

# LET SCOTLAND

## WRITTEN SUBMISSION

We thank the Parliament for this opportunity to comment on aspects of the Housing (Scotland) Bill relevant to the private rented sector (PRS) housing and letting agents in particular. We set out some observations on the questions provided with some additional comment in conclusion.

**LetScotland's ambition** is as described on our website:

*LetScotland – the Association of Professional Letting Agents in Scotland*, believes that the private rented sector plays a crucial role in Scotland's housing provision. As is the case with home ownership and public rental, private rental can be an affordable, enduring and attractive housing option in Scotland as it is in many other countries. Our shared aim as letting agents is to support and enable the long term growth of the private rented sector.

LetScotland would wish to comment on the following sections of the Housing (Scotland) Bill:

- Part 3 – Private Rented Housing; and
- Part 4 – Letting Agents.

### **Part 3: Private Rented Housing**

This part provides for the transfer of the sheriff's existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular, it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are to be given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

#### ***Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?***

LetScotland generally welcomes these proposals, subject to it remaining focussed on and achieving what is intended - the need is for the system to be more responsive and for decisions to be delivered more quickly. We believe the Tribunal will need to be well-resourced with a panel made up of suitable people experienced in the PRS. We are of the view that if tenants were empowered with better knowledge about their rights and responsibilities there would be a diminished number of cases resulting in hearings at the tribunal.

#### ***Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?***

The intention here is a welcome one. Most landlords will wish to invest in improving their property – LetScotland believes that an approach focussed on encouragement rather than enforcement will probably always be more effective. Again, empowering tenants with knowledge about how their circumstances may ease the release of grant money to carry out improvements would add value to this process and assist with what is frequently a cumbersome process for landlords and tenants.

**Q9. Do you have any comments on the Scottish Government's intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?**

As part of our core mission, LetScotland wants to advance the case for a successful PRS, and a key part of that objective has to be improving conditions in the PRS housing stock. So, we concur with the Scottish Government's ambition to improve housing stock generally. However, to achieve that goal, any new powers introduced must be enforceable across all tenures. Further, they must provide for effective prioritisation, focussing on areas or sectors most in need rather than those properties which may be more easily identified but ultimately less urgent.

**Part 4: Letting Agents**

This part of the Housing Bill establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

**Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?**

LetScotland supports the creation of a register of letting agents.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code.

Registration should include:

- an annual renewal (not every 3 years)
- a legally binding commitment each year to possessing:
  - adequate professional indemnity insurance
  - appropriate client money protection
  - a ring-fenced client money bank account
  - an annual audit of client accounts
  - membership of an ombudsman scheme to ensure an easily available redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a requirement for the agent to produce annual documentation to confirm the above. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.

**Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?**

See the above comment about ombudsman services in response to Question 10; under these schemes redress is readily available to customers of such organisations at no cost to the claimant.

**Additional comment**

The more one looks at the regulation of landlords, letting agents and the processes they employ to provide good quality housing stock, the more apparent it becomes to LetScotland that tenants are not, generally, as well-resourced as all the other stakeholders.

The whole process of providing housing is one in which housing providers and their support suppliers need to be qualified: landlords are registered, letting and managing agents will be, and housing associations are well regulated. The support services all these businesses use (such as electricians, gas fitters, fire safety testers, EPC providers) are all qualified and certificate their work.

As any new tenant enters the market place, the initial experience may involve searching for a property in their desired location, then initiating a process about which they may have little knowledge or experience. The principle way in which tenants learn about the process of renting a property usually comes from their first contact with a letting agent or landlord. There are various websites to support tenants once they are in residence, but there is little support for would-be tenants prior to that first interaction with a letting agent or landlord or a friend.

All tenants will eventually “register” in the process of occupying property and paying council tax, up till then they have no real identity to the letting industry in the private rented sector in particular.

It has been suggested that in many areas of the PRS, it is difficult to identify a complete listing of all the letting agents and landlords operating in Scotland.

Tenants seeking accommodation from the Council and Housing Associations in the Edinburgh area can access Edindex. This is operated by the City of Edinburgh Council and participating registered social landlords (RSLs - housing associations/partnerships and cooperatives) as a means of enabling tenants to identify and access properties. Edindex can be accessed via the council’s web site or <http://keytochoice.scotsman.com/>.

Whilst we do not necessarily support Edindex’s weighty 15-page application process, it is interesting to note that the first two pages focus on the applicant’s name, UK residency status, and immigration status. Applicants are given a “reference number” to enable them to proceed with applications for property.

The establishment of a Scottish Tenants Association or similar subscription scheme could offer tenants reassurance and empowerment by providing access to information and services such as access to certificates of identity and accredited registered landlords and letting agents.

This would act both as a cross-check against the owner of the property, the property itself and any manager involved. It could also be developed to ensure that all tenants were equipped with suitable ID, such as a UK National Insurance numbers and that they have passed any required tests such as the immigration exam used in the Edindex process.

It is generally acknowledged as inappropriate for landlords and letting agents to perform the duties of the UK Border Agency.

The Renting Scotland website is another good example of what this scheme's website or organisation might look like - <https://rentingscotland.org/>. This is an extremely well-designed, online resource.

If the scheme was to be managed by the Scottish Government and included a membership/reference process for tenants to provide a tenant ID, then the whole system of landlord, letting agent, property, local authority would be cross-referenced. We would suggest it be funded by the Scottish Government and operated by a management board made up of current and new stakeholders, with no one particular member having more control or influence than another.

## **Tenure reform**

Whilst we appreciate this is not part of the current legislative process, the prospect of tenure reform has been alluded to previously and is constantly being referred to in other discussion groups and arenas. LetScotland believes that the necessity for tenure reform will potentially diminish with the implementation of the detail of the Housing Bill

If there is continuing uncertainty on future tenure reform, many institutional investors will wait until that hesitation is removed before making final investment decisions. This could have a significant and detrimental effect on housing supply.

Our membership is predominantly urban letting agents and managers all of whom use the short assured tenancy (SAT) as the norm.

Most agents and landlords will offer a lease length between 6 and 12 months to a new applicant – however, it is usually the tenant that will opt for the shorter term. The tenant wants to get to know the letting support they will receive once they move in and want to be sure that they are happy in their new community. Thereafter, the letting will normally continue on an appropriate legal basis to suit both sides.

Most landlords and letting agents will relate many examples of tenancies which have lasted for years - until such time normally when the tenant says they want to move on. The experience in the industry is that students, migrant workers, and many others do not seek or require long leases.

Member firms variously inform us of that landlord terminations of leases equate with around one to ten percent of all lease terminations. The reasons for doing-so are split broadly evenly between properties being put on the market for sale; tenancy problems; or where a landlord intended reoccupation.

The empowerment of tenants in their rights and responsibilities will strengthen their resource to deal with their landlords over matters which may currently lead them to accept poor service or standards. This should be changed as required within the Housing Bill. If tenure reform is to be considered we would advocate a new form of lease to reflect the benefits of the Scottish Secure Tenancy (SST) as used by RSLs and adapt it for use in the private sector. We would strongly recommend that any new lease option should be created in such a way that the PRS wants to use it, although is not compelled to do so.

LetScotland would recommend retention of the existing SAT.

## **Conclusion**

The reason for raising this latter point is that the new register of letting agents must take into account the constantly changing nature of the industry; the diversity of the property, the investor and the tenant.

Long-term investment by private landlords is very similar to pension fund investment in housing, requiring professional management to provide a return to the investor and the financing commitments involved. The housing market cannot afford the further delays that might ensue if the Housing Bill is distracted by potential reform of tenure.

Through the Landlord Registration Scheme and the requirement for extensive paperwork and certification in running an investment property both the private investor and the institutional investor are going to look to the professional manager to carry out these duties for them. We see this happening already; any and all measures taken now need to have the foresight to cater for a substantially larger professionally managed PRS in the future.

For the future, a strong and successful PRS requires:

- flexibility in tenure over a wide range of types of tenants;
- security for both landlord and tenant;
- provision of quality housing with efficient services from the property managers; and
- a financial environment in which investors will wish to supply the housing stock needed.

We believe the Housing (Scotland) Bill is a significant opportunity to build on recent success for the private renting sector in Scotland.

**LET SCOTLAND**

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