



RentBetter

Research on the impact of changes to the private rented sector tenancy regime in Scotland

Wave 1 Baseline Report | Executive Summary | 2019/20

Indigo House in association with IBP Strategy and Research

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Acknowledgements

The Indigo House team would like to thank all the private renters, landlords, letting agents and wider stakeholders that participated in this research. Without their interest and enthusiasm this comprehensive piece of work would not be possible. We look forward to engaging again with some of these participants, and also meeting new tenants and landlords in future waves of the research. We would also like to thank the Advisory Group for their insight and scrutiny of the large amount of research materials and outputs. Their contribution provided an invaluable sounding board based on considerable expertise from across the private rented sector, advisory sector, public sector and academics with expertise in this field. We look forward to continuing to work with you in 2021.

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Foreword

Across the UK, the private rented sector has historically been characterised by poor security of tenure, poor property conditions, and serious affordability issues. It remains a sector that is characterised by a lack of consumer power, particularly for tenants at the bottom end of the market.

In 2017, reforms to the private rented sector in Scotland sought to improve security of tenure and access to justice by providing open-ended tenancies and an end to no-fault evictions, among a raft of other reforms. The Nationwide Foundation believes it is imperative that we understand and learn from the reforms in Scotland, primarily through the lens of tenant and landlord experiences, and that's why we were pleased to have funded the Rent Better research by Indigo House.

This baseline report shows that most tenants in Scotland feel secure in their properties, particularly when they have a good relationship with their landlord and feel able to pay their rent. This said, we must not forget that where deprivation and lack of financial power is an issue, tenants in Scotland still feel a sense of precarity. However, what is clear is that most tenants are not aware of their rights, and with this lack of knowledge comes lack of empowerment, regardless of the justice system.

For landlords, it is relatively early to have experienced the full impacts of reform in Scotland, but contrary to what might have been expected, there was general lack of concern around the removal of the 'no-fault' ground.

There are some other areas which may merit refinement in the legislation from landlords' perspectives, but most landlords stated they wished to continue with their landlord business going forward. This data should give reassurance and guidance to policymakers in other areas of the UK, as they consider similar changes to their private rented markets.

The report acts as a helpful point of reflection almost three years after the reforms by the Scottish Government. We look forward to the next phase of this research in 2021.

Bridget Young

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Background

In 2013, the Scottish Government published its strategy for private renting – ‘A Place to Stay – A Place to Call Home.’

This strategy resulted in new legislation including the Private Housing (Tenancies) (Scotland) Act 2016 which introduced Private Residential Tenancies (PRT) and replaced the assured tenancy regime for new private lets from December 31st, 2017

Private Residential Tenancies

The key features of the PRT are:

- it is open-ended and has no fixed term
- tenants’ notice periods have been standardised to 28 days
- eviction proceedings have been simplified to 18 grounds and there is no ‘no-fault’ ground
- landlords must provide 84 days’ notice to leave for tenants who have lived in the property for six months or longer
- rent can only be increased once every 12 months with three months’ notice, and tenants are able to challenge unfair rent increases to a rent officer.

The 2016 Act also gave local authority powers to implement rent caps in designated areas called ‘Rent Pressure Zones’ (RPZs) where rent increases were deemed to be ‘excessive’. This legislation was the most recent element of a series of reforms in the private rented sector (PRS) in Scotland over the last 15 years.

These regulatory reforms in the PRS in Scotland should also be seen in the context of other legislation and regulation which affects the PRS including:

- the extended role of the First Tier Tribunal (Housing and Property Chamber)
- changes in Mortgage Interest Tax Relief for private landlords (MITR)
- the Additional Dwelling Supplement (ADS)
- energy efficiency standards required in PRS properties as part of the Scottish Government’s wider objectives on climate change.

Aims of the Research

The Nationwide Foundation commissioned this three-year study to learn from the experiences of households living in, and landlords providing private rental properties in Scotland.

The Foundation's key aim for this research is to understand the impacts of change that have been made, and from this, learning to help shape any further changes that may be needed in Scotland. The Foundation also wants to share lessons learned for the benefit of private tenants and landlords across the UK.

It wants to understand the impact of change of the PRT and other recent legislative change in the PRS on security of tenure; access to justice; affordability; landlord and tenant conduct; and the impacts of these changes on tenants on a low income and/or in housing need.

The baseline report sets out the current position in 2019/20 from which any change in the sector as a result of the PRT will be measured across the course of the three-year study to 2021/22. The research in Wave 1 (2019/20) has involved two large scale surveys of tenants and landlords/letting agents, secondary data analysis and qualitative research with tenants, landlords/letting agents and wider stakeholders.

Profile of the Private Rented Sector in Scotland

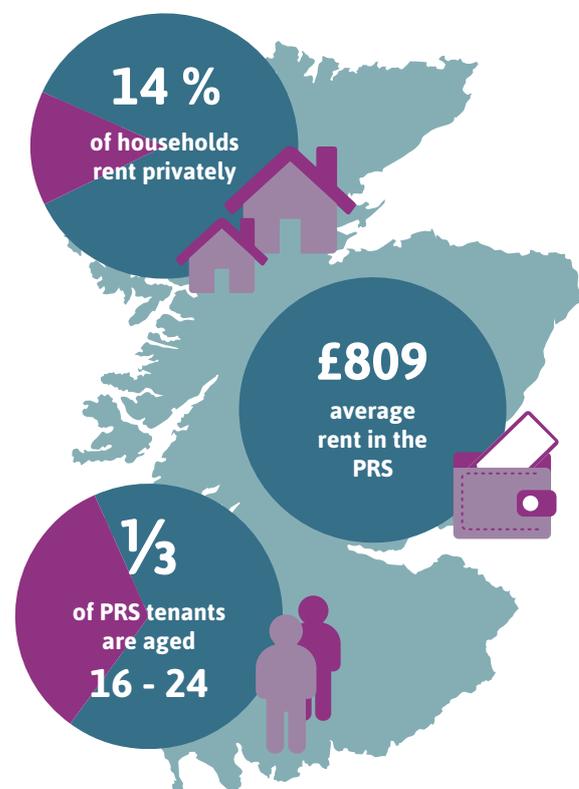
The PRS in Scotland has grown considerably over the last 20 years from 5% to 14% of all households in 2018 (reaching 25% in Edinburgh), although over the past two years there are signs of a levelling off in growth across Scotland as a whole.

While there are concentrations in the cities, the PRS is also an important tenure in some rural areas. Growth has been particularly marked amongst younger households with over a third of households aged 16-34 years now renting in the PRS in Scotland.

It is clear that the PRS in Scotland is extremely diverse. While most private renters work full-time, there is a large range of household incomes with a quarter of private renters claiming either Housing Benefit or Universal Credit (housing costs element).

This proportion varies considerably by geography from 11% of private renters in the Shetland Islands claiming housing allowances, compared with 85% of private renters in North Ayrshire. Rents also vary considerably across different geographic markets with an average of £809 per month in 2019 (Citylets data), with the lowest in line with social rent levels in Ayrshire and highest average of £1,100 in Edinburgh.

Landlords mainly have small portfolios of less than five properties, whereas letting agents have large portfolios of over 100 properties.



Impact

Choice and Access to the Private Rented Sector

Private renters can be broadly grouped as those private renting in advance of their preferred tenure whether social renting or ownership, and a lower proportion of those who are enthusiastic about private renting as their ideal, long term option – these renters tend to be older. Those on lower incomes, claiming housing benefit, tenants with disabilities and single parents most commonly highlighted their long wait for social housing while living in the PRS.



In terms of tenants' experiences of finding a home, most find it easy to get a private rental, but a significant minority have difficulties. Difficulty securing a private rental is disproportionately experienced in urban and pressured markets, by single people, single parents, those on lower incomes, disabled people, those claiming some form of housing allowance, black and minority ethnic tenants and more recent renters. The most common reason for difficulty in finding a suitable private rental is affordability and high demand/lack of supply in the areas where people want to live. At this baseline report stage, there is insufficient evidence to conclude whether these market imbalances have been helped or hindered by the PRT.

The Tenancy Regime and Impact of Reform

There is a clear lack of awareness amongst tenants about exactly what their current tenancy is, or their tenancy rights. More work is needed, led by Scottish Government and involving wider advisory stakeholders, to raise awareness of rights as a starting point to empower tenants and increase their access to justice.

However, there is a high level of confidence amongst tenants to be able to stay in their tenancy. It is clear most tenants feel secure in their home to the extent that they need and want, regardless of the type of their tenancy or their knowledge of rights. The most important aspects of security from tenants' perspectives are affordability, trust in the landlord and secure employment.

The minority that feel less secure are those with less financial power – those living in deprived areas, on lower incomes and housing benefit.

In terms of the PRT's impact on landlords and letting agents, at this stage most are indicating 'no impact'. The 'no impact' may reflect the fact that Short Assured Tenancies (SATs) are still in use, and it appears that the opinions of some landlords are based on their perception as heard through the market, rather than their actual experience of the PRT. This suggests the impacts of the PRT are yet to be fully experienced by landlords and letting agents. There is significant negative opinion about two specific aspects of the PRT – the open-ended aspect and the reduced 28-day notice period for tenants. These two combined are strongly argued to cause problems of 'churn' – increased turnover and voids which seems to be more acute in student and more seasonal markets. There is little concern about the loss of the 'no-fault' ground. There appears to be significant problems for landlords and discontent around the eviction Ground 12 – relating to rent arrears and the increased length of time it takes to achieve eviction for rent arrears, resulting in considerable loss of earnings. There are also concerns relating to the way in which joint tenancies are dealt with in the PRT.

Rents and Affordability

Data on actual rents across the whole of the PRS housing stock in Scotland is not publicly available. This is a limitation for any study of rents and affordability. The research has therefore relied on analysis of secondary data on advertised rents, and self-reported rents from the Rent Better tenants survey. Based on the information available, PRS rents have increased significantly in some areas over recent years. So far, the legislative mechanisms for adjudicating rent increases appear to have had little impact, although it is difficult to isolate policy impact from varying market factors, and broader fiscal reforms. In particular, the Rent Pressure Zones mechanism appears to have failed in the policy objective of limiting excessive rent increases, which is likely due to its evidential data requirements. In addition, there is some evidence to suggest that the PRT may be encouraging landlords to raise rents more frequently than they would have done under the assured and short-assured tenancy regime, due to the annual rent review process now built into the PRT.

Despite the limitations on published rent data, the evidence from tenants shows that rent affordability is a key factor limiting access to private renting for low income households, tenants from ethnic minorities and single parents in particular. Many tenants say they pay a significant proportion of their income in rent, and just over one in ten tenants described their rent as difficult to afford. Although this may indicate a general acceptance of high rents relative to income, single people and single parents in particular spoke of experiencing significant financial difficulties. Disabled tenants also had difficulties accessing renting, often citing being on benefits as a barrier.

The prevalence of landlords letting to private tenants claiming benefits is largely driven by the type of market. In higher demand/more pressured markets, access to private renting for those on benefits appears particularly difficult. In lower demand areas, landlords are more pragmatic and accepting of the need to rent to those on benefits, but nevertheless many landlords are still reluctant to risk renting to tenants on Housing Benefit.



For many landlords there is limited awareness of the benefits system, and the scope to receive direct payments to landlords as a means of limiting the risk of rent arrears. This indicates more work is required, led by the Scottish Government in collaboration with landlord representative bodies, to raise awareness on how to navigate the benefits system to support lower income households living in the PRS.

Experience of Living and Letting in the Private Rented Sector

The tenants survey showed that tenants are generally satisfied with their property and the service received in the PRS. A more nuanced picture emerged through interviews with a minority of tenants experiencing poor service around repairs and uncommon but illegal practice of unauthorised access to properties, both of which was distressing for tenants. There was no discernible or statistically significant difference in tenants' experiences between PRT and SAT tenancies so far.

Likewise, landlord and letting agents appeared generally satisfied with their experience of letting, with most challenges experienced around damage to property and rent arrears. There are clear signs that landlords who were proactive and nurtured good, close tenant/landlord relationships reaped rewards for both the tenant and landlord.

Access to Justice

The stated intention of moving to the Tribunal system in the PRS was to increase access to justice and to make it more accessible. The Tribunal is by design more inquisitorial or investigative rather than the traditional adversarial approach of the Sheriff Courts with a sifting process to reject erroneous cases before hearings.

Tenants' awareness of rights is low, but most tenants say they are confident in raising disputes with their landlord/letting agent. Those that are less confident are again those with less financial power – often those on lower incomes and in part-time work, or the inexperienced – younger people, those in full-time education and those with shorter tenancies. While awareness of rights is low, there is also a general assumption that the landlord, and the 'system' as a whole would 'do right' by tenants. Tenants that complain tend to try to resolve the issue directly with the landlord or letting agent first or seek legal advice. Help through advice agencies is much less common.

The importance of maintaining positive, trusting relationships with the landlord was a strong theme from tenants, and appears to be a key driver in there being little appetite from many tenants for lodging formal legal complaints. The importance of proactive, person-centred landlord approaches, most often provided by one property or small portfolio landlords, is also emphasised. There may be a gap in provision between informal and formal dispute resolutions which might better meet tenants' needs including wider access to mediation services, rather than having to go to Tribunal when less formal routes fail.

There appears to be an asymmetry of access to justice through the Tribunal between tenants and landlords. Awareness of the Tribunal amongst tenants is extremely low, but greater for landlords and letting agents, and the majority of cases are initiated by landlords and agents. From a small number of tenants interviewed with experience of the Tribunal, they did not find the process accessible, although it was more so for those with professional advice.

Landlords' and letting agents' experiences appeared to be smoother than for tenants and evidence suggests they have greater reliance on professional advisors than tenants, and have carried over this approach from the Sheriff Courts to the Tribunal.

Landlords' and letting agents' complaints about the Tribunal appeared to be mainly related to complaints about the law, rather than the Tribunal process itself (although initial delays and backlogs were highlighted). This is specifically about Ground 12 and the impact of longer periods in the PRT compared to the assured tenancy regime for raising applications for eviction for rent arrears.

Future of the Sector

Landlords' and letting agents' opinions about the future of the PRS appears to be broadly equally positive and negative. The single most unpopular intervention in recent years has been the change in tax relief regime. This, when combined with the wider changes in regulation in Scotland, was considered to be too much for some to stay in the sector – just under a quarter indicated they were considering selling all their properties and leaving the sector and were most likely landlords with between 2 and 5 properties. However, the highest proportion stated that they planned no change for the future of their landlord business.

Taking the range of risk or 'push' factors into account, participants pointed to the cumulative impact of changes in the sector having a more negative impact on smaller 'cottage industry' landlords, many of whom are seen as quality providers by tenants who provide a more person centred service, compared to larger, more institutional landlords.

Recommendations & Next Steps



Recommendations

For the Scottish Government and other wider stakeholders in Scotland, the following recommendations are put forward at baseline stage:

Recommendation 1

More work is needed, led by the Scottish Government and involving wider advisory stakeholders, to **raise awareness of tenancy rights** as a starting point to **empower tenants and increase their access to justice**. This may include some targeted work for those private tenants with less financial power – those on lower incomes and housing benefit – who feel less security of tenure than private tenants generally.

Recommendation 2

The Scottish Government may wish to **consider the early findings on the combined negative impact of the open-ended tenancy and the reduced 28-day notice period** which is argued by landlords and letting agents to be causing increased turnover, although it gives tenants greater flexibility. Other negative impacts that merit early consideration are the **Ground 12 timescales** and the **difficulties around the joint tenancy** aspects of the PRT.

Recommendation 3

While not a focus of this research, **challenges reported by landlords around the practical implications of the PRT in the student market** should be explored further by the Scottish Government.

Recommendation 4

There are **challenges relating to rent data to enable accurate assessment of rent increases and affordability**. However, given overall findings so far, the Scottish Government should **consider commissioning further work to fully explore the limitations of the Rent Pressure Zones mechanism**, and how this can be improved to tackle **excessive rent increases** where these occur in specific markets.

Recommendation 5

There is scope for the Scottish Government, with training and advisory bodies, to **support landlords and letting agents to better understand and navigate the benefits system**. This could help support more lower income tenants in the PRS, and help landlords mitigate any real, or perceived financial risks in this part of the market.

Recommendation 6

The Scottish Government and the Scottish Courts and Tribunal Service, alongside advisory agencies and local authorities should **work together to raise awareness amongst tenants about the Tribunal system as a formal route to justice**. In addition, there should be consideration from these stakeholders on the **development of mediation services** to fill a gap between informal and formal tenant landlord dispute resolution, which might better meet tenants' needs compared to the formal Tribunal route.

Wider stakeholders interested in PRS reform elsewhere in the UK:

Recommendation 7

Should **consider the early lessons learned at baseline stage and recommendations listed above**. In particular, stakeholders should note the lack of concern (so far) in the loss of the 'no-fault' ground amongst the majority landlords/letting agents participating in this research.

Next Steps

Wave 1 of the research has provided a baseline of the context and key issues experienced by tenants, landlords and letting agents. It has also enabled the identification of a set of hypotheses or initial propositions for further investigation in the future waves of research on the experiences and impact of the PRT and other elements of PRS reform for both tenants and landlords.

Key hypotheses to be explored are the extent to which access to private renting, security and awareness of rights has improved over time among tenants generally and lower income tenants in particular. For landlords, perceptions of the new tenancy arrangements and risk would be examined again, in particular around impact on turnover and the impact of Ground 12. Have their concerns evidenced in Wave 1 (some of which was based on conjecture in the industry) worked out in reality? To what extent has the pool of landlords changed and has landlord behaviour changed?

The report also sets out methodological considerations for future waves of the research including overcoming challenges of lack of secondary data that is readily available, specifically in relation to PRT tenancies.

Covid-19 is likely to have impacts on the sector for the foreseeable future and clearly needs to form part of the interpretation of the secondary data and the design of the qualitative research to reflect on pre- and post-Covid renting experiences. It would therefore be beneficial to leave some time between the qualitative interviewing waves, with the aim of conducting the next wave of qualitative fieldwork in Spring or Summer of 2021.

It is also proposed that qualitative interviews with tenants will focus greater attention on lower income households and those in housing need to explore their experiences in greater depth. Issues relating to equalities should be explored more fully to unpick issues of access, affordability and whether landlord/letting agents' approach to risk results in systematic discrimination for some groups of tenants.



For the landlord qualitative work in Wave 2, following up some of the potential 'leavers' and 'stayers' from the Wave 1 qualitative may also be beneficial to provide some longitudinal insights. The research should also explore further the experiences around the open-ended aspect of PRT combined with the 28-day notice issue identified in Wave 1. The research will also aim to target landlords and letting agents who have a mix of PRT/SAT and those with only PRT to compare and contrast these experiences.

Of particular interest in the qualitative interviews with both tenants and landlords in Wave 2 will be how the relationship between tenant and landlord affects tenants' experience of security of tenure, and if the smaller '*cottage industry*' landlord is more likely to provide a better service than other larger landlords/letting agents. Included in this discussion would be exploration of whether these landlords potentially providing high quality services, are those that are most likely negatively impacted by reform.

