



# Then and Now

A short history of change  
in the Scottish Private Rented Sector

## Summary

Regina Serpa and Douglas Robertson, edited by Anna Evans

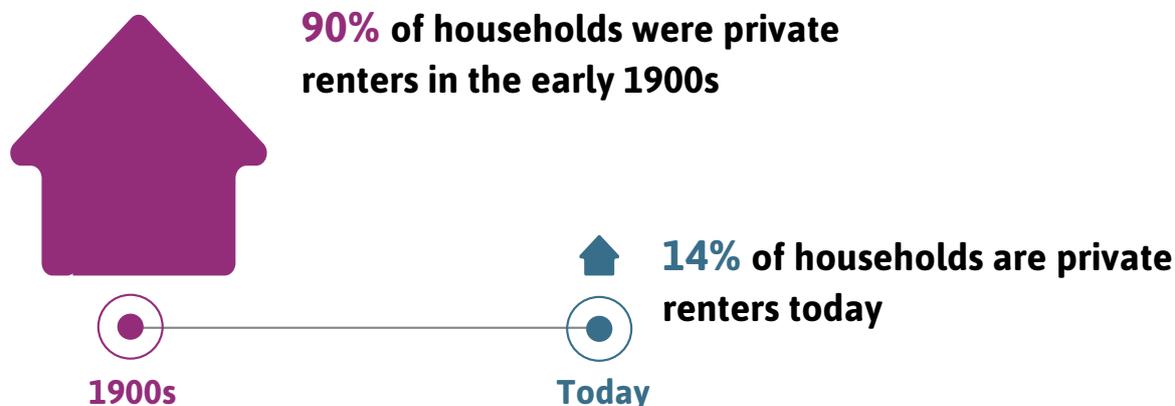
# Introducing RentBetter

This briefing summarises the most recent reforms in the Scottish private rented sector. The full briefing (available on the RentBetter website) looks at the history of reform in the private rented sector in Scotland, and the changing relationship between landlord and tenant over the course of Scottish urban history, from the earliest forms of intervention in Medieval Scotland to the present system of private rented housing.

This briefing has been produced as part of the RentBetter three year research programme funded by the **Nationwide Foundation**. The purpose of the research is to understand the impacts of changes that have been made in the private rented sector in Scotland, and to share lessons learned for the benefit of private tenants and landlords across the UK.

The Foundation commissioned **Indigo House** to undertake this work between August 2019 and August 2022.

The private rented sector in Scotland has undergone considerable change in recent years, doubling in size from a low figure of 7% in 2001 to 14% in 2018.



But looking further back, the sector was much more important – in the early 1900s, 90% of Scottish households were private renters.

- **1400s - 19<sup>th</sup> century**  
– from a feudal system to the emerging Law of Landlord and Tenant when the vast majority of Scots rented privately. Challenges to the unregulated rental market began.
- **Mid 1800s to the inter-war period**  
– slum clearance, increasing rent levels, introduction of rent control and the start of contraction of private renting. By the end of WWII around 60% of homes were privately rented.
- **20<sup>th</sup> century**  
– from 1919 there was a rapid rise of public sector housing, and a series of legislation to incentivise, but then to regulate the private rented sector with changes in rent control, housing standards and in tenancy regimes culminating in introduction of assured and fixed term short-assured tenancies in 1988.
- **21<sup>st</sup> century reform and resurgence post credit crunch**  
– by 2001 only 7% of Scottish households rented privately. A series of legislation introduced from the early 2000s provided greater protection for tenants, including landlord registration, the repairing standard, a tenancy deposit scheme, an open ended private residential tenancy, the First-tier Tribunal and letting agent regulation.

## A series of legislation in the early 2000s introduced greater protection for tenants in Scotland. Reform included:

- Part 8 of the **Antisocial Behaviour etc. (Scotland) Act 2004** introduced a private landlord registration in 2006, placing a duty on local authorities to prepare and maintain a public register of private landlords. This was later amended by the **Private Rented Housing (Scotland) Act 2011** making operation as an unregistered landlord a criminal offence.
- **The Housing (Scotland) Act 2006**, later amended by the **Housing (Scotland) Act 2006 (Modification Of The Repairing Standard) Regulations 2019**, covered the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard – landlords were required to meet the **Repairing Standard** from 2007.
- A home meets the repairing standard if it is wind and watertight, is structurally stable, is well insulated, has suitable plumbing and electrical installations, suitable fire detection and carbon monoxide detectors, has electrical safety inspections and meets the **Tolerable Standard**.
- In 2010 new regulations under **Section 32A of the Housing (Scotland) Act 1987** came into effect allowing local authorities, for the first time, to discharge their duty to homeless households by providing a short assured tenancy in the private rented sector.
- In 2011, the **Private Rented Housing (Scotland) Act 2011** came into effect revising the earlier HMO licensing regime, which gave local authorities power to refuse to consider an application for an HMO licence if it considered that there would be a breach of planning control, or if it considers that there is an overprovision of HMOs in the locality which was a concern in areas that had high numbers of student flats.
- The tenancy deposit scheme also began operating as per **2011 Tenancy Deposit Scheme (Scotland) Regulations** requiring every landlord or letting agent that receives a deposit in Scotland to register with their local authority and join a tenancy deposit scheme.

## In 2013, the Scottish Government published its strategy for private renting – “A place to stay – a place to call home.”

In developing the strategy, some called for greater tenant protection, arguing that private rentals were driving excessive rent increases, while landlord interests called for an overhaul to the costly and protracted procedure for evictions, and sought assurances from the Scottish Parliament that rent control would not be introduced. The resulting legislation – the **Private Housing (Tenancies) (Scotland) Act 2016** introduced:

- Private Residential Tenancies from December 2017 replaced both short-assured and assured tenancies
- Local authority powers to implement rent caps in designated areas so-called ‘rent pressure zones’ where rent increases were deemed to be ‘excessive’.

**14% of Scottish households rented privately in 2018**

## Most recent reforms in the private rented sector

### Private Residential Tenancies

This is an open-ended tenancy and removed the 'no-fault' ground, amongst other tenancy reform. All private rented tenancies in Scotland starting from 1 December 2017 onward are Private Residential Tenancies (PRTs). Unlike assured tenancies, PRTs are:

- open ended – private rented sector tenancies are no longer fixed term
- for tenants who have lived in the property for 6 months or longer, landlords must provide 84 days notice to leave, notice for shorter tenancies is 28 days
- eviction proceedings have been simplified to 18 grounds (10 mandatory and 8 discretionary) in the areas of: non-occupation, breach of tenancy agreement, rent arrears, criminal and anti-social behaviour, and associating with a person who has been involved with anti-social behaviour
- rent can only be increased once every 12 months with 3 months' notice and tenants are able to challenge unfair rent increases by referring the increase to a rent officer
- The Scottish Government have published a model private residential tenancy that can be used by landlords to set up a tenancy.

**Rent pressure zones** – Applications from local authorities for rent pressure zones must be made to Scottish Ministers, who then lay regulations before the Scottish Parliament. As at January 2020, no applications have been made. There is also an ability for tenants to challenge a rent rise if they considered it to be excessive, by reporting it to the Rent Officer who would determine the market rate, provided the property is not in a rent pressure zone.

**The First-tier Tribunal (FTT)** (Housing and Property Chamber) began hearing Repairing Standard civil cases in 2016. It was established to provide relatively informal and flexible way of resolving disputes between landlord and tenant. The FTT replaced the Private Rented Housing Panel. The FTT was designed to address rent or repair issues and provide assistance for a landlord's right of entry to properties.

**Letting agent regulation was introduced in 2018** when the **Letting Agent Code of Practice (Scotland) Regulations 2016**, also came into effect. The Code outlines the standards expected of letting agents in the management of their business and how they provide services. It sets out standards of practice, how letting agents handle tenant monies (charges levied on tenants were abolished in 2012) and their requirements for professional indemnity. The Code is part of a broader regulatory framework for letting agents (introduced in the **2014 Housing (Scotland) Act**).