Crisis response to relevant consultation questions

Protected characteristics and tenant participation

What particular barriers do people with protected characteristics face in their experience of the rented sector?

Crisis is not in a position to say what barriers people with protected characteristics face in relation to the rented sector in general, but we do have some insight into the experiences of particular groups when it comes to homelessness.

Causes of and experiences of homelessness are often driven by experiences of systemic discrimination. In understanding the causes of homelessness, it is important to understand that poverty is experienced differently by different equalities groups, driven by sexism, racism, homophobia, transphobia and intersectional experiences of discrimination. The most common reason for women's homelessness is a violent or abusive household dispute, which is the cause of homelessness for 26% of women applicants. Men, on the other hand, are more likely to sleep rough (86% of those who slept rough in the previous 3 months were men), and to experience repeat homelessness.

There is a disproportionate representation of ethnic minorities in the homeless population, as demonstrated by the fact that there are fewer white individuals experiencing homelessness (87%) than the Scottish population as a whole (95%). More research is needed to understand the causes and solutions specific to these groups. As part of this, Crisis is undertaking research over the coming months to investigate how race, homelessness and housing interplay by looking at the lived experiences of homelessness and housing precarity among people from Black, Asian and minoritised households.⁸ This includes negative experiences of accessing support and services and having to put up with insecure or unsafe living situations. We will be happy to share the findings of this research with Scottish Government officials when it is published.

Nationality also effects experience of homelessness. Crisis commissioned research⁹ into the experience of homelessness amongst non-UK nationals found that the risk of experiencing homelessness for EU nationals in Britain is virtually double the risk for the population as a whole. The risk is even higher for rough sleeping, with EU nationals estimated to be around 15 per cent of the total number of people rough sleeping across Britain. This suggests that the risk of EU nationals experiencing rough sleeping in Britain is almost three times the risk for the general population. While many of the individual factors that triggered people's homelessness at least partially mirror

⁸ <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/types-of-homelessness/research-on-race-homelessness-and-housing-precarity/>

⁹ Bramley, G., Morris, M., Mort, L., Netto, G., Sosenko, F., and Webb, J. (2021) *The scale, causes, and impacts of homelessness among EEA Citizens*, Heriot-Watt University and IPPR. Available from: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/types-of-homelessness/the-scale-causes-and-impacts-of-homelessness-among-eea-citizens/>

those experienced by the general population, they are compounded by a further set of factors based on the barriers individuals faced to accessing sufficient support. In many cases, participants who faced a loss of employment and challenging financial circumstances were left without an adequate safety net, which worsened and prolonged their housing difficulties. Sometimes this was due to language or cultural barriers that made it harder for EU citizens to access mainstream support that should have been available to them, while others were unable to get help for their housing situation – in particular, through welfare benefits – as a result of rules restricting EU citizens' access to support. This left people in extended periods of limbo while they tried to resolve their accommodation and employment issues, without any support to help them in the interim.

Do you have any suggestions for how we can better meaningfully embed tenant participation within the private rented sector, including for people with protected characteristics, in national and local policy/decision making?

Any tenant participation initiatives should explicitly aim to include those with experience of homelessness who have moved into a PRT, to explore what has worked well and what could be improved. PRS access schemes like the Help to Rent scheme Crisis delivers in Edinburgh can provide a route through which to engage with tenants.

Grounds for eviction and pre-action protocols

After 4 years of use, how well do you think these eviction grounds are working? Is there anything that you would like to see changed? Please explain your answer with reference to the relevant ground(s). Are there any additional specific grounds for ending a tenancy that you think should be added?

The Scottish Government's introduction of open ended tenancies in 2017 provides evidence that tenure reform can be delivered without significant disruption to the housing market. The available evidence suggests the reforms have not resulted in the contraction of the private rental market and have had a beneficial impact on tenants' sense of security.

Crisis does not propose any changes to the existing eviction grounds, however we recommend consideration of whether a tenant can retain their tenancy even where the landlord intends to sell. Analysis by IPPR has highlighted that sale of property with a sitting tenant is more common in other countries. The Scottish Government could consider the case for supporting the development of a sub-market for tenanted properties, enabling tenants to remain in situ when a property is sold, rather than reduce the protections available to tenants within the first two years of their tenancy.¹⁰

In terms of which grounds are most commonly used, the data on First Tier Tribunal eviction cases for 2021 shows that 65% of applications were for PRTs and, of these, the most common ground used was Ground 12 Rent Arrears, used in 40% of cases. Following this, the most common were where the landlord intended to sell or move into the property (used in 19% and 16% of cases respectively). The grounds that were used in less than 1% of cases were refurbishment, lender repossession, criminal behaviour, and change of use/religious use.¹¹ Given that the majority of cases that go to Tribunal are on ground 12 for rent arrears, Crisis believes the introduction of pre-action requirements in the PRS is an essential step in preventing eviction into homelessness.

Housing to 2040 talks about a 'tenure-neutral' housing system, where people can expect the same kinds of security of tenure, affordability, and standards no matter which tenure they're in. This is

¹⁰ Baxter, D & Murphy, L (2019) *Sign on the dotted line: A new rental contract*. IPPR

¹¹ Although this data is useful, it is worth noting that many cases will not reach tribunal, so the FTT cases are not necessarily representative of all cases where a tenant has been served notice.

something Crisis fundamentally supports, because it widens the housing options available to low income households and those with experience of homelessness. However, a well-functioning private rented sector must meet the needs of tenants whilst also offering landlords assurance that they can obtain possession of the property where there is a legitimate reason to do so. Crisis believes the grounds for eviction set out in the Private Housing (Tenancies) (Scotland) Act 2016 strike the right balance in terms of the rights of tenants with regards to security of tenure, and the rights of landlords to use their property as they wish. We are concerned that removing any of the current grounds for eviction would impact negatively on landlords' confidence in investing in the sector which could impact on the number of properties available for rent. Equally, we believe the current grounds are sufficient in covering the main reasons why a landlord may need to repossess the property and do not need additional grounds. The exception to this is the introduction of a ground aimed at extending the provisions in the Domestic Abuse Protection Act to the private sector, to allow a landlord to evict a perpetrator of abuse.

Crisis' primary concern is preventing people from experiencing homelessness. Rather than changing the grounds on which a landlord can seek to repossess a property, we believe it is more important to introduce a stronger focus on the role of landlords in preventing homelessness, with advice and support provided to both tenant and landlord to help prevent the situation deteriorating towards eviction. Our recommendations for achieving this are discussed throughout this response and in our response to the Prevention of Homelessness Duties Consultation.

To ensure that the Tribunal system works fairly for tenants, government must also improve access to advice and legal aid. Housing and homelessness is an increasingly complex area of law, and requires a degree of specialism to do it well. There are significant areas of Scotland that are not well served by advice provision in terms of housing law. The eligibility criteria for legal advice and assistance is quite restrictive, and there are people who are homeless who would not meet this test.

Anecdotal evidence from our services and other stakeholders suggests that in some cases landlords use a ground disingenuously, and protection should be put in place to ensure that grounds are used appropriately. For example, if a landlord is seeking to repossess on the ground that they intend to sell, the Tribunal should be required to satisfy itself that the intention to sell is genuine, with landlords required to provide tangible evidence of an impending sale. Crisis also recommends that the government considers the feasibility of introducing a robust mechanism to ensure tenants are compensated if it is subsequently established that landlords do not sell the property following eviction on this ground, in line with the proposals around damages for illegal evictions.

Whilst we do not recommend changing the grounds for repossession, in response to the MHCLG consultation on *A New Deal for Renting* in 2019 we recommended that some eviction grounds should have a minimum term of two years before the ground can be used. We said this safeguard is important to provide tenants with at least two years certainty of occupation, and to ensure unscrupulous landlords do not use the measure as a device to secure possession when there is no genuine intention for example for a family member to occupy the property. The Scottish Government may wish to give further consideration to introducing a minimum term for certain grounds, but with careful consideration of whether there would be an impact on landlords willingness to enter into the sector.

Crisis recommends that landlords are obliged to give tenants four month's-notice for all the no-fault grounds. This recommendation is informed by the evidence submitted to the London Mayor's tenancy reform proposals, which identified four months as the minimum appropriate period for

households to plan and save for an unexpected house move and to allow school age children to finish their term before having to move and potentially change schools.¹²

Crisis supports the provisions in Part 4 of the Coronavirus (Recovery and Reform) (Scotland) Bill, which puts on a permanent footing the temporary changes made by paragraph 1 of schedule 1 of the Coronavirus (Scotland) Act 2020, effectively making all eviction grounds discretionary on a permanent basis. Assessing the reasonableness of making an eviction order, having due regard to the circumstances of both parties, makes for clearer legislation that can be better understood by everybody. The temporary legislation made the application of eviction grounds fairer for both parties on the basis that individual circumstances are given equal merit before the reasonableness test is applied. Previously, the legislation favoured the landlord with remedies for tenants (in mandatory evictions) being limited to negotiating with the other party prior to an order being made.

Do you have any views on our proposal to take forward a clarification in relation to the use of ground 6 – ‘Landlord intends to use for non-residential purpose’?

Crisis is concerned that the prevalence of Short Term Holiday Lets, particularly in pressurised markets, is negatively impacting on the availability of housing for low-income households and those with experience of homelessness. Crisis supports the proposal to clarify that ground 6 – ‘landlord intends to use for non-residential purpose’ – should not be used in instances where the landlord intends to evict the tenant in order to let the property out as a Short Term Holiday Let.

What further refinements could be made to either the private rented or social rented sector pre-action requirements in order to further protect and support tenants?

Crisis believes that pre-action requirements are an important means through which tenants in arrears can receive advice and support to manage rent arrears before any eviction action is taken, thereby preventing homelessness and supporting them to remain in their home. The pre-action requirements are a valuable opportunity for people to be linked up with independent advice and support services, who can help to ensure that households are accessing all benefits they are entitled to, which may help to address any arrears.

Anecdotal evidence from other stakeholders suggests there are still landlords operating in Scotland who are unaware of or do not co-operate with the pre-action requirements that have been temporarily in place during the pandemic. There are landlords who still do not comply with other regulations and attempt to carry out illegal evictions. There is always room for improved enforcement, and the First Tier Tribunal must play a strong role in actively interrogating and enforcing the fulfilment of pre-action requirements. Crisis believes the new PARs that apply to PRS landlords should be evaluated to ensure they are working as intended. Data on the use of PARs and reporting by the Tribunal would help to ensure effective monitoring and evaluation.

We agree with the Legal Services Agency suggestion¹³ that the pre-action requirements could be strengthened if the Scottish Government provided a pre-action requirement checklist, which was incorporated into the Notice to Leave, so there was no doubt as to what will be considered by the Tribunal with regards to the landlord’s efforts to engage the tenants on these issues. The checklist

¹² Greater London Authority (2019) *The London Model: Reforming Private Rented Sector Tenancies. A Technical paper.*

¹³ Legal Services Agency (2021) *Response to Scottish Government Consultation on the Covid recovery: a consultation on public health, public services and justice system reforms.* Available here: https://consult.gov.scot/constitution-and-cabinet/covid-recovery/consultation/published_select_respondent

could include a prompt for the landlords to have a conversation with the tenant about whether they would like to be referred to the local authority housing assistance service.

The role of private landlords in preventing homelessness

The Scottish Government and COSLA's joint consultation on homelessness prevention duties proposed a new legislative duty on local authorities to respond to referrals to prevent homelessness from private landlords.

If a private landlord agrees with the tenant that a referral to the local authority is appropriate, then the landlord should be able to (not required to) make a referral for housing assistance in the same way as has been set out for public bodies. We envisage such a referral as potentially emerging out of a discussion around pre-action protocols, or where a landlord becomes aware that an elderly tenant's health is deteriorating and they may be unable to continue to live in their current home without additional assistance. Guidance should be clear that a referral should only be made with the tenant's consent. The local authority could also respond by supporting the landlord, rather than it all being about assisting the tenant.

The second route through which a private tenant may be referred into the local authority is through a section 11 notice. Section 11 is not always currently well used as a prevention tool. Crisis recommends concerted effort to improve the effectiveness of Section 11, using learning from the Registered Social Landlord sector. We should also work towards targeted, proactive approaches to prevention for groups with higher vulnerability to homelessness in the PRS.

Generally speaking, a landlord needs to make a Section 11 referral where they are seeking someone's eviction. This is typically served where an application is made to the Tribunal or Sheriff Court for eviction. This is therefore clearly making a large percentage of people who are threatened with homelessness known to the local authority. In terms of preventing homelessness this could be made more effective by requiring service of the Section 11 notice at the point when a notice to quit, notice to leave or notice of proceedings is being served, or at least 28 days prior to an application for eviction being granted for example, which would allow at least some time for the local authority to look at the Section 11 referral, and see if eviction can be avoided.

However, the matter that then needs to be addressed is how local authorities deal with their Section 11 referrals. This mechanism highlights to the homelessness service or housing assistance service, a cohort of people who are at risk of becoming homeless from a Private Residential Tenancy. These individuals should be assessed as 'threatened with homelessness' under the new extended prevention duty, which should mean the housing assistance service works with the individual/household to develop a Personal Housing Plan, setting out the reasonable steps that will be carried out to prevent or resolve their homelessness. Depending on the individual's circumstances, these steps might include: housing options information, advice and advocacy; and/or welfare debt advice and assistance; and/or landlord negotiation and assistance, rent deposit guarantee schemes and other access schemes; or any other steps that would be helpful.

This will, however, require a culture shift towards early intervention. In a recent Crisis report published in partnership with Citizens Advice Scotland,¹⁴ an analysis of the cases dealt with by citizens advice bureaux across Scotland revealed several examples of clients being told by various

¹⁴ Sims, R. (2022) Prevention of Homelessness Duties: An analysis of homelessness advice cases provided by Scotland's CAB network. Online: Citizens Advice Scotland. Available from: <https://www.cas.org.uk/publications/prevention-homelessness-duties>

services – including their local authority’s housing and homelessness services – that making an application for homelessness support was the best route into other more suitable accommodation. This was demonstrated in several cases where clients were at risk of eviction from their private residential tenancies, where clients were told the council was unable to help them “unless they have an eviction notice.”

Rented sector and gender based violence

In response to the MHCLG consultation on *A New Deal for Renting* in 2019, Crisis expressed our support for the recommendations developed by the National Housing & Domestic Abuse Policy & Practice group, proposing a new general mechanism by which a survivor can apply to the court for the transfer of the perpetrator’s sole or joint tenancy rights to the survivor solely, and regardless of marital status or the presence of children, and recommended that any new mechanism should *apply equally* across the social and private sectors.

What measures could be implemented to support people involved in sex work, including women subject to commercial sexual exploitation in the rented sector?

Crisis supports action by the Scottish Government to support women in the rented sector who are involved in sex work, and to better protect people from harms caused by commercial sexual exploitation, although we do not have specific expertise to add on this policy area.

Do you agree with our proposal to amend the 2016 Act to ensure that all joint tenants can terminate their interest in a private residential tenancy without the agreement of other joint tenant(s)? Yes, No, Don’t know - Please explain your answer.

Crisis understands the rationale behind these proposals but has not had enough time to fully think through the implications of allowing a tenant to end their interest in a joint tenancy. We intend to follow up with officials following the consultation deadline to set out our thoughts on the best ways to protect tenants from homelessness in these cases.

In the social rented sector, the notice period required for a joint tenant to end their interest is four weeks. Should a similar 4 weeks’ notice period apply for a joint tenant in the private rented sector to give to their landlord and other joint tenant(s) to end their interest in the tenancy? Yes, No, Don’t know - Please explain your answer.

As we’ve said in response to the previous question, we will follow up with officials after the consultation deadline to provide our views on this.

Should this proposal be taken forward, are there any additional safeguards that should be put in place for remaining joint tenants in the private rented sector? Yes, No, Don’t know - Please explain your answer.

A remaining joint tenant might be negatively affected by this in the following ways: firstly, it may put the tenancy at risk if the landlord decides to (legally or illegally) terminate the tenancy altogether and repossess the property; secondly, they may struggle to afford the housing costs on their sole income and be at risk of accumulating arrears; thirdly, they may experience disruption to their support from the benefits system, if joint benefit claims are brought to an end and support with housing costs are affected.

The most important protections that should be put in place to mitigate risk of homelessness for remaining tenants are the Prevention Review Group proposals being consulted on in the Prevention of Homelessness Duties consultation, which provide a much better safety net for anyone who might be at risk of homelessness within the next six months. Access to advice on ending a joint tenancy

should be included as part of the 'reasonable steps' offered by local authorities as part of those new duties.

In addition to these issues, consideration should be given to the experience of any new tenant entering into a tenancy with an existing tenant. Any new tenant(s) should be invited by the landlord to sign a tenancy agreement, giving them access to all the information, rights and protections offered by the Private Residential Tenancy, as opposed to being a sub-tenant who pays rent to the existing tenant and has none of the same protections.

Should we introduce a similar ground to that in the social sector, to enable private landlords to initiate eviction proceedings to end a perpetrator's interest in a joint tenancy and transfer the tenancy to a tenant who was subject to domestic abuse allowing the victim/survivor to remain in the family home where they wish to do so? Yes, No, Don't know - Please explain your answer.

Domestic abuse is one of the most common causes of homelessness. This was also evident in the research Crisis carried out in support of our response to the Scottish Government and COSLA's homelessness prevention duties consultation, where domestic abuse emerged as one of the key causes of homelessness for both focus group participants and in the CAS case analysis.

It is very welcome that the Scottish Government is considering extending the Domestic Abuse (Protection) (Scotland) Act 2021 to the private sector, giving social and private landlords the power to initiate eviction proceedings against a perpetrator of domestic abuse and enabling victims to remain in the family home, rather than the perpetrator of domestic abuse, where an appropriate order has been granted by the court. We believe it is possible for private landlords to be seen as partners in achieving these policy aims.

However, private landlords do not have the same statutory responsibilities as social landlords, so this should be given careful consideration. For example, where a local authority or Registered Social Landlord might be equipped to support a tenant who has experienced domestic abuse and, for example, enter into a conversation with them about what support they might need to continue living in the property as a sole tenant, a private landlord is less equipped to carry out that role. At worst, a private landlord may act illegally to evict a perpetrator if they are not clear on the process they must follow to obtain a court order. We recommend that a landlord advice and assistance service could play a vital role in ensuring landlords know their responsibilities, and landlords and letting agents should be offered training and guidance on their wider role with respect to supporting victims of domestic abuse.

Although it is perhaps being considered as part of the statutory guidance relating to the Domestic Abuse (Protection) (Scotland) Act 2021, one consequence of Domestic Abuse Protection Orders is that perpetrators of domestic abuse may be suspended from their home and be at risk of homelessness as a result. Someone at risk of eviction on these grounds should be considered as 'six months away from homelessness' and referred as soon as possible to the housing assistance/homelessness service, so that they can be rapidly rehoused into housing which is stable and suitable to their needs. It may also be appropriate for the homelessness service to build up appropriate links with domestic abuse perpetrator services to reduce further risk of abuse and homelessness for either victim or perpetrator.

Should we streamline the eviction process (remove the discretion of the Tribunal), where there has been a criminal conviction relating to abuse of another person living with them in the let property (joint tenant or cohabitee) which is punishable by imprisonment in the previous 12 months? Yes, No, Don't know - Please explain your answer.

Yes, Crisis supports the proposal to streamline the eviction process in cases in which there has been a criminal conviction relating to the abuse of another person in the property. However, in these circumstances it is especially important that the perpetrator of abuse is able to seek assistance from the homelessness system as early as possible, in line with our recommendations set out in our response to the Homelessness Prevention Duties Consultation.

How can we help improve the immediate and longer term housing outcomes of domestic abuse victims living in the private rented sector?

CIH and Women's Aid in 2019 published *Domestic abuse: a good practice guide for social landlords*. This guide is an essential resource for social landlords, and the Scottish Government should work with stakeholders to develop similar guidance for private sector landlords.

As has been discussed elsewhere in this response, having dedicated PRS teams within local authorities, which include a landlord-tenant liaison service would be extremely beneficial in helping to embed good practice regarding responding to domestic abuse and gender based violence.

A dedicated PRS team could also offer support to tenants, for example, ensuring victim of domestic abuse have access to money for a deposit and first month's rent if they do choose to move home, and supporting them to access all benefits they are entitled to (for example, changing a joint benefit claim to a single claim where necessary).

Reinvesting unclaimed deposits

If unclaimed deposits were to be reinvested, do you agree that the period after which the funds would be available for reinvestment should be: i. after all avenues to reunite deposits with their tenants have been exhausted, and ii. after a period of 5 years? Yes, No, Don't know - Please explain your answer.

Yes, Crisis agrees with the proposals to reinvest deposits after a period of five years, during which all avenues to reunite tenants with their deposits have been exhausted.

Crisis strongly welcomes the proposal to legislate to enable the reinvestment of unclaimed tenancy deposits. We believe the best use of this fund would be to invest it in PRS access schemes across the country, targeted at those with experience of homelessness.

Crisis understand that around a quarter of local authorities commission a PRS access service, and a further quarter have their own internally staffed service. Staffing ranges from team of 6+ to 0.5 dedicated officers. About half of local authorities (to the best of our knowledge) have no dedicated staff working on PRS access, though at least four were intending to recruit/explore recruitment to this type of role when we last completed a survey on this issue in 2021. Most do have a rent deposit or bond scheme, but with no dedicated staff to administer it, or hold relationships with landlords and offer support to both landlords and tenants. Most local authorities have no dedicated PRS prevention offer, or linkage between access and prevention. Whilst some LAs have developed services and others have scaled back, but overall, the above picture has not changed radically in Scotland in many years.¹⁵

¹⁵ Crisis unpublished survey data

In Crisis' experience of delivering and supporting PRS access schemes and preventing homelessness from the PRS, we have found that landlords and letting agencies can often be the quicker vehicle for flagging up issues threatening a tenancy than tenants themselves. The key elements of a joined-up and strategic approach to the role of the PRS in ending homelessness should include:

- A landlord-facing person/team
- A mediation, liaison, negotiation or tenancy relation service offer
- A join-up between access to the PRS for those with experience of homelessness, and prevention from the PRS for those at risk of homelessness
- Clear pathways/referral routes into existing housing advice and support services for PRS tenants
- Landlord registration, HMO, empty homes and enforcement functions brought together

A landlord-focused team can serve many functions including improving access, earlier prevention, diffusion of information, encouraging good practice, distribution of enhancement grants or loans for property improvements etc. and allows many of the local authority's PRS priorities to be achieved.

Winter Evictions

Do you think additional protections against the ending of tenancies during the winter period are needed? For example, some or all of the following:

- restricting the service of notices during the winter period;
- pausing or extending notice periods so that notices do not expire during the winter period;
- pausing or extending the period (following expiry of the notice period) during which eviction proceedings can be raised; and/or
- restricting the ability of landlords to raise eviction proceedings (following expiry of the notice period) during the winter period. Yes, No, Don't know - Please explain your answer.

Crisis believes tenants need adequate protection from eviction at all times and therefore policy should provide a consistent safety net all year round. For this reason, Crisis does not support these proposals to delay evictions over the winter period. We understand this to be a policy transfer from other international contexts, perhaps where rights for people at risk of or experiencing homelessness are not as strong. In those contexts, preventing people from eviction during the winter months means preventing people from sleeping rough in low temperatures. The consultation document is not clear enough about the policy rationale for why winter represents a time when people need additional protection from eviction. It might be because services are closed and less easy to access (in which case it should perhaps apply to public holidays rather than 'winter'); it might be because people's living costs are higher over the winter months due to high fuel bills; it might be based on an idea that if someone is roofless over the winter months they may be without accommodation during low temperatures and bad weather (policy in Scotland should already prevent anyone from being roofless at any time of year); and finally, it might be based on an idea that temporary accommodation is an unpleasant place to spend the festive period. Either way, the Scottish Government should provide greater clarity on the rationale for why this is being proposed, so that appropriate policy solutions can be developed in response to the problem.

There is not evidence that more people become homeless during the winter months or the last quarter of the year from January to March. Crisis is not aware of strong evidence to support action to delay or ban evictions on a seasonal basis and are concerned that extending notice periods for

repossession grounds during the winter may have other unintended effects, such as there being a peak in tenants being served notices either side of the period during which the regulations apply, causing a 'bottleneck' in the Tribunals service. From the perspective of homelessness services, it is unhelpful to have few applications over a period, and then lots of applications at once.

Fundamentally, we believe that delaying evictions offers a solution too late: if a household is struggling to maintain their tenancy, for example due to high fuel bills and other living costs, they should be provided with the support they need to prevent homelessness, rather than being offered a longer notice period prior to being evicted. The introduction of the proposed prevention of homelessness duties will offer a better opportunity to respond earlier, especially if a new six-month prevention duty is introduced.

These proposals also need to be considered in the context of the provisions in the Coronavirus (Recovery and Reform) (Scotland) Bill which change the grounds for eviction from Private Residential Tenancies from mandatory grounds to discretionary grounds.

Finally, if this is something that the Scottish Government does pursue, Crisis believes it would be valuable to analyse the effects that the delayed notice periods introduced during the pandemic have on services, which provide a useful comparator. The delayed notice periods came to an end in March 2022, so it is likely to take at least six months for the full effect on tenants, landlords, the tribunal service and homelessness services to be realised. The *Homelessness Monitor Scotland*¹⁶ shows there are concerns amongst local authorities that the temporary eviction protections may have delayed rather than removed the threat of an upsurge in homelessness. One key informant from local government said:

"We don't know the people in PRS accommodation, and we don't know the level of arrears that they've got... The response of Local Authorities to high levels of arrears isn't going to be eviction, necessarily. A range of factors will be considered and it's for services, ultimately, to decide what's the best option, but there's a level of, I suppose, control over that... There's a level of predictability in there, but there's not really the same level of predictability with the PRS side of things"

Illegal evictions

Do you agree the current calculation for unlawful eviction should be reformed and simplified, as proposed? Yes, No, Don't know - Please explain your answer

Crisis agrees with the principle that the regulations should make it riskier for a landlord to illegally evict a tenant than to follow the proper legal route to repossession. The fact that so few cases of illegal eviction have ever been pursued demonstrates that the current law is not fit for purpose.

Crisis supports the Legal Service Agency in its proposal to remove the current process for calculating damages and replace it with a simplified process, using a multiple of the monthly rent.

¹⁶ Watts, B., Bramley, G., Fitzpatrick, S., Pawson, H. & Young, G. (2021) *The Homelessness Monitor: Scotland 2021*, London: Crisis. Available from: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/scotland/the-homelessness-monitor-scotland-2021/>

If the current system for calculating damages was reformed in this way, what do you think would be the appropriate minimum and maximum level of multiplication that the First-Tier Tribunal for Scotland (Housing and Property Chamber) could apply?

Crisis does not have a view on how damages should be calculated.

What other ways can we make it easier and more attractive for victims of illegal eviction to seek redress and exercise their rights?

Increased awareness of rights among tenants is vital for recognising illegal evictions and challenging them. Where tenants do want to challenge illegal eviction, it is often unclear who they should go to and what the process is. Again, having a local authority PRS service to provide advice and support in cases such as these would be valuable.

Education and training for both landlords and Police is also crucial. In Wales, landlords and letting agents are required to undertake 'Rent Smart Wales,' training before applying for a licence to let out a property. A similar scheme could be introduced in Scotland, including information on how to follow the legal evictions process, so as to avoid having to pay damages.

Rent guarantor scheme

What would be the key features of an effective guarantor scheme?

How could we support the development of guarantor schemes that meet the needs of those groups who could benefit from them?

In the consultation document, rent guarantor schemes are mostly referred to in the context of students. However, in Crisis' experience, *guaranteed rent models* are an integral part of PRS access schemes targeted at people at risk of or experiencing homelessness, who view a PRT as their preferred housing option. In Edinburgh, Crisis has worked in partnership with the council, local landlords and other third sector agencies for a number of years to provide such schemes. Rent guarantee schemes and PRS access more generally are explored at the outset of this response.

Affordability

What are the most important factors to be incorporated into a shared understanding of housing affordability (e.g. household size and composition, regional variations, housing standards, treatment of benefits)?

The most important test for developing a shared understanding of affordability is whether it supports those at the lower end of the income distribution, households with fewer affordable housing options and those most at risk of homelessness.

The literature on housing affordability tends to classify two broad groups of measures: housing-cost-to-income ratios (HCIR), and residual income approaches.¹⁷

¹⁷ Meen, G. (2018) How should housing affordability be measured? Online: UK Collaborative Centre for Housing Evidence. Available at: <https://housingevidence.ac.uk/publications/how-should-affordability-be-measured/>

Meen, G. and Whitehead, C. (2020a) 'Is Housing Really Unaffordable?' in G. Meen and C. Whitehead (eds.) *Understanding Affordability: The Economics of Housing Markets*. Bristol: Bristol University Press, pp.17-38.

Scottish Government (2019b) *Rent affordability in the affordable housing sector. A Literature Review*.

Edinburgh: Housing and Social Justice Directorate, Scottish Government. Available at:

<https://www.gov.scot/publications/rent-affordability-affordable-housing-sector-literature-review/>

Wilson, W. and Barton, C. (2019) *Private rented housing: the rent control debate*. London: House of Commons Library. Available at: <https://commonslibrary.parliament.uk/research-briefings/sn06760/>

For HCIR measures, the threshold at which housing costs are deemed unaffordable relative to income varies by historical, political and geographical context. In the US, UK, Europe and Australia, at different times over the last 40 years, the threshold has fluctuated from 25% to 40% of income spent on housing costs.¹⁸ In the UK, there is widespread consensus that spending over 30% of income on rent should signify some level of financial stress with respect to housing costs.¹⁹

The idea behind HCIR measures is that a household faces a simple budget constraint; its total expenditure and savings is constrained by earned income, plus income from financial assets (savings), and benefits. The household can then, theoretically, choose what proportion of that income to spend on housing and what proportion to spend on other goods.

Residual income measures, alternatively, are based on the idea is that what really matters is living standards, which are determined not only by income relative to the cost of housing, but also relative to other non-housing goods which would widely be considered necessities.²⁰

Crisis has no established policy position on the best way of measuring affordability. However, measures of affordability for Scotland could include the following components:

- 1. Specification of which housing costs should be considered** – This should include ‘total’ housing costs, including: rent; water rates, community water charges and council water charges; mortgage interest payments; structural insurance premiums (for owner occupiers); ground rent and service charges. Consideration should also be given to whether maintenance costs of the property should be included.
- 2. An agreed minimum income standard for non-housing goods** – The Minimum Income Standard research provides for this.²¹ However, the Scottish Government’s commitment to develop a Minimum Income Guarantee for Scotland, which will presumably rely on the establishment of its own measure of the Minimum Income Standard (on which that guarantee should be based), may offer an opportunity to establish by consensus a minimum standard for non-housing goods.
- 3. An agreed minimum standard for housing quality** – It is important to ensure that any measure of affordability does not allow for under-consumption of housing below a tolerable standard to be considered ‘affordable’. Minimum standards of housing quality (including issues of overcrowding) should define a ‘floor’ below which consumption is considered unaffordable, by virtue of it being unacceptable.

¹⁸ Clarke, S., Corlett, A., Judge, L. (2016) *The housing headwind: the impact of rising housing costs on UK living standards*. London: Resolution Foundation. Available at: <https://www.resolutionfoundation.org/publications/the-housing-headwind-the-impact-of-rising-housing-costs-on-uk-living-standards/>

¹⁹ Baxter, D. and Murphy, L. (2017) *Priced Out? Affordable Housing in England*. London: Institute for Public Policy Research. Available at: <https://www.ippr.org/publications/priced-out-england>

Reynolds, L. (2011) *Private Rent Watch. Report 1: Analysis of local rent levels and affordability*. London: Shelter.

Affordable Housing Commission (2019) *Defining and measuring housing affordability – an alternative approach*. Online: Affordable Housing Commission. Available at: <https://www.affordablehousingcommission.org/news/2019/6/6/defining-and-measuring-housing-affordability-an-alternative-approach>

²⁰ Padley, M., Marshall, L. and Valadez-Martinez, L. (2019) ‘Defining and measuring housing affordability using the Minimum Income Standard’, *Housing Studies*, 34 (8) pp.1307-1329.

²¹ Ibid.

4. **An agreed threshold or price above which housing costs are considered ‘high’** – For example, Padley, Marshall and Valadez-Martinez (2019) define this for working households as more than the average proportion of net income taken up by housing costs for working households with below median income.
5. **Equivalisation by household size and type** – The definitions of a) a minimum income standard for consumption of non-housing goods; b) minimum size which is considered adequate; c) household income; should all be equivalised by household size and type, using the OECD (Organisation for Economic Co-operation and Development)-modified equivalence scale (ONS, 2015).
6. **Considerations of interactions with the benefits system** – Given that the benefits system is designed to provide support to cover housing costs for households in- and out-of-work any measure of affordability must consider how income from benefits should be treated. As was concluded by the Affordable Housing Commission²² and others,²³ in dealing with benefits, housing benefit should be factored into housing costs, subtracted from the expenditure side of the equation rather than added to the income side; and where a household with no-one in work does not see their housing costs met by housing benefit/LHA, they can be assumed to be facing a problem of affordability.
7. **Specify which part of the distribution the measure is supposed to apply to** – Whether a ratio measure is used or a residual income measure, the measure must be clear which section of the income distribution the averages are derived from. Some researchers apply the ratio measure to only the bottom 40% of the distribution. Some have proposed weighting affordability ratios by income quintile;²⁴ whereas others define ‘high’ housing costs with reference to the average paid by the bottom half of the distribution.²⁵
8. **To be tested against indicators of financial stress and under-consumption of housing** – Finally, a measure, once developed, should be tested against empirical data of households’ experiences of financial stress, as has been done by Bramley (2012),²⁶ Meen and Whitehead (2020),²⁷ the Affordable Housing Commission,²⁸ among others.

²² Affordable Housing Commission (2019) *Defining and measuring housing affordability – an alternative approach*. Online: Affordable Housing Commission. Available at: <https://www.affordablehousingcommission.org/news/2019/6/6/defining-and-measuring-housing-affordability-an-alternative-approach>

²³ Padley, M., Marshall, L. and Valadez-Martinez, L. (2019) ‘Defining and measuring housing affordability using the Minimum Income Standard’, *Housing Studies*, 34 (8) pp.1307-1329.

²⁴ Meen, G. (2018) How should housing affordability be measured? Online: UK Collaborative Centre for Housing Evidence. Available at: <https://housingevidence.ac.uk/publications/how-should-affordability-be-measured/>

²⁵ Padley, M., Marshall, L. and Valadez-Martinez, L. (2019) ‘Defining and measuring housing affordability using the Minimum Income Standard’, *Housing Studies*, 34 (8) pp.1307-1329.

²⁶ Bramley, G. (2012) ‘Affordability, poverty and housing need: Triangulating measures and standards’, *Journal of Housing and the Built Environment*, 27 (2), pp.133–151.

²⁷ Meen, G. and Whitehead, C. (2020a) ‘Is Housing Really Unaffordable?’ in G. Meen and C. Whitehead (eds.) *Understanding Affordability: The Economics of Housing Markets*. Bristol: Bristol University Press, pp.17-38.

²⁸ Affordable Housing Commission (2019) *Defining and measuring housing affordability – an alternative approach*. Online: Affordable Housing Commission. Available at: <https://www.affordablehousingcommission.org/news/2019/6/6/defining-and-measuring-housing-affordability-an-alternative-approach>

In addition to a measure of the affordability of ongoing housing costs, consideration should be given to the upfront costs involved in accessing housing, such as tenancy deposits, first month's rent, removal costs and the costs of furniture/white goods.

If we are successful in reaching a shared understanding of affordability in Scotland, how should it be used and evaluated?

An agreed measure of affordability could be used to better understand the characteristics of households defined as experiencing problems with housing cost affordability in terms of household type, age, region, and tenure type. This would indicate the pressure points and inform strategic policy interventions intended to tackle affordability issues. Such an analysis would likely have policy implications in relation to both household income and expenditure. With regards to expenditure, there may be implications for rent setting in the social rented sector and any rent controls or stabilisation measures in the private rented sector. With regards to income, there may be implications for design of social security benefits and rate setting; development of a Minimum Income Guarantee for Scotland; and policy relating to income from work (low pay; under-employment; childcare policy; job design and stability). There would also likely be implications for housing supply and access, including affordable house building programmes; planning policy and regulation of related markets such as short term holiday lets.

The agreed definition and measure of affordability should be evaluated based on its ability to inform policy interventions and whether those interventions deliver the intended outcomes of supporting access to affordable housing for those at the lower end of the income distribution, households with fewer affordable housing options and those most at risk of homelessness.

Consideration should be given to linking the definition of affordability to the availability of support with rent through the benefit system, addressing the gap between rents and what Housing Benefit will cover. A revised definition should also ensure that social housing remains affordable to those on low earnings, while mid-market housing is affordable to those on modest incomes. The aim should be to ensure that there is a comprehensive safety net which enables all people in Scotland to afford housing.

Data collection on rents

Do you think the data we are proposing to collect will provide all the necessary evidence to inform national and local rent control considerations? Please explain your answer.

Yes, Crisis supports the proposals set out in the consultation document to improve the data on rents and tenancies. The consultation document notes significant flaws with the reliability of data on private rent levels in Scotland (as elsewhere across Great Britain), in part because rents data is heavily reliant on advertised rather than actual rents, and also because of limitations with the sampling framework. This lack of reliability also affects the calculation of Local Housing Allowance rates, undermining its effectiveness in protecting people against homelessness. In the *Plan to End Homelessness*,²⁹ Crisis called on the Scottish Government to collect rent data as part of the landlord register, with an obligation on landlords to submit rents data annually by size of property (number of bedrooms). This is still our position, and what is not yet clear in the consultation document is the frequency with which rents data is collected: data should be collected annually via the landlord register.

²⁹ Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018) *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

What can we do to ensure that landlords and agents provide accurate rental data (and other relevant property information), as soon as any changes are made? Please explain your answer.

Crisis does not have a view on this.

What is your view on enabling Rent Penalty notices to be issued where a landlord fails to provide up to date registration, rent data and property details?

Crisis does not have a view on this.

Rent controls

Do you agree that the rent adjudication process should only result in rents being decreased or maintained? Please explain your answer.

Yes, Crisis agrees with this proposal. Significant or unexpected rent increases can jeopardise tenants' security of tenure. While landlords may only adjust rents once a year, currently the only safeguard for tenants against unaffordable rent increases is to use the rent adjudication process to see if what is being proposed represents a market rent. Fear that rents could be adjusted upwards represents a barrier to tenants seeking rent adjudication. The proposed change will help ensure that rent adjudication works effectively as a measure of controlling within-tenancy rent increases.

If the reliability of rents data should improve, as per the proposals, this will provide a more reliable basis for judgements about whether rents have been set at an appropriate market rate, and whether they need to be reduced. This should enable tenants to make better informed judgements about whether to appeal.

Alternatively, empowering the tribunal to limit rent increases within tenancies to a different measure, such as the lowest of either inflation or real median income growth, the government could ensure that tenants were not subject to high unexpected rent increases.

Do you agree with the proposal not to extend any national rent controls to the social rented sector?

Yes, No, Don't know - Please explain your answer.

Yes, Crisis agrees it would be inappropriate to extend any new rent regulation to the social rented sector, which already has a regulatory framework of its own. Any change to rent regulation should, however, seriously consider the potentially wide-ranging implications this could have for affordability and rent setting in the social rented sector.

Do you think the current safeguards for rent setting in the social rented sector are sufficient and, if not, how could they be strengthened? Please explain your answer.

Problems with the affordability of social housing make it harder for homeless people and others on very low incomes to access social housing. This also increases the risk of rent arrears and eviction for low income households living in social housing. These problems are driven in part by the impact of reduced Housing Benefit entitlements and changes associated with the introduction of Universal Credit.

Social renters have seen an increase in their housing cost to income ratio: over a ten year period from 1995 to 2015, the HCIR for social renters across the UK rose from 12% to 18%. However, the share of social renters paying more than half of their income on rent (after HB), remained less than 5% for most of the decade to 2015, far lower than the share of private renters (20%) in the same position.³⁰

³⁰ Joyce, R., Mitchell, M. and Keiller, A.N. (2017) *The Cost of Housing for Low-income Renters*. London: The Institute for Fiscal Studies. Available at: <https://ifs.org.uk/publications/9986>

There may be changes to rent setting in the social sector that could help improve affordability for the lowest income social tenants, but Crisis does not have well developed policy recommendations relating to this.

Are there elements of the existing Rent Pressure Zone system that could be built upon when designing a new system of rent controls? Please explain your answer.

Rent Pressure Zones were created to enable local authorities to apply for permission to place a cap on the level of rent increase in high pressure housing markets. The proposals have been found to be unworkable in practice, largely because of the paucity of data enabling local authorities to demonstrate (as required) that rents are rising excessively in a given area, causing undue hardship to existing tenants and having a detrimental effect on the authority's broader housing services.³¹ Improving the data on the rents tenants actually pay should be the first priority in any consideration of rent regulation.

Do you agree with the vision and principles set out above in relation to a future model of rent controls for the private rented sector in Scotland? Please explain your answer

Crisis welcomes Scottish Government's efforts to tackle affordability. However, we are clear that rent controls alone will not end homelessness. To solve the overarching problem of inadequate availability of homes that people can afford, the most important change that we must see is an increase the supply of social housing. We are aware, however, that delivering the Affordable Housing Supply Programme takes time, and therefore recognise the importance of taking measures in the interim to ensure that the PRS is made more accessible and affordable for those who are experiencing, have experienced or are at risk of experiencing homelessness in the meantime.

Whilst we recognise that rent stabilisation measures might form a part of a wider package of reform to tackle affordability, we believe there are significant risks associated with the introduction of such measures. Without careful approaches to design and implementation, rent regulation may result in unintended consequences that, at least in the short term, could reduce supply and more severely curtail the housing options available to people at risk of homelessness.

Specifically, we must guard against:

- Depletion of supply of affordable housing available to people most at risk of, facing or experiencing homelessness.
- People on lower incomes, or otherwise most at risk of or experiencing homelessness, being locked out of the private market altogether.
- Creating the conditions for the emergence of a 'shadow' rental market acting outside of any regulatory regime (enforcement must be invested in to make regulations work).
- Making assumptions about the extent to which a nationally designed model can have consistent impact at the local level (with respect to the housing market and institutional context).

In any context in which rent regulation is being considered, the government should have a **clear vision of the role they see the PRS playing in meeting current and future housing need**. Whilst the Scottish Government has a commitment to increasing overall housing supply, the headline targets are not accompanied by a long-term vision for tenure mix that is informed by a robust assessment of need. Given changing demographics and the integrated nature of the housing system, where dwellings shift across tenures in response to demand and investment opportunities, the Scottish

³¹ Robertson, D. & Young, G. (2018) *An evaluation of Rent Regulation Measures within Scotland's Private Rent Sector. A report to Shelter Scotland*. Scotland: Shelter

Government needs to make explicit its strategy for housing provision which meets the needs of local/regional populations. This should specify targets for the proportion housed in different tenures, based on projections of population changes and the housing needs and aspirations of different groups. Without a vision for the size and role that the PRS should play in the future tenure-composition of housing, it risks remaining the 'residual' tenure which absorbs demand from other tenures without being fit for purpose to meet the needs of those it is housing.

In our 2018 *Plan to End Homelessness*,³² **Crisis called for the introduction of limits on annual rent increases linked to an inflationary measure, alongside longer tenancy security.** This remains our position although we have since highlighted the importance of improving enforcement alongside such measures.

To avoid any counterproductive unintended consequences, any system of rent controls must be carefully designed. One way of achieving this would be to **create an expert panel, independent of but accountable to relevant governments, with responsibility for reviewing all the relevant evidence and setting any limitations on rent increases/rent levels.** This panel should include expertise from across the housing and homelessness sector and should ensure the policy design predicts and mitigates any adverse consequences, incorporates adequate enforcement mechanisms and can take account of variance in local market conditions.

In designing any system of rent regulation, it is important to ensure:

- There is robust modelling of scenarios based on a range of assumptions about how the market would react and how this might affect availability/demand/affordability of rental supply for people at risk of or experiencing homelessness.
- Other aspects of the regulatory regime are taken into consideration when assessing what the impact of price regulation on investor behaviour and the tenure mix of housing might be. For example, if there is no regulation of short-term holiday lets (STHL), this might influence investor behaviour to withdraw from the Buy-to-Let market in favour of the STHL market; if there is regulation of this, that might not be as high a risk.
- There is a reliable method for evaluating the impact of any measures introduced (this is more difficult to achieve when rent regulations are introduced as part of a package of measures to reform the PRS, as their impact cannot be isolated).
- Careful consideration is given to determining the most appropriate inflationary measure for limiting rent increases. For example, the previously proposed measure in the Fair Rents Bill (a Private Members Bill introduced by Pauline McNeill MSP in the last parliamentary session), of one percentage point above inflation as calculated by CPI, could over time significantly worsen affordability for tenants, particularly in areas where rents are high relative to wages at the outset of the new regime. There may be merit in including wage growth in the calculation, as well as CPI.

The expert panel must therefore consider the following characteristics of the area in which the system would operate, including:

- nature of the housing market
- 'types' of landlords present, i.e., 'big' or 'small'/'accidental' or 'corporate' landlords
- landlord and tenant behavioural responses

³² Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018) *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

- availability of support to access housing (especially help with deposits/upfront costs for example provided by the local authority)
- the housing needs and aspirations of different groups within the population

The panel should also consider any triggers and the sunset clauses for rent regulation, clearly outlining and then overseeing procedures for implementation and de-control.

Any system of rent regulation must be adequately enforced and include an accessible mechanism whereby a tenant can report/challenge breaches with no adverse consequences to the security of their tenancy. It must also include mechanisms to evaluate its efficacy based on robust data that is routinely collected before, during and after the system is introduced.

As evidenced across the literature on this topic,³³ we are concerned about the wider effects of ‘hard’ first generation rent controls. There is a considerable risk of unintended consequences that might serve to exacerbate the problems we are trying to solve (availability and accessibility of affordable private rental supply for people facing, at risk of, or experiencing homelessness).

There are many proven and less risky policy changes that will work towards tackling access to and unaffordability of the PRS and we believe these should be prioritised. Crisis has long campaigned for changes to Local Housing Allowance rates and eligibility to better meet the housing costs of those at risk of or with experience of homelessness, especially young people.³⁴ These should remain a central part of any package of solutions we propose to tackle affordability, alongside making the wider case for increased investment in the supply of social rented housing and other forms of genuinely affordable housing for households at risk of or experiencing homelessness. If there was something that could be done through Scottish Government funding/devolved social security powers to mitigate the shortfall between rents and LHA rates, that young people especially face, that would also help to tackle the problem.

Affordable Housing Supply

How do we ensure that we are achieving the right balance between building new properties and acquiring existing properties through the Affordable Housing Supply Programme?

Crisis is not in a position to provide detail on achieving the right balance between building new properties and acquiring existing ones, but we know that homelessness is intrinsically linked to housing supply. Corroborating other research which estimates the demand for affordable homes to be 53,000, including 37,100 for social rent, between 2021 and 2026,³⁵ Crisis commissioned research shows that to be effective at reducing poverty and homelessness, there needs to be at least 5,500 social rented homes delivered each year to 2031.³⁶ Sustained investment in affordable housing has

³³ Gibb, K., Soaita, A.M., Marsh, A. (2022) Rent Control: A Review of the Evidence Base. Online: UK Collaborative Centre for Housing Evidence. Available from: <https://housingevidence.ac.uk/publications/rent-control-a-review-of-the-evidence-base/>

³⁴ Basran, J. (2019) Cover the Cost: Restoring Local Housing Allowance rates to prevent homelessness. London: Crisis. Available from: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/benefits-and-employment/cover-the-cost-restoring-local-housing-allowance-rates-to-prevent-homelessness/>

³⁵ Dunning et al. (2020) *Affordable Housing Need in Scotland Post-2021*. Online: SFHA. Available here: <https://www.sfha.co.uk/mediaLibrary/other/english/62960.pdf>

³⁶ Bramley, G. (2018) *Housing supply requirements across Great Britain for low income households and homeless people*.

wider economic benefits, including boosting the economy, providing higher disposable incomes for low income households, and contributing to prevention.³⁷

Crucially, we must ensure that future investment is effectively targeted, not only in localities with greatest need, but also providing homes which match the size requirements of households who are homeless. This means expanding provision of one-bedroomed homes in many parts of Scotland.

Allocations

Is the approach to allocations achieving the right balance between supporting existing social tenants and those who are seeking a home within the social sector?

What more can be done to support people with protected characteristics trying to access social rented homes?

In our *Plan to End Homelessness*,³⁸ Crisis made the following recommendations on allocations for Scotland:

- Create a regulatory requirement that all registered providers of mainstream social housing set an annual guideline target for the minimum proportion of social lettings to homeless nominees and report on this publicly.
- Ensure all social housing providers fulfil their responsibilities to cooperate with local authorities in meeting their homelessness duties and are encouraged to adopt best practice in supporting homeless people into social housing – including best practice in the use of pre-tenancy assessments.
- Ensure councils and housing providers monitor and report publicly on their performance providing settled homes for homeless people.

Further to this, at this stage Crisis does not have enough evidence on allocations to take a view in response to these questions. To inform our position, Crisis and the UK Collaborative Centre for Housing Evidence (CaCHE) have begun a new research project exploring current practices and issues affecting social housing allocations in Great Britain, in collaboration with the National Housing Federation. During spring and summer 2022, we'll be speaking to housing associations, local authorities and people living or hoping to live in social housing, to explore allocations. We're doing this to build a stronger understanding of what challenges social landlords face when deciding who is prioritised for access to social housing. We hope the findings from this research can inform Scottish Government policy in this area.

Driving up Standards of Management

³⁷ Gibb, K. et al. (2020) *The Impact of Social Housing: Economic, Social, Health and Wellbeing*. Online: UK Collaborative Centre of Housing Evidence. Available here: <https://housingevidence.ac.uk/publications/the-impact-of-social-housing-economic-social-health-and-wellbeing/>

Shelter Scotland (2015) *The economic impact of investment in affordable housing*.

Chaloner, J., Dreisin, A. and Pragnell, M. (2015) *Building New Social Rent Homes. An Economic Appraisal* SHOUT/National Federation of ALMOs;

Savills (2017) *Spotlight 2017: Investing to solve the housing crisis*.

³⁸ Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018) *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

Do you consider the vision and principles for the private rented sector Regulator to be the right ones? Are there any additional principles that you think are important? Please explain your answer.

Yes, we agree with the broad vision and principles for the regulation of the Private Rented Sector, which are in line with achieving a tenure neutral approach to housing, and moving towards proactive approaches to improving compliance rather than the more reactive and punitive aspects of enforcement. Crisis looks forward to developing our positions on the role of a new regulator in response to future consultations on this topic.

When it comes to regulation and enforcement in the PRS, research by Harris, Marsh and Cowan (2020) found that not all councils take an active role in regulating the sector and that “light-touch approaches based on reactive enforcement and limited use of formal powers would appear to be relatively commonplace in the UK PRS.”³⁹ The authors found that cuts to local authority budgets have had an impact on local authorities’ resources – both spending and staff skills and knowledge – available for carrying out PRS enforcement strategies, deterring proactive activity. It also found that, in Scotland, there is a lack of clarity about what the landlord registration scheme is aiming to achieve, making it difficult to measure its effectiveness.⁴⁰

A key recommendation from this research is to improve the advice and guidance provided by Scottish Government to local authorities on how to regulate and improve compliance in the PRS, with consideration of the role of partnership working, strategic approaches, innovative use of data and careful consideration to how PRS teams are configured. The authors also recommended bringing greater clarity of purpose to the landlord register.⁴¹

³⁹ Harris, J., Cowan, D., Marsh, A. (2020) *Improving compliance with private rented sector legislation: Local authority regulation and enforcement*. Online: UK Collaborative Centre for Housing Evidence. Available from: https://housingevidence.ac.uk/wp-content/uploads/2020/08/200803_ComplianceReport_Final.pdf

⁴⁰ Ibid.

⁴¹ Harris, J., Cowan, D., Marsh, A. (2020) *Improving compliance and enforcement in the private rented sector: Information for UK and devolved governments Policy briefing*. Online: UK Collaborative Centre for Housing Evidence. Available from: <https://housingevidence.ac.uk/our-work/research-projects/improving-compliance-with-private-rented-sector-legislation/>