CONSUMERS AND THE RENT ACTS:
A CONSULTATIVE PAPER

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CONSUMERS AND THE RENT ACTS

SCC SUBMISSION TO THE REVIEW OF THE RENT ACTS

INTRODUCTION:

1. As part of their Review of Housing Policy and Finance, the Scottish Development Department invited evidence and comments from interested organisations and individuals on the working of the Rent Acts in Scotland. In May 1977 they published "The Review of the Rent Acts, A Consultation Paper" which defined the objectives of the review in the following terms:

Bearing in mind therefore the varied categories of tenant currently housed in the privately rented sector and their changing and continuing needs the review will examine the extent to which the existing legislation hinders or encourages the physical preservation, improvement and best use of the present stock of privately rented housing and will propose any necessary changes to meet these objectives more effectively. Among the particular objectives which the Government will have in mind in carrying out the review will be the need:

(a) to safeguard the interests of existing private tenants, many of whom are elderly, poor or for other reasons have difficulty in finding alternative accommodation;

(b) to ensure (without imposing unreasonable burdens on landlords, many of whom are of limited means) that privately rented houses are properly maintained and kept in repair so that they do not deteriorate to such an extent that there is no alternative to demolition;

(c) to promote the efficient use of housing, particularly to meet needs not otherwise adequately catered for (for instance lettings to the young, single and mobile) and to encourage the letting of property which might be available for limited periods only;

(d) to ensure that the methods and criteria for the determination of rents are tailored to meet the difficulties faced by both landlords and tenants;

/...
(e) to simplify the law on private renting and the administrative machinery, in order to make for a speedier and more effective resolution of disputes between landlord and tenants, and

(f) in general to provide a legislative framework which maintains a fair balance between the interests of tenants and landlords so that privately rented accommodation can contribute effectively to meeting housing needs and choices.

2. The Scottish Consumer Council welcomes the opportunity provided by the Review to express its views on the "consumer protection" legislation which regulates the provision of privately rented housing. The White Paper, whose publication preceded the creation of the National Consumer Council and its associated councils in Scotland and Wales, "National Consumers Agency" (Cmd.5726) stated that:

"It is the inarticulate and disadvantaged who most need a body to speak for them and ensure they are protected and it is they whose needs have least been met by the consumer activities of the last decade. The Government believes that the new body proposed will be in a position to insist that the interests of all consumers, including the least articulate, should be taken into account".

In the housing market it is the privately rented sector which caters - particularly in unfurnished accommodation - for the most disadvantaged consumers. It is also this sector which on average provides its consumers with the poorest quality housing.

3. The problems of Privately Rented Housing

While we welcome the review of the Rent Acts and agree with the policy objectives set out in the Consultation Paper, we believe that any strategy to preserve and rehabilitate the privately rented housing stock must look beyond the details of the current rent legislation to the underlying structural problems of this sector of the housing market.

4. What are these underlying problems? We see these as being:-
(a) The availability since the beginning of this century of more attractive investment opportunities. These opportunities provided investors with a higher rate of return on their capital and were less troublesome than the management of rented housing. There has been a continuous decline in the amount of privately rented housing ever since and virtually no new investors have entered the market or are likely to. The Government in putting forward for discussion the idea of creating a new publicly accountable letting agency (see Scottish Housing A Consultative Document Para. 10.10-10.11) has recognised that even in return for assurances about rent increases over the long term to institutional investors whose capital the new agency would hope to attract such a scheme would probably result in only "marginal additions" being made to the private rented sector. Also the numerous laws passed to protect tenants have made investment in private renting even less attractive and more uncertain. The provisions governing security of tenure and rent restriction in particular have reduced returns through rental income and have restricted landlords' room to manoeuvre in the market.

(b) Private renting attracts very few subsidies compared with other tenures. Council housing receives Government and rate fund subsidies, while owner occupation receives tax relief on mortgage interest and other advantages such as exemption from capital gains tax on the sale of property. Private landlords are therefore at a considerable disadvantage in the housing market. The tax concessions and other financial advantages of owner occupation have themselves been an important factor in pushing up house prices so that rents which the majority of tenants could afford to pay are well below mortgage costs. In addition the private landlord is taxed effectively as if his property lasted forever and receives no tax relief on depreciation. He is in a less favourable tax position than most commercial enterprises, although he may have an appreciating asset.

(c) The age and poor quality of most privately rented dwellings which were built before 1919 and which often lack basic household amenities. Slum clearance programmes have resulted in the removal and replacement of many thousands of unfit dwellings, especially since the last war. Many of these were privately rented. This loss of dwellings to the private rented sector was accentuated by the fact that many owner occupiers displaced by slum clearance or redevelopment policies subsequently purchased properties which had previously been privately rented. Studying tenure changes on Clydeside between 1965 and 1970 Cullingworth and Watson

...
found that "Large numbers of privately rented dwellings have been bought by owner occupiers and that this is almost balanced by the number of dwellings which were owner occupied in 1965 and have since been demolished". (1)

(d) The preference of consumers for alternative forms of tenure to renting from a private landlord, particularly owner occupation but also council and housing association tenancies. Partly this is a result of the costs or poor quality or insecurity of much private rented accommodation but it has now become a contributory reason for its decline.

5. The Consultation Paper states that "Sixty years ago perhaps as many as 9 out of 10 households lived in privately rented houses. Since then the number of privately rented houses and the proportion of the population living in these have fallen until now probably less than one household in 10 does so". Our conclusion is that this continuous decline of the private rented sector over the last sixty years or so is the result of the interaction of a number of economic and social factors. Legislation may at various times and in various ways have contributed to the rate of decline in private renting but it is not among the primary causes of that decline. Nor do we believe that this decline can now be arrested by changes in the Rents Acts. Such was the expectation when in 1957 rents were decontrolled and security of tenure withdrawn. Table 1 shows what actually happened (2)

Table 1: No. of dwellings rented privately in Great Britain

<table>
<thead>
<tr>
<th>Date</th>
<th>Million dwellings</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1951</td>
<td>7.3</td>
</tr>
<tr>
<td>June 1956</td>
<td>6.4</td>
</tr>
<tr>
<td>December 1960</td>
<td>5.1</td>
</tr>
</tbody>
</table>

The rate of loss had averaged approximately 175,900 dwellings annually over the five years up to June 1956. Yet it increased in the following five years to nearly 290,000 dwellings annually - the highest it has ever been. Undoubtedly landlords took the opportunity to sell out with vacant possession with the result that between 1958 and 1964 the privately rented sector shrank from 41% to 28% of the total stock of housing. The sale of formerly rented property is perhaps the major source of profit in this sector of the housing market. A recent study of landlords in Edinburgh, discussing the property companies which have been steadily gaining control of privately rented housing in the city at the expense of other types of property owner, observes:

"One is tempted to ask why in a shrinking market and in a sector of the economy frequently depicted as very unprofitable so many firms remain. Presumably
they must for the most part make a reasonable profit - so how do they do it. The answer lies in the fact that they never operate simply as landlords. It is true that there is not much to be gained by rent alone. What these companies do, and do with great skill, is to buy property which typically is near the end of its useful life but not yet bad enough for compulsory closure and, having gained the advantages of block purchase, proceed to sell off individual units to owner occupiers". (3)

This suggests that the relaxation of the legislative protection in privately rented housing simply contributes to the decline in the amount of accommodation available for rent. Although it may be true that the number of new lettings has fallen since the extension of security of tenure to furnished tenants in 1974, it is possible (although it is, as yet, too early to judge the full effects) that it has also slowed the overall rate of decline in the number of privately rented dwellings by making it less easy and attractive for landlords to sell their property. What is certainly true is that the decline of the private rented sector makes it more difficult for certain groups who have traditionally depended upon it to obtain satisfactory accommodation.

7. **Who needs privately rented housing?**

The Consultation Paper notes that tenants in the private sector fall into two broad categories. What both categories have in common is that they are composed mostly of single person or all adult households. Unfurnished tenants (of whom there are an estimated 100,000 in Scotland) tend to be elderly, to have lived in their houses for a long time and to have low incomes. In the course of time it is likely that most of the accommodation they occupy will pass into owner occupation, be acquired by Housing Associations or else be demolished on account of its poor condition. Furnished tenants (who number around 25,000) tend to be young and transient and to have, according to the Consultation Paper, "rather higher than average" incomes*. They make only short term use of the privately rented sector and include groups such as mobile workers and their families, the newly married, those suffering from family breakup, students not accommodated by educational institutions and other young people who need or wish to live away from home. Apart from these two categories there are the 70 -100,000 households who live in tied accommodation -tion (4) provided by their employers. This type of housing is particularly important in rural areas (5). The inter relationship of housing and employment factors is peculiar to tied accommodation and marks it off from
rest of the privately rented sector.

Footnote: The figures cited by the Consultation Paper to justify this characterisation are from the General Household Survey 1974 and read as follows:

<table>
<thead>
<tr>
<th>Weekly Household Income by Tenure</th>
<th>%age of each tenure group</th>
</tr>
</thead>
<tbody>
<tr>
<td>£ per week</td>
<td>41-60</td>
</tr>
<tr>
<td>Rented</td>
<td></td>
</tr>
<tr>
<td>furnished</td>
<td>26</td>
</tr>
<tr>
<td>All Tenures</td>
<td>26</td>
</tr>
</tbody>
</table>

It is difficult to see how these figures support the Consultation Paper's claim and we would be very sceptical about attaching a great deal of significance to it in policy making. The diversity of the housing needs which are currently met by this type of accommodation means that any such generalisation - and this particular one does not seem to be well founded - is of limited value. This characterisation seems to be, directly or indirectly, linked to the proposal made in Paras. 10.10-10.11 of "Scottish Housing A Consultative Document" to create a new letting agency. Certainly the idea of a new publicly accountable letting agency which it is hoped might - in return for assurance about rent increases over the long term - attract capital from institutional investors to improve or add to the present privately rented housing stock is an imaginative one and deserves further consideration. However, given the likelihood that this would entail relatively high costs to tenants the Consultative Document admits "the scope for housing of this type might be limited numerically". (6) Housing policy must also take into account the position of tenants whose low incomes would exclude them from such a scheme - a point to which we will return.

8. These are the groups who find themselves squeezed as the privately rented sector contracts and as the existing stock of rented houses deteriorates.

9. The Way Forward

How are the housing needs of those groups who presently depend on the privately rented sector to be met in the future? In the long term we see no possibility of the sector's decline being arrested or reversed. Most, if not all, of these groups will have to look increasingly to other forms of tenure to provide their accommodation. In the short term the privately rented sector continues
to provide a significant proportion of the total housing stock. We believe that the reform of the Rent Acts, leading to a less complex framework of legislation and more effective enforcement of its provisions, together with a change in the financial arrangements which affect privately rented accommodation, can play a significant part in protecting consumers' interests and preventing the further deterioration of the housing stock. In the following paragraphs, we outline the long term and short term policies that we believe should be implemented in relation to the privately rented sector. The ideas we put forward for immediate reform of the Rent Acts are further developed at Appendix I with reference to the questionnaire contained in the Consultation Paper. (Annex 2).

10. The Government notes in "Scottish Housing A Consultative Document" that "the needs of these groups (such as mobile workers, the young and new households) may in future increasingly be met by widening the access to owner occupation and to new forms of tenure and by more liberal allocation policies on the part of public authorities". We agree though we would substitute the word 'must' for 'may'. We should note, however, the problems to be overcome before such wider access can become a reality.

(a) Owner Occupation: the major problem in this sector is the restriction on funds available for local authority mortgages. For people on relatively low incomes seeking to buy at the 'bottom-end' of the housing market these funds provide the only realistic source of finance. The available evidence indicates that the scheme to provide special Building Society loans to applicants referred by local authorities - which it was hoped would alleviate the problems caused by the restriction of local authority lending - has not been a success: in Glasgow some 78% of those referred have been refused loans by the Societies. (7) The more recent scheme, announced in June 1977, to introduce a new savings bonus and loans scheme for first time buyers who are saving with building societies is unlikely to help those buyers at the 'bottom-end' of the market either, unless the Building Societies' traditional lending policies are radically altered. Local authority lending for house purchase has been one of the main victims of the housing expenditure cuts imposed by the government (8). We believe that higher priority should be given to this form of financial help for house purchase in future policy making.

(b) New forms of Tenure: While experiments involving new and more flexible arrangements are to be welcomed we are concerned that the costs incurred by participants may be such as would automatically exclude those on low incomes. It is certainly true that the costs involved
in co-ownership schemes – the only alternative form of tenure which has developed to any significant extent in Scotland – are extremely high.

(c) Allocation policies in the public sector: The removal of residential qualifications where they exist, and more equitable treatment of single people must be the priorities in this sector. The public sector housing stock at present contains relatively few small units so that, apart from introducing arrangements which would allow a number of single people to share a larger dwelling, councils would have to build more small units or 'municipalise' existing small dwellings in the private sector.

The government, however, appears to favour a leading role for Housing Associations rather than local authorities in this field, a policy highlighted by the recent announcement that the Scottish budget of the Housing Corporation, which provides funds for Registered Housing Associations, has been increased by 70% this year (9). Housing Associations have a flexibility which suits them to providing housing for specialised needs and carrying out area based improvement policies. The emphasis on the rehabilitation of older houses which is the basis of Housing Action Area programmes set up under the Housing (Scotland) Act 1974 is a welcome change from comprehensive redevelopment policies whose disruptive effects on local community life have been belatedly recognised. The involvement of Housing Associations in improvement work does not of course mean that local authorities have no role to play. In Glasgow for instance co-operation between the Housing Corporation, the District Council and community-based housing associations has produced an approach which has been described as "sufficiently innovative to demand UK attention". (10)

11. However, this new emphasis in housing policy on the improvement of older houses has a number of important implications for the private rented sector and those groups who depend on it for their accommodation. For those who are or were private tenants and find themselves renting from a Housing Association an immediate legal consequence is the loss of security of tenure. We see no substantial reason why Housing Association tenants- or tenants renting from Local Authorities or New Town Development Corporations for that matter - should not enjoy security of tenure equivalent to that of protected private tenants at present. We would recommend the extension of Rent Act protection to include tenants of public bodies and housing associations as well as those in the private sector. A second consequence of the improvement
policy is the loss of dwellings which will result from the amalgamation of existing units to provide larger dwellings which contain the basic household amenities. This is likely to increase the difficulty presently experienced by those seeking furnished accommodation to rent. A third consequence is that once improvement has been carried out Registered Rents are likely to rise substantially so that, even with rent phasing and rebates, low income tenants may be excluded from sharing in the benefits of the rehabilitation programme. Finally, there is the question of the change in tenure "mix" which is a consequence of local authority or housing association acquisition of houses for improvement. The Government, it seems, wants to maintain and promote the mix of ownership and other forms of tenure. (11) They propose that authorities and associations should be encouraged to rehabilitate property for sale as well as for rent and observe that some of the intermediate forms of tenure currently being devised may be appropriate to the needs of tenement property. While we recognise that large scale acquisition of tenement property for improvement by housing associations or local authorities may adversely affect some (particularly first time) house buyers by reducing the supply of cheaper flats for sale, we feel that to direct improvement policies too strongly towards the eventual sale of the improved properties could accentuate the present rigidity of the housing market caused by the dominance of the owner occupied and publicly rented sectors. The future development of 'intermediate forms of tenure' could perhaps offset this rigidity to some degree. The questions of access and tenure 'mix' are difficult ones and the answers to them must vary according to the circumstances of local housing markets. The development of comprehensive local, housing plans as envisaged by the Government seems to provide the best method of resolving these issues.

We would hope that the Government will urge local authorities in drawing up these plans to pay particular attention to the housing needs of those who, for one reason or another, find themselves outside the two main categories.

12. The Reform of the Rent Acts: our proposals

In the short term there is a need for better protection for tenants than that which is provided by the present legislation and for new financial arrangements to ensure that the housing stock does not continue to deteriorate. In the following paragraphs we outline the concepts on which we believe the reform of the Rent Acts should be based. We should add that we
think that the new legislation should be embodied in a specifically Scottish statute in order to avoid creating the type of complication which has arisen under the 1974 Rent Act which applied to both England and Scotland.

13. The many different categories of tenant and licensee should be replaced by two kinds of letting: a "tenancy" and an "exempted letting”

This distinction is based on the different uses people make of their accommodation which can be divided into three broad categories. First, there is the use of accommodation on a temporary basis where no formal arrangement is intended by either side - for example where someone puts up a friend or relative for a few days. Secondly, there are cases where formal arrangements exist but there are special circumstances relating to the letting which are understood by both parties - examples are hotel guests, people renting accommodation for a short holiday or staying at a specialised hostel. Thirdly, there is the usual case where people rent their accommodation in return for payment in money or kind and use it as their ordinary home. All forms of residential letting which have a contractual basis should be tenancies unless they are exempted lettings. The tenancy would therefore include most lettings. It would apply irrespective of who the landlord was (covering local authority, New Town and housing association tenants) or the Rateable Value of the premises. It would apply whether or not board or attendance was provided. It would cover tied accommodation and existing licence arrangements (although many of the lettings that are genuine licences under the current legislation would probably qualify as "exempted lettings" under the new) "Rental purchase" arrangements should become tenancies. By amending the grounds for possession allowed by the Rent Acts it should also be possible to treat lettings on long leases and mixed residential and business lettings as tenancies.

Under the new system every letting which is not subject to an exemption certificate must be brought to an end by a proper notice to quit. This notice would give a tenant at least four weeks to quit and it should be issued on an official form and would include advice on harassment and protection from eviction and on sources of advice and aid. We propose that the existing grounds for possession of protected accommodation, with some additions, should form the basis for the grounds for possession of the new "tenancy". The changes
which would result under the new system are further considered at Appendix One (responses to Questions I to IV).

Exemption certificates should be granted, after inspection, by a local authority to landlords who provide accommodation for recognised special purposes (e.g. genuine holiday lettings, hotels, specialised hostels etc.) The certificate should be valid for a period of five years at the end of which time the landlord could apply for renewal. The local authority should keep a register of exempted lettings and should inspect the properties from time to time: in the case of exempted holiday accommodation in areas with a substantial year round tourist presence more frequent inspections would undoubtedly be necessary. The local authority would also have to notify the occupant of the accommodation of their landlord's application for exemption, giving them the opportunity to lodge objections to it. Where a certificate had been granted, the landlord would be obliged to display a copy of it on the premises and in a prominent place. It would be an offence for a landlord not to inform the local authority of a change in use of exempted accommodation. The local authority ought also to have the power to revoke an exemption certificate at any time if it comes to their notice that the circumstances in which certificate was granted have changed. Tenants and landlords should have the right to appeal to the Courts against a local authority's decision on an exemption certificate application or revocation.

We believe that the present system with its myriad categories and exceptions is incomprehensible to tenants (and others) and provides too many loopholes (e.g. spurious licensing arrangements) to be exploited. These proposals would simplify this situation while retaining meaningful distinctions between the functions of different types of accommodation. They would also provide, through the exemption certificate system, an ongoing process of monitoring which would be capable of discovering and checking abuses as they arise.

14. Every tenancy must be accompanied by a standard letting contract. Three copies would be required for the tenant, the landlord and the local authority.

Failure to provide a contract should be a serious offence and a Court should not be able to consider an application for possession unless it has a copy of the letting contract.
contract relating to that tenancy before it. The contract should have two parts: the first would explain briefly the principal rights and responsibilities of landlord and tenant and the second would contain the details relevant to that particular letting and would provide the legal basis of the contract. The task of explaining basic rights would be made much easier by the simplification of the legal structure. Information in the first part should include explanation of:

(i) the right of both tenant and landlord to apply to the Rent Officer to have the rent registered.

(ii) the right to a rent book.

(iii) the availability of rent and rate allowances and rebates.

(iv) the landlord's minimum responsibilities for carrying out repairs, the right to complain to an Environmental Health Officer if repairs are not done and to require the local authority to institute proceedings for repairs and improvements under the Housing Acts.

(v) the tenants right to quiet and peaceful enjoyment

(vi) the explanation of the law on sub-letting.

(vii) that the tenant can only be evicted after a proper notice to quit has been issued and a Court Order obtained; that the landlord must prove the existence of a ground for possession (these should be briefly explained)

(viii) the law on sub-letting

(ix) the law on deposits and the payment of rent in advance; notes on the maximum amount that could be charged and the steps a tenant can take to recover the excess.

(x) the law on gas and electricity charges, explaining that it is an offence to charge above the set rates and explaining how to find out what the current rates are.

15. The second part of the letting contract, the terms of which would be specific to a particular letting, should include information on:
The owner and the landlord's identity; the landlord's right to let (a tenant letting to a sub-tenant would have to say whether or not he is allowed to sub-let).

Copies of any notices issued by the landlord to say that he will require the accommodation back for his own family use or for his retirement; whether the letting is an "out of season" letting of holiday accommodation normally covered by an exemption certificate and so liable to a special ground for possession.

In the case of tied accommodation brief details of the employment to which the accommodation is tied.

The accommodation let: the tenant's right to use shared facilities, the garden, etc. any special conditions of the tenancy.

The rent charged; whether inclusive of rates and whether it is a fair rent. How the rent is to be paid and collected. Where no rent is paid (for example with some tied accommodation) this section would have to be linked with the conditions giving rise to the rent free terms.

Whether the tenant has the right to sub-let

A clear statement of the landlord's and tenant's respective responsibilities for repairs.

Landlord's right of access

Inventory of any furniture provided with a note of its condition.

Details of any services or board provided.

The set rates for gas and electricity charges.

16. A letting contract would let the tenant (and the landlord) know exactly what he could and could not do under the terms of the letting. Unlike a rent book, to which some tenants are at present entitled, all
tenants would have to receive a copy of the contract and the system should become well known and generally understood in a short time. The local authority could compile a register of lettings from the contracts received and this would provide a basic record of privately rented housing which would be of great value to local authorities in assessing local housing needs.

17. Enforcing the Legislation

Local authorities must in our view take an active part in enforcing the new legislation, a role which implies a wider view of their housing responsibilities than they have traditionally taken. However, this is something that local authorities should be undertaking in line with the comprehensive approach to the assessment of housing needs which was advocated by the Scottish-Housing Advisory Committee (12) and is the basis of the new system of housing policy and programme planning which is to come into full operation in Scotland in 1978 – 79. (13). In the urban Districts which contain the bulk of the privately rented stock, this new role would complement the improvement work which is being carried on through Housing Action Area programmes since 1974. It should also be noted that the Housing (Homeless Persons) Act 1977 (which comes into effect in Scotland on 1st April 1978) places new statutory responsibilities on housing authorities to provide accommodation for homeless people who have a priority need as defined by the Act and to provide advice and assistance to the homeless who fall outside these categories. If Councils are to discharge these responsibilities effectively and to avoid excessive pressure on their own resources, they will have to become more actively concerned with the privately rented sector.

18. The role of the Courts

In submissions to the parallel review of the Rent Acts undertaken recently in England and Wales, one idea that was actively canvassed by a number of organisations (including the National Consumer Council and Camden Borough Council) was the creation of a specialised Housing Court to deal with all housing cases and to replace the Rent Assessment Committee and the Rent Tribunal. This proposal was based on case studies of English Courts which highlighted the shortcomings of the present system and the ways in which tenants were placed at a disadvantage by it. (14) Differences in both the
housing market and the legal system between England and Scotland make it obviously unreliable to apply conclusions drawn from the English studies directly to Scotland. However, they do raise questions of a general nature which we believe should be investigated in Scotland to ascertain whether the creation of a specialist court or other changes in the present court system are desirable and necessary. Whatever is decided on this question*, the major issue as we see it is one of ensuring access for tenants to the Courts. There are good grounds for believing that Housing law (on the tenant's side at least) is an area where there is a considerable unmet need for legal advice and representation by tenants who are in many cases unable to pay for it. There are of course Housing Advice Centres, Citizens' Advice Bureaux and other advice agencies to whom tenants can turn for advice on legal matters but as a recent SCC Report (15) concludes:

"advice services in large parts of Scotland are unsatisfactory, particularly in rural areas. Even some large towns which are centres for people in the surrounding areas such as Ayr (population 48,000) lack any substantial advice agency. This illustrates the haphazard way in which the advice network in Scotland has developed". The SCC has put forward proposals for the development of a local advice network in Scotland to which we hope the government will give urgent consideration.

19. Finance

As we have already noted the privately rented sector is at a financial disadvantage as regards tax reliefs and subsidies compared with the major household tenures. It is also financially disadvantaged by the fact that tenants in this sector have, on average, lower incomes than households in the other sectors. There are two aspects of the financial assistance presently given by the government to private sector landlords and tenants that we wish to comment on:

(a) Financial Assistance for landlord's repairs - It is generally recognised that the high annual rates of inflation experienced over the past few years have eroded the real value of repair grants. Grant levels should now be revalued to take account of increased costs and should be kept in line with future increases. The stricter conditions attached to repair grants since 1974 (such as the power of a local authority to

*Footnote: We put forward proposals on the composition and functioning of the Rent Assessment Committee - if it is to be maintained - at Appendix One (Questions XXII - XXIV)
require landlords to continue to let their property for five years) have also contributed to declining take up of the grants available: however, we feel that these conditions are justified in the public interest and should not now be relaxed. The introduction of tax allowances on funds set aside for depreciation as an incentive to landlords to keep their property in good repair should also be considered. The incentives of realistic repair grants and, possibly, tax concessions must be accompanied by effective action by local authorities to ensure that necessary repairs are carried out.

If the various statutory procedures described by the Consultation Paper (Page 13) are to be assimilated, we would propose that the powers conferred on local authorities by the Housing (Scotland) Act 1969 should form the basis of the new consolidated procedure. These enable a local authority to serve a notice requiring the landlord to carry out specified repairs within 21 days and, subject to an appeal to the Sheriff Court, to carry out the work itself if he defaults.

A variable time scale, related to the seriousness or extensiveness of the repair, should be employed in issuing such notices. It should no longer be possible for landlords to exclude the tenant's right to abate his rent if the landlord has failed to meet his responsibilities to repair the property.

(b) Rent Allowances - It is curious that the Review of the Rent Acts makes no mention and contains no discussion of Rent Allowances. It is true that they are not a part of the Rent Acts (they were introduced by the Housing (Financial Provisions) (Scotland) Act 1972): however, their exclusion is symptomatic of a failure to face up to the implications that the generally low level of tenants' incomes (documented in Annex 4 of the Consultation Paper) has for any strategy for maintaining or improving that part of housing stock which is at present privately rented. Any policy which implies higher rents must be accompanied by an effective system of income maintenance to protect those least able to afford them. Means-tested welfare benefits have always faced the problem of failing to reach all those who are entitled to them: rent allowances, however, perform particularly badly in this respect as Table 2 shows (16).

* Footnote: See Appendix One Questions XXVII - XXXV
### Table 2 Take-up Rates: British estimates (1976)

<table>
<thead>
<tr>
<th>Benefit</th>
<th>No. of Claimants</th>
<th>Official Estimate of Take-up % (year of Estimate)</th>
<th>Value of Unclaimed Benefit (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent Rebates (Council Tenants)</td>
<td>955,500</td>
<td>70/75% (1975)</td>
<td>47.4</td>
</tr>
<tr>
<td>Rent Allowance (Unfurnished Tenants)</td>
<td>180,000</td>
<td>30/35%</td>
<td>46.8</td>
</tr>
<tr>
<td>Rent Allowance (Furnished Tenants)</td>
<td>11,000</td>
<td>10% (1974/75)</td>
<td>14.9</td>
</tr>
</tbody>
</table>

If the reforms we have proposed (particularly the introduction of a mandatory letting contract and the creation of a single category of tenancy) are accepted this would ease the difficulties faced by some claimants at present. Allowances should also be kept up with the levels of rent being set by Rent Officers and all tenancies should be brought in to rent regulation. The principles of the Code of Practice* to be applied by Rent Officers in estimating fair rents should also be used in determining entitlement to rent allowances (and to supplementary benefits). More effective publicity campaigns could be organised by local authorities using information which the letting contract system would provide them with. These measures would not solve the general problem of low take-up levels associated with means tests but they should be able to increase the present (unusually low) level of take-up substantially.

* See Appendix One (Questions XVI - XIX)
References:


4. The Review of the Rent Acts (P.8) estimates that there are 70,000 households in tied accommodation: the Shelter Report on Tied Housing in Scotland (July 1976) put the number at around 100,000.

5. The Shelter Report on Tied Housing in Scotland P.6


7. see "Glasgow is 'Mortgage Black spot'" Evening Times 9th June 1977.


9. see "£60M housing aid for Scotland" the Scotsman 20th July 1977.


11. Scottish Housing, A Consultative Document (op.cit) para. 7.39, p.64


13. Scottish Housing A Consultative Document (op.cit) para.5.6, p.44

14. see Marion Cutting "Tenants in the County Court" and Shelter Housing Aid Centre (London) "A Fair Hearing - Possession Hearings in the County Court".

15. "Let the People Know" a Report on local advice services in Scotland, P.64 (Scottish Consumer Council September 1977)

16. "Means Tested Benefits" A National Consumer Council discussion paper, 1976 (Table 4 and Appendix Three)
APPENDIX ONE

Responses to the Consultation Paper's Questionnaire

Questions I and II. Security of Tenure

1. SCC supports (1) the simplification of the present legislation.
   (2) the creation of a standard category of tenancy with full security of tenure
   (3) an exemption certificate system (administered by local authorities) to cover bona fide cases where full security should not apply
   (4) strict monitoring of the exemption certificate system to prevent abuses and loopholes.

Questions III, IV, V. Basic Security

We believe that tenants should be able to seek reistate: ment as well as compensation in cases of harassment or illegal eviction. Penalties for harassment and illegal eviction should be commensurate with the potential financial gain for unscrupulous landlords. 'Harassment' by tenants may indeed exist but it can already be dealt with at law by:

(i) An Action for possession by the landlord on grounds of nuisance.

(ii) Existing civil or criminal law remedies.

There should therefore be no extension of the provisions to cover harassment by tenants.

Questions VI and VII. Restricted Security

If our proposals for simplifying the Rent Acts are adopted, the Rent Tribunal in its present form would disappear as a consequence. Resident landlords, if they share essential living accommodation with a tenant, should be able to obtain an immediate possession order from a Court if they can prove the existence of a ground for possession under the Rent Acts: if they cannot prove such a ground they should still be able to obtain possession subject to a discretionary period of suspension imposed by the Court. If essential living accommodation is shared by landlord and tenant, a landlord should also be able to obtain immediate possession if he can show the Court that he will suffer considerable hardship if he cannot do so. The exemption of single lettings by resident landlords from security of tenure might attract accommodation, which would not otherwise be available, on to the market; however, by creating a loophole in the security of tenure legislation it might also induce other landlords to deliberately keep property vacant, thereby avoiding the creation of multiple lettings all of which would enjoy security of tenure. We believe that the best way of tackling the special circumstances which may arise in the case of a resident landlord is by way
of amendment to the grounds for possession under the Rent Acts as proposed above.

Questions VIII and IX Full Security

The creation of further grounds for possession to cover the letting of mixed business and residential accommodation or the out of season letting of bona fide holiday accommodation or tied accommodation (see below) would be reasonable in the context of the reforms we have proposed.

Questions X and XI Leasing by local authorities and housing associations

This seems to us to be merely a device to avoid granting the tenant security of tenure. The SCC has argued in its discussion paper "Tenancy Agreements in Scotland" that public sector tenants should enjoy security of tenure equivalent to that of protected private tenants at present and we see no reason why these same arguments should not apply to Housing Association tenants as well. We are not in favour of such leasing arrangements unless the authorities or associations undertake to rehouse the tenants in suitable accommodation at the end of the letting. It is also difficult to see this arrangement leading to a greatly increased supply of accommodation since presumably owners who wish to recover vacant possession at a favourable moment for sale would be excluded from it. Those with bona fide reasons for obtaining vacant possession could already do so under the grounds for possession recognised by the Rent Acts. The extension of these grounds for possession to cover short life property could achieve the desired result of more flexible use of housing stock without breaching the principle of security of tenure.

Question XII Tied Accommodation

Tenants in tied accommodation should enjoy security of tenure equivalent to that of other tenants but an employer should have grounds for possession if he can show that the accommodation is genuinely needed for another employee, that it is in the interests of 'good work performance' that he should replace one employee by another and that he cannot provide suitable alternative accommodation. In this case the local authority should have a duty to provide such accommodation. This is the approach adopted in relation to agricultural tied cottages in England by the Rent (Agriculture) Act 1976. This new ground would have the effect of separating a person's role of tenant from his role of worker. An unsatisfactory tenant could be removed in the normal way by proving that a ground for possession existed under the Rent Acts/...
but an inadequate worker would not lose his right to accommodation along with his job. It should be noted that although the government is committed to bringing in legislation on farm workers' cottages in Scotland, they resisted attempts to extend the Rent (Agriculture) Act 1976 to include Scotland and have yet to bring forward any concrete proposals for reform. We believe that this could be done as part of the comprehensive reform we have proposed.

**Question XIII Rateable Value Limits**

Protection should be extended to all dwellings in the privately rented sector - if only for the sake of comprehensiveness and simplification.

**Question XIV 'Illegal' tenants and sub-tenants**

We think that the introduction of a **mandatory letting contract** (see Para.14) for all tenancies is a reform which would help to alleviate the ignorance and confusion which often underlies disputes about sub-letting. A landlord should still have the right to forbid sub-letting without his permission but not to forbid it absolutely. The Tenant should have the right to appeal to the Courts if he feels that such consent has been unreasonably withheld. This should be clearly explained in all letting contracts.

Unlawful sub-letting should cease to be a ground for possession against the tenant. If problems were being caused by such sub-letting the landlord would still be able to apply for possession on other recognised grounds (e.g. overcrowding).

A sub-tenant should have a normal landlord/tenant relationship with the tenant. The sub-tenant must be given a letting contract which would have to state whether or not the tenant was entitled to sub-let. If this were omitted or the position was wrongly stated, and the sub-tenant was subsequently evicted by the head landlord, he should be entitled to bring an action for damages against the tenant.

An unlawful sub-tenant, remaining in the accommodation after the tenant has left, should have only limited protection against the head landlord. The landlord should have to issue him a proper notice to quit and could then obtain possession under a new ground if the Court found it reasonable to grant the order. The sub-tenant would then be able to retain his accommodation if he could show that the landlord's refusal to allow sub-letting was unreasonable or, if the landlord had not been told of the sub-letting by the tenant, that it would nevertheless be reasonable for the landlord to allow him to stay.

/...
A lawful sub-tenant, remaining in the accommodation after the tenant has left should become the tenant directly of the head landlord and enjoy normal protection in relation to him. The head landlord would then be able to evict a lawful sub-tenant if he could prove that one of the grounds for possession existed against him.

Protection should be extended to the 'illegal' tenant of a mortgagor (where the mortgagees forecloses on the mortgage) in the following way. The mortgagee should be obliged to sell the house tenanted rather than with vacant possession where there is sufficient equity from the sale of the property tenanted to cover the outstanding mortgage and any tenant in the house would then have the right to remain there. When it appears that there will not be sufficient equity if the property is sold tenanted, the tenant would lose his right to stay but would be entitled to sue his landlord for damages and any sum awarded in Court should be registered as a charge on the money realised from the sale of the property with vacant possession.

Questions XVI, XVII, XVIII, XIX  Fair Rents

The broad principles of the fair rent system should be retained but the level of council rents in the District should be one of the factors taken into account by Rent Officers - to prevent the element of scarcity creeping into assessments (XVI). Actual costs incurred in providing the accommodation should not be specifically taken into account in the rent-fixing process (rent officers do, of course, already set systematically higher rents for property which is well maintained or has been improved). Incentives to good repair should be provided through changes in the tax system, better improvement grants and greater enforcement of local authority powers regarding repairs. It is wrong to make tenants with low incomes and poor housing conditions bear these costs: the worst conditions and lowest incomes are in the unfurnished sector (XVII). The distinction between reasonable rents and fair rents would disappear with the creation of a standard category of tenancy. (XVIII)

There should be a code of practice for rent officers in assessing fair rents. Capital values should not be a point of reference: the amenity of an area should be a subsidiary factor; depreciation allowances for furniture should be realistic; local council rents should be taken into account (XIX)
Questions XX and XXI  Controlled Rents

Controlled rents should be phased out (these are tenancies which date from before 6th July 1957 and where the rateable value on 27th August 1972 was under £25). Rents here are usually very low and repair and amenities are very poor. However, as the SDD note "Where repairs or improvement are carried out 12½% of the net cost to the landlord can be added to the annual rent. Such increases are not phased. These cost-linked increases can sometimes result in large rises in the rent where the repairs or improvements are substantial, but in general they do little to encourage or reward the landlord who is expected to maintain the property in good repair".

Decontrol poses problems because of the age and low incomes of the tenants involved (less than 5,000 in Scotland). The best approach might be:

(i) Decontrol to be carried out over a limited period.
(ii) Fair rents for all controlled tenancies to be fixed by rent officers. All cases to be referred automatically to local authorities.
(iii) Local authorities to be obliged to inform and aid tenants to obtain rent allowances for which they may be eligible.
(iv) Environmental Health Department to inspect all properties. If a landlord is unable to provide repair or a tenant is dissatisfied with the arrangements offered, the local authority should be obliged to rehouse the tenant or buy the property using compulsory powers if necessary.
(v) Tenants to be able to have their rents fixed by rent officers in advance of decontrol in order to protect them from rent increases passed on under the 12½% rule.
(vi) Unfit property or property scheduled for clearance should not be decontrolled.

Questions XXII, XXIII, XXIV The Administration of Rent Regulations

There should be an appeal from the Rent Officer's decision. Serious consideration should be given to the establishment of a specialist Housing Court (see above Para.19). If such a Court was established it would replace the present Rent Assessment Committee. If a Housing Court is not established we would urge:

(i) stronger Consumer Representation on the Rent Assessment Committee - the present committee seems to us to be loaded in favour of the landlord.
(ii) a common basis of assessment for fair rents (see above).

(iii) much greater availability of advice and representation to tenants at the Committee's hearings (XXIII)

New evidence should not be admissible at the appeal stage nor should an applicant have a right to appeal when the rent registered is the same as that applied for (XXIV). Rent officers should have the power to vary their decisions within 28 days if a material omission or error of fact is brought to their notice (XXIV)

Question XXV The Role of the Rent Tribunal

If the proposals put forward under Security of Tenure were implemented the function of the Rent Tribunal would disappear. The power to suspend a possession order granted to a resident landlord in certain circumstances (see Questions VI and VII Restricted Security) would be vested in the Courts.

Question XXVI Premiums

While recognising the practical difficulties of enforcing legislation against the charging of premiums (particularly where accommodation is scarce) we are opposed in principle to allowing such charges to be made. More publicity should be given (and it should be clearly pointed out in the letting contract) to the local authority's power to inspect furniture and fittings if they have reasonable grounds for suspecting that an exorbitant price is being asked for fixtures and fittings. This power would be extended to cover all lettings (not simply protected tenancies as at present).

Questions XXVII - XXXV Repairs and Improvements

The right policy is one which will combine genuine incentives to carry out repairs and improvements with effective enforcement of sanctions if this is not done.

We recommend:

(i) More intervention/monitoring by local authorities who should have a duty to carry out work in cases of default by landlords and to recover the costs later.

(ii) Realistic grants and tax concessions for landlords (e.g. the introduction of depreciation allowances on their property) to encourage them to carry out the work first.
(iii) Tenants should be able to initiate proceedings to have work done. They should also receive, by right, copies of any notices served on the landlords of their dwellings by the local authority.

Question XXXVI Sinking Funds for Repairs

It would be more effective and easier to administer if landlords were allowed to claim tax relief on funds set aside for depreciation.

Question XXXVII Landlords Co-operatives and Equity Sharing

**Landlords Co-operatives:** This idea seems to have a number of advantages but it is doubtful whether landlords with less expenditure and more income would be willing to participate in such schemes.

**Equity Sharing:** This would undoubtedly spread costs but one doubts whether the benefits of such a scheme would be sufficiently attractive to tenants to offset their higher outgoings. Low incomes among tenants in unfurnished accommodation is a further problem with such a proposal.

Questions XXXVIII and XXXIX Publicity and Information

1. Simplified legislation would help greatly.
2. So too, would a mandatory letting contract containing information on the rights of both parties for every tenancy.
3. Our views have already been published on the need for greater availability of, and access to, advice agencies. (see "Let the People Know" a report on Local Advice Services in Scotland, September 1977)
4. Local authorities should play a more positive and active role in publicising and enforcing the legislation.