

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Crisis

Crisis has first-hand experience of working to help people into the private rented sector in Scotland. We work with local authorities across Scotland to improve access to the private rented sector (PRS) for vulnerable people and those on low incomes, including acting as the National Co-ordinator for Rent Deposit Guarantee Schemes¹ in Scotland on behalf of the Scottish Government.

The PRS has grown significantly in Scotland over the past few decades and is increasingly used to meet housing demand and provide long term homes for a growing range of households.

Through our experience, we know that the PRS can be a viable housing option, even for vulnerable people, with the right support and safeguards in place. At present, however, there are serious problems: the sector is not fit for purpose and there are long-standing issues around security, affordability, conditions and access.

Context and summary

Research by Crisis and Shelter on the experiences of people moving out of homelessness into the private rented sector² found that housing security is a key concern. People wanted somewhere they could settle and stay long term, enabling them to plan ahead and make positive changes in their life. Our research also showed that tenants are reluctant to report a problem or request maintenance work out of fear that they would be evicted and be unable to access another property.

Therefore we strongly welcome the Bill. The provisions have the potential to significantly enhance security of tenure for tenants and put in place measures to protect tenants from excessive rent increases. We have worked constructively with Scottish Government through the process of developing the process and believe that overall they will create a major improvement in the operation of the private rented sector in Scotland.

The proposals should create a simpler and fairer system for both tenants and landlords, including through a model tenancy agreement, clearer rules around notices and defined grounds for eviction. The removal of no-fault eviction and introduction of indefinite tenancies is particularly to be welcomed, will end any possibility of retaliatory evictions, and will facilitate the most secure private tenancies in the UK.

¹ Rent deposit guarantee schemes are run by local authorities or third sector organisations and offer tenants help with a deposit and more general support with accessing the private rented sector.

² Crisis, Shelter (2014) A roof over my head: the final report of the Sustain project, a longitudinal study of housing outcomes and wellbeing in private rented accommodation

We also highlight some concerns around the Bill. These are primarily around how the new regime will operate in practice, rather than with the principles themselves. Key points include:

- The importance of eviction grounds being thoroughly developed and clear so that landlords and tenants are clear how they are to be used and no loopholes are created.
- Making sure that penalties for wrongful eviction are appropriate, particularly where a landlord has wilfully misled tenants and the tribunal.
- That the effectiveness of Rent Pressure Zones will be dependent on the simultaneous measures to address housing affordability.

Role of First Tier Tribunal

The First Tier Tribunal has a crucial role in the operation of the new system. However, as the Tribunal has not yet been set up and its rules of operation are still to be agreed, we do not yet know how it will work, how accessible it will be, what the cost (if any) will be for using the tribunal, how quickly hearings will be arranged following an application and how decisions will be enforced. We believe that the Tribunal should be free to access for tenants.

It should be a principle of the operation of this legislation that an application to the First Tier Tribunal is a last resort. It must not be left to tenants to police the system and ensure compliance with the law by taking cases to tribunal. This is especially important for tenants who may not have the financial or personal resources to take a challenge further. Primary and secondary legislation and accompanying guidance should have sufficient clarity, for example around the ending of a tenancy, that tenants, landlords and their representatives are clear what evidence would provide acceptable proof of meeting the grounds, and do not need to go to tribunal to resolve issues.

Provisions

Parts 1-3: Private residential tenancy

We welcome the development of a new model tenancy containing statutory and non-statutory clauses. A standardised tenancy with some flexibility will give increased clarity and transparency for tenants, landlords and people working to support them, such as housing advice workers. Very little detail of this is contained in the Bill and more will be required. For example we would expect there to be a requirement for a tenancy to set out a start date and the amount of rent due.

Initial tenancy period

On balance we believe that the initial six month period of the tenancy where neither party can give notice, except for rent arrears or anti-social behaviour, is useful to both parties. Tenants and landlords can agree a shorter period if they wish. As set out in the policy memorandum, a landlord should be able to gain possession during that time where the tenant is at fault (rent arrears, antisocial behaviour etc). We do not agree that the landlord should be able to gain possession to sell their home in the initial six month period.

Part 4: Rent restrictions

We strongly welcome the restriction of the frequency of increasing rents (paragraph 17). A maximum of one rent increase a year with three months' notice will increase certainty for tenants and enable them to budget more effectively.

Challenging rent increases

It is important that tenants continue to be able to refer rent increases to a rent officer (paragraph 20) and, if necessary, subsequently to the First Tier Tribunal (paragraph 23). This process needs to be accessible to tenants, particularly more vulnerable tenants. In some cases it will be appropriate for someone other than an individual tenant to refer a rent-increase notice to a rent officer (paragraph 20), for example, where a caseworker or other professional is acting on behalf of a tenant.

Fees for referring a rent increase to the rent officer must be set (paragraph 20 (4b)). Tenants on low incomes will be disproportionately affected by rent increases, and any fee must not have the effect of making this power less accessible to tenants who may already be struggling to meet their rent. Tenants should also have sufficient time to refer to a rent officer. The current time period seems short, at only 21 days (paragraph 20 (4d)). A longer period of at least a month would ensure tenants have full opportunity to consider and respond to the rent increase, including taking advice from an external agency if appropriate.

Liability for over or under paid rent (paragraph 26)

While it is important that the landlord can receive any rent due quickly following a dispute about a rent increase, this should not be done in such a way that the tenancy is put at risk. As drafted, if a dispute about a rent increase notice is decided after the date specified in a rent increase notice, and a rent officer or tribunal determines that the tenant has underpaid rent during that period, the tenant would immediately be liable to pay the full balance within 28 days (paragraph 26(5)).

If the rent officer or tribunal's decision takes several months and the tenant cannot pay the full difference between the old and new rent within 28 days, then the tenant would be at risk of eviction for rent arrears under schedule 3, paragraph 11. The rent officer and tribunal should be given discretion to allow payment over a longer period where arrears accrued during this process are substantial.

Rent pressure zones (chapter 3)

Crisis welcomes the intention to limit rent increases in areas where this is particular problem.

In our responses to the Scottish Government's consultations on the proposals, we recommended all in-tenancy rent increases be limited through a mechanism incorporating CPI and inflation. The mechanism proposed for Rent Pressure Zones in the Bill for a therefore seems an appropriate compromise which is able to reflect local circumstances.

One of the main challenges with rent controls are unintended consequences. Much more detail will be needed on how the scheme might operate in practice. The second consultation on the proposals stated that this would be a short-term measure “to make time for other measure in the mid-to-longer term, to improve the affordability of housing”³. When making an application to use these powers, local authorities will need to set out what other steps they intend to take to address housing affordability during the operation of the Zone. Without these measures, there is a significant risk that at the end of the period of the Rent Pressure Zone rents for existing tenancies will increase to match the open market rents for new tenancies (which will not be regulated during the operation of the Zone).

Paragraph 31(2) allows landlords to make reasonable charges to tenants for improvements to the property during the operation of the Zone. It is not clear if the intention is that these charges would be incorporated through rent increases, and how these would need to be evidenced and, where necessary, challenged. We recognise the importance of supporting landlords to maintain improve their properties but this must be done in such a way that tenants do not feel that raising a concern about poor conditions could lead to a rent increase.

Paragraph 33(2) sets out the evidence requirements for making a case for Rent Pressure Zone. These will need further definition during the passage of the Bill.

Part 5: Termination

Crisis strongly welcomes the increased security of tenure for tenants introduced by this part of the Bill, both through setting out specific grounds for eviction and through the specified notice periods. These will have the effect of trebling the length of notice most tenants will receive from their landlord, if the eviction is through no fault of their own.

We strongly welcome the provision in paragraph 46 that a landlord cannot make an application to the Tribunal for an eviction order without giving notice to the local authority. This will enable local authorities to be proactive about preventing homelessness for tenants in this situation.

Wrongful termination order and associated penalty (paragraph 49)

We welcome that a tenant will be able to challenge the landlord through the tribunal where they believe they have been wrongfully evicted. The effectiveness and accessibility of this measure is critical to the success of these provisions in improving security of tenure.

The penalty set out at paragraph 49(3b) is a maximum of three months’ rent to be awarded to the tenant. This is the same penalty as for failure to provide specified information (paragraph 14(2)). Based on average Scottish rents, this would equate

³ Scottish Government (2015) Second consultation on a new tenancy for the private sector, p34

to a maximum penalty of just under £1800 for a wrongful eviction from a two bedroom property⁴.

Yet the impact of an eviction on a tenant is very substantial. They are likely to face moving costs, a possible rent increase in moving to a new property, gathering a new deposit before they have had their previous deposit returned, in addition to all the emotional costs of losing their home. If the tenants become homeless as a result of the eviction, the local authority may incur substantial costs dealing with the tenants' homelessness and it seems reasonable that the landlord be liable for some or all of these costs.

Under the tenancy deposit regulations a sheriff can award up to three times the deposit. Where a landlord takes a deposit of 6 weeks' rent, this may amount to more than three months' rent proposed here. Under the Irish system, the Private Residential Tenancies Board can award damages of up to 20,000 euros in certain circumstances⁵. Under current arrangements where someone has misled the Sherriff's Court, they may be arrested for contempt of court.

We therefore do not believe that the maximum penalty is sufficient, either as an award to a tenant for a wrongful eviction, or as a deterrent to prevent people from wrongfully evicting or misleading the tribunal into issuing an eviction order.

Notice to Leave (paragraph 52)

It will be important for Notice to Leave to be clear and contain all the relevant information. More detail will be needed about the contents and how they are issued. For example, it should be specified that Notices to Leave should be issued to all adult residents of the household, and that in some circumstances a pre-action notification must be issued. We would also strongly support the suggestion in the previous consultation that the Notice to Leave should signpost to relevant advice around housing and where appropriate budgeting support.

Part 6: Death of tenant

We welcome the additional security this provision gives to the partner of a sole tenant on their death. The death of a partner is traumatic enough without the additional stress of losing your home as a result. We would like to see this extended to all people who have been occupying the property as their principal home prior to the main tenant's death, such as adult children or the tenant's sibling.

⁴ Scottish Government (2014) Private sector rent statistics, Scotland (2010-2014)
<http://www.gov.scot/Resource/0046/00463199.pdf>

⁵ Department of the Environment, Heritage and Local Government (no date) Residential Tenancies Act 2004: A quick guide
<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,1996.en.pdf>

Schedules

Tenancies which are not private residential tenancies (Schedule 1)

Further definition is required on some of the definitions, in particular the definition of a holiday let. We are aware of cases where a holiday let provision has been used to avoid meeting statutory requirements for vulnerable tenants.

Schedule 2, paragraph 3 requires tenants to inform the landlord of anyone over the age of 16 residing in the property. It will be important to make tenants aware of this clause, particularly where there are children in the household approaching this age. We would be deeply concerned if a failure to inform the landlord when a child reached their 16th birthday could result in the issuing of a Notice to Leave.

Eviction grounds (Schedule 3)

As discussed, Crisis warmly welcomes that eviction grounds will now be specified in legislation, as this has the potential to give tenants much more security of tenure. How these grounds operate in practice will be critical, and so legislation, regulations and guidance need to be clear about the requirements and evidence needed to support an eviction ground at both the Tribunal and Notice to Leave stages of eviction. Loose or unclear drafting or evidence requirements could create loopholes which undermine tenants' rights to retain their home. For example, as currently drafted:

- For example under the Breach to Tenancy Agreement (ground 10) a landlord could issue a Notice To Leave following the breach of a very minor term of the tenancy, such as using blu-tac or not washing windows for a month
- In particular, the ground on abandonment (ground 9) is not fit for purpose as currently drafted. It is not necessarily a requirement of a tenancy that the tenant occupies the property as their primary home, and abandonment should have some specified criteria such as a timescale.
- Ground 11 on eviction due to rent arrears, it is not clear whether the mandatory ground for eviction (11(2)) requires just one, or all three, of the criteria to be met for a mandatory eviction. We welcome the recognition that problems with benefits should be excluded as a factor during evictions decisions.
- The new eviction ground 14 means a tenant would be evicted if a landlord ceases to be registered with the local authority. We do not believe that a tenant should lose their home due to a landlord's failure to register or meet registration requirements (currently in these circumstances a landlord would forfeit rent as tenants could obtain a rent penalty order).
- The eviction grounds for subtenants (listed in paragraph 37) are worded more loosely than as set out in schedule 3

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About Crisis

Crisis is the national charity for single homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help people to transform their lives.

As well as delivering services, we are determined campaigners, working to prevent people from becoming homeless and advocating solutions informed by research and our direct experience. We work with politicians, policy makers and the Scottish and Westminster governments to bring about change and share good practice, using expertise from working with single homeless people and our understanding of the issues they face to shape policy and practice.

Crisis has ambitious plans for the future and we are committed to help more people in more places across the UK. We know we won't end homelessness overnight or on our own but we take a lead, collaborate with others and, together, make change happen.

Crisis
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