

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

NUS Scotland

NUS Scotland welcomes the Scottish Government's decision to reform and further regulate the Private Rented Sector (PRS). This sector has grown substantially over the past few years, and private rented accommodation now provides a long term home for an increasing number of people. Students and young people make up a large proportion of those living in the private rented sector - over half (57%) of the tenants in the private rented sector are between the ages of 16 and 34, and this number is growing (*Scottish Household Survey 2012*). Thus, a sector that provides security, flexibility and affordable homes is highly important for NUS Scotland's student membership.

Introduction and summary

NUS Scotland welcomes this opportunity to provide written evidence as part of the committee's scrutiny. We strongly support the creation of a streamlined, simplified and clarified private residential tenancy, and welcome the recognition by the Government to the need for more flexibility and security of tenure for tenants in the private rented sector. We believe that in order to ensure that the new proposed tenancy will provide enough rights, security and affordability for tenants, legislation must ensure that:

1. Rent is controlled within and between tenancies, linked to cost of living and quality of housing.
2. The no-fault ground for repossession is removed
3. The grounds for removal can be appealed by tenants and are clearly defined in legislation
4. Tenancies will roll-over on a monthly basis
5. The notice to quit period for tenants will be one rental month

The case for rent controls

According to figures from HomeLet¹, rents in Scotland have risen by 11.7% in the past year, faster than anywhere else in the United Kingdom. Our members live on some of the lowest incomes in the country, and costs have increased hugely in some regions in particular. For example in Aberdeen, where two universities and a large college attract thousands of students, rent for four bedroom properties has risen by 65.8% over the past four years². With student support levels and pay levels stagnating, the situation for students and other private rented sector tenants on low or average incomes living in many areas is unsustainable, and the extremely high rental prices indicate that the market is not fit to provide rented accommodation for all those who need it.

Aberdeen, Edinburgh and Glasgow are among the locations with the highest rent levels in Scotland, but also the highest student populations in the country. In order to access education in these areas, students in Scotland must be able to afford the

¹ <http://homelet.co.uk/assets/documents/1892-Nov-HRI-FINAL.pdf>

² <http://www.scotland.gov.uk/Publications/2014/11/2313/10>

living costs. We believe that in order to ensure that our members and other private rented sector tenants can afford to live, study and work, rent levels in the private rented sector must be brought down to an affordable level.

While the measures proposed in the Bill are a welcome step, and a clear indication from the Scottish Government that high rents are a serious issue requiring legislative action, we have concerns that the proposals do not go far enough, nor do they take account of historical, above inflation increases in rent. The ultimate solution to high rent prices is to increase the provision of social housing, and other affordable housing in the rented sector, opening up affordable housing to all. However, we urge the Scottish Government and Parliament to use this Bill to implement policies that control rents to ensure that rent levels in the PRS do not rise to an unaffordable level taking into account two main principles:

1. Rent levels are regulated according to the dynamics of the local market
2. Rent increases are controlled both within existing tenancies and between tenancies. This would ensure those in shorter tenancies would also benefit from rent controls.

Rent controls within and between tenancies

NUS Scotland believes a rent control model for Scotland should ensure that rent levels are not just controlled for existing tenants, but also in between tenancies. The model of rent controls proposed only controls rent increases within existing tenancies. However, while this would provide *certainty* over rent levels, it would not necessarily control *affordability* of rent levels. While NUS Scotland is supportive of the predictability of rent increases this model would provide, such a model might encourage landlords to pre-empt inflation and changes in the market by raising rent substantially between tenancies. This could be particularly problematic for tenants who tend to live in a property for shorter periods of time, as rent levels for the part of the sector that caters to them might be raised faster than for properties where tenants stay for longer time periods. Thus, rent controls should be linked to a tenancy *and* property.

We believe that notice of rent increases within a tenancy should be no less than 16 weeks. We need to make sure that tenants have adequate time to prepare for rent increases. We also believe rent reviews should be limited to no more than once every 18 months. Tenants should have security in the knowledge that their rent cannot go up at any given moment, as many people in the PRS cannot rely on their wages increasing annually. We believe a limit of 18 months is an appropriate compromise.

NUS Scotland also has concerns that limiting rent increases to below Consumer Price Index (CPI) within existing tenancies would not be sufficient to tackle the already high level of rent prices, and may even encourage some landlords to 'hike up' rents to level with CPI increases. Furthermore, we would like to question whether CPI is the right indicator to measure the affordability of rent, as it does not take into account tenants' income levels.

Rent pressure zones

As mentioned above, rapidly rising rent levels are particularly difficult in certain areas. Therefore NUS Scotland welcomes the introduction of rent pressure zones, and agrees that Scottish Ministers should have the power to cap the levels of rent increases for sitting tenants in areas where rents are rising excessively. We believe rent levels should be reflected against indicators that describe the income of those living in the PRS in a local area.

A local authority could also demonstrate that a growing number of people living in the PRS are struggling with rent levels if they are able to show that applications for Local Housing Allowance are rising or if the number or rent arrears cases in First-tier Tribunals are rising. We would urge the committee to consider thresholds and detailed requirements for this evidence. This is necessary to ensure that Ministers have proper guidance indicating when an area qualifies as a rent hot-spot and the proposed regulation can be properly utilised. There are numerous examples of successful government policy elsewhere in Europe that controls the price of rent that take into account these principles.

- **Germany:** Rent increases within existing tenancies are regulated according to a local average rent index. Within a tenancy, rent can only be increased by less than a fixed amount per annum, and not above the local average rent. Furthermore, while initial rent levels can be set relatively freely, they cannot be higher than 50% of the average local rent level.
- **Netherlands:** Rents are controlled through a points system. Dwellings are given points according to different characteristics (e.g. size, location, local amenities), and a maximum rent level is then determined by the scoring given.

Challenging an unfair rent rise

NUS Scotland supports the ability of tenants to have the ability to refer a rent increase to a rent officer at Rent Services Scotland and it is important that this process is as clear and simple as possible. However, we would like to stress that this safeguard only works if Rent Services Scotland is adequately resourced and tenants receive the information and support they need to challenge unreasonable rent levels. A duty should be placed on Rent Services Scotland to engage with local communities in order to ensure that tenants in the private rented sector are aware of the service and how to utilise it. We also believe that referring a rent increase to a rent officer should never incur a cost to the tenant, which would be a clear barrier for low-waged tenants to tackle unfair rent rises.

Furthermore, we believe that the definition of “unreasonable” needs to be explored in more depth. It is important that this is related to the reality of peoples’ incomes, and not solely related to market levels or CPI. Where rents far outstrip the costs to landlords – as is demonstrably the case in many areas – that should also be considered unreasonable. For this reason, we also believe that tenants should have the ability to refer not only unreasonable rent *increases* for adjudication, but unreasonable rent *levels* as well. We believe that a model similar to the Dutch system, where properties are assessed against a points system based on criteria such as energy efficiency, size, and quality provides a sensible model to assess the reasonableness of rent levels.

There should be a clear need to have any rent increases (if not the starting point of rent) to be linked in some way to quality. Doing so would (a) ensure that tenants are able to challenge the cost and quality of their property, without fear of reprisal, and (b) ensure that cost is linked in some way to quality, as it is in many other sectors and consumer areas.

Removal of the “no-fault” ground for repossession

NUS Scotland believes that currently, the no-fault ground for repossession leaves tenants in the private rented sector in an extremely vulnerable and insecure position. Especially since the private rented sector is increasingly catering for people who want to stay in their home for the longer-term, the ability for a landlord to repossess the accommodation even where a tenant has fulfilled all their contractual duties has a detrimental effect on security of tenure for tenants.

We believe that if a tenant fulfils all their contractual duties, and where some specific conditions (such as a need for the landlord to sell their property) do not arise, a tenant should be able to stay in the property indefinitely. The removal of the no-fault ground would significantly increase security of tenure for tenants in the private rented sector, and thus NUS Scotland is strongly supportive of this proposal.

Other grounds for repossession

NUS Scotland recognises that landlords must feel secure in the knowledge that they are able to repossess their property in certain situations, but these must only be in limited circumstances and ensure security for tenants. While we broadly agree with the majority of the new grounds for repossession, and support the reduction in the number of grounds, we have serious concerns regarding the grounds for removal which result not from any fault of the tenant, but from a change in a landlord’s circumstances. For example, if the ground “*Refurbishment*”, is made mandatory, the need for minor repairs may lead to a tenant being evicted from their home. We believe the exact content of this proposed ground is too open to interpretation, and therefore there is a risk that the ground could be abused in order to undermine tenants’ security of tenure.

We also have concerns regarding the ground “*Tenant has otherwise breached the tenancy agreement*” being made mandatory, as it could potentially be used to evict a tenant simply for committing a minor technical breach of their tenancy agreement. NUS Scotland believes that with the implementation of the new, specialised Private Rented Sector Tribunal, there is no need to make any repossession grounds mandatory. However, at a minimum, we are calling on the Scottish Government to ensure that there is an element of discretion attached to grounds where a tenant is not at fault, so as to ensure that tenants have sufficient rights to appeal. We also urge the Government to consider the implications of making the proposed ground “*Tenant has otherwise breached the tenancy agreement*” mandatory, as outlined.

As above, we would want to see the Bill ensure that all of the (now sixteen) proposed grounds are discretionary, helping ensure that none of the grounds will be abused. Furthermore, we would want to ensure that the exact content and legal text of all the proposed grounds will be consulted on and given careful consideration and full definition, potentially through ministerial guidance.

Finally, NUS Scotland opposes any proposal that would undermine security of tenure. Other stakeholders have proposed the introduction of an additional ground for repossession for student lets, arguing that landlords should be able to repossess a property from student groups in order to retain the property within the 'student market'. NUS Scotland believe this proposed additional ground to be wrong in principle and in practice. In principle, it would deny security of tenure from a key group within the PRS. Equally, if this precedent is set for student tenants, similar exceptions may be argued for other tenant groups in the future. In practice, such an additional grounds would not be workable, as it would be impossible to define the tenants within a property as students or not throughout the tenancy.

NUS Scotland believes the current 'student cycle' which some organisations wish to protect is not fit for purpose. Many students' associations and unions across the UK have run campaigns to encourage students not to sign a contract for a property six months or more before they take up residence because of the issues it can produce around changing relationships and issues around dropping out of their courses. The new tenancy gives students the security of tenure to stay in their homes through the summer if they wish, therefore providing more flexibility for such a diverse tenant group.

NUS Scotland believes that with careful management, students can be asked if they wish to serve notice to vacate their property for the end of the academic term, just as many student renters are already asked if they wish to carry on their tenancy into the next academic year. Tenant education will be key, and it will be important for renters to understand they are the party that needs to serve a notice to quit. It seems unlikely that any renter will want to be liable for more than necessary, therefore it will be in the tenants' own interests to serve a notice to quit if they wish to leave at the end of the academic term.

Notice from landlords when issuing a notice to leave

We strongly believe that tenants who want to stay in their rented accommodation on a long-term basis must be able to feel secure in the knowledge that their tenancy cannot be terminated frivolously. The removal of the no-fault ground for repossession is the most significant step towards ensuring greater security of tenure for tenants in the private rented sector. However, ensuring that if a tenant has made their home in a property for a long period of time, they will have enough notice to prepare for moving accommodation is also crucial in regulating for a private rented sector that is fit for purpose.

NUS Scotland supports the principle of linking the length of notice periods to the length of the tenancy. However, we are concerned that four weeks is too short to allow for tenants to make the necessary preparations for moving, no matter how long they have stayed in the property for. Tenants should have the right to a longer notice period especially where the tenant is being removed for no fault of their own. Thus, we urge the committee to consider starting the sliding scale for notice periods to, at least, eight weeks for tenancies shorter than six months.

Security of tenure and student accommodation

NUS Scotland would strongly oppose any proposal that would undermine security of tenure. The argument is that landlords should be able to repossess a property from

student groups in order to retain the property within the 'student market' and the 'student cycle'. NUS Scotland believe this to be wrong in principle and in practice. In principle, it would deny security of tenure from a key group within the private rented sector. Equally, if this precedent is set for student tenants, similar exceptions may be argued for other tenant groups in the future. It would often be impossible to define the tenants within a property as students or not throughout the tenancy. For example, many college students will be on part-time or short-term courses, while others may drop-out or move on from studies to work during a tenancy. It would be wrong for legislation to treat students as a homogenous group, and clearly would present huge logistical difficulties of defining who is a student, and when they cease to be a student.

We would be open to consideration being given for landlords to make a request to students to consider ending the tenancy, as we believe that tenant management and education will be enough for student tenants to serve notice to quit if they do wish to leave their property at the end of an academic year. We therefore believe that no-fault repossession should be rejected for all tenant groups, including students.

Where the inclusion of 'student cycle' would be appropriate, and would be very interested to know if this is the case, is if university halls of residence are intended to be captured by this Bill. If so, these are the only grounds where we would support retaining the property within the 'student cycle' as grounds for repossession, as halls of residence are obviously required for each years intake of new students. If this is to be the case then we would be hopeful that this means the remaining provisions in the Bill would also capture university accommodation, particularly when considering rent increases. University halls, despite being run by charitable bodies (as universities are) and almost all but guaranteed for all incoming, first-year students are not immune from unreasonable price increases.³

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October 2015

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<http://www.nus.org.uk/Global/Campaigns/Accommodation%20Costs%20Survey%20V6%20WEB.pdf>