

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

LetScotland

Introduction

Letscotland, formed in 2012 to represent the interests of Letting Agents in Scotland, welcomes the opportunity to provide evidence at stage 1 of the Private Housing (Tenancies) (Scotland) Bill. Letscotland is keen to see many of these changes take place in order to achieve as best as possible the outcomes society needs, namely a larger supply of new homes of all tenures at an ever improving and sustainable standard with quality services to match.

The current market

As evidenced in the Scottish Household Survey (SHS) 2014 (see 1) the PRS letting market has grown substantially over the years and now provides accommodation for over 330,000 households.

- 80,000 homes are estimated to be occupied by families
- Over 14,900 HMO Licenced properties housing upwards of 60,000 persons (see 2)
- 71% of households in the PRS are 1 or 2 bedrooms
- 21% of households are occupied by those in further education
- Only 29% of the PRS comprises 3 or 4 bedroom properties

The urban environment seeks to provide homes for a range of occupiers; these include students who wish to rent for 9, 10 or 12 months, as well as professional individuals on contracts in the cities to a wide selection of others who have differing incomes and circumstances.

This new legislation is driven by consumer need; Letscotland is concerned that many consumers, most particularly those seeking time definite contracts, will be the ones to have a reduction in their potential property availability. The ambition to provide greater security of tenure for all tenants driven by consumer demand primarily of 25% of the PRS made up of families makes for a difficult solution for the remaining 75% including contract workers, students, and home sharing young professionals in the age groups of early 20s to mid 30s. "One size to fit all" will not work unless very carefully drafted with alternatives to meet all the different demands.

Enforcement of current regulations

Letting Agents in Scotland support the changes planned for both the new form of tenancy in the Private Housing (Tenancies) (Scotland) Bill as well as the proposed Letting Agent Regulation currently under consultation for a new Code of Practice for all Registered Letting Agents and the training programmes associated with it.

There is however real concern amongst the Letting Agent industry that lack of enforcement of Landlord Registration and other current regulations has allowed many landlords to self-manage in the past without adequate controls. With this new Register of Letting Agents monitoring managed properties and the associated

services provided the result could be one where the rogue Letting Agent has been driven out of business but the rogue landlord still exists. Such landlords will not use compliant Letting Agents and the only way to rid the market place of them will be by more efficient enforcement of current regulations rather than imposing heavy restraint on the market place as a whole via a blanket approach within this new tenancy.

Today's Rogue landlords and letting agents

Much is made of the rogue landlord and letting agent. The circumstances frequently reported reflect a very small part of a broad and largely well managed market. A number of Scottish Government reports (see 3) and Lettingstats – Tenant Survey report dated 9th December 2014 (see 4) surveyed a tenant profile of approximately 6,500 current tenants in the PRS showing broad satisfaction with the market yet with some areas where improvement could be made mainly revolving around repairs and delivery of improved standards.

Letscotland supports the ambition of tackling the rogue elements in the industry and encourages the Scottish Government to do so using current regulations more robustly.

Future supply issue

The proposed changes in legislation need to encourage increased supply of new build accommodation in varying locations and of different sizes and rental costs to meet this wide ranging demand.

The provision of this new build programme will be met by Government support but predominantly from investment in the property market by private investment. This investment will come directly from the private individual as is frequently the case in the PRS with the private investor owning on average 1 or 2 let properties or that same individual's investment of capital in the institutional investor. The environment in which this investment is made needs to be one that encourages development and investment rather than hinder.

Future short term flexible tenancies

The Policy Memorandum for the Private Housing (Tenancies) (Scotland) Bill recommends in section 68 when making direction regarding short term tenancies that.....

“Landlords and letting agents engaging with tenants to establish their plans to remain in or give up the tenancy and marketing properties to a shorter time-frame.”

This, and other references to the student market and other consumers who seek something other than an indefinite tenancy, does not meet the needs of a socially and economically important section of the PRS. The consumers must have presented to them a better delivery system of available property. This sector of the PRS is very large and warrants better recognition of its needs.

Surely such a large part of the PRS marketplace deserves better recognition of its requirements.

This flexibility needs to allow for not only the long term and continuing nature of a tenancy for some but also the needs of some consumers/tenants who need the availability of stock to be certain at particular times. In the urban environment many share accommodation on joint and several tenancies.

The proposition that 3, 4 or 5 tenants on a joint and several lease may all consider issuing a co-signed Notice to Leave in a timely fashion is hard to visualise. Many Letting Agents report of the difficulty in getting 4 or 5 tenants to sign documents at the commencement of a lease; the likelihood of a group coordinating signatures and agreeing a date for departure is fraught with potential problems.

The timeline and process for a typical student finding accommodation entering Second year at a University in Edinburgh whilst spending First year in University Halls of Residence is as follows:-

December 1st year Students are encouraged to look for accommodation for the following academic year

February Universities hold “accommodation fairs” at which landlords and letting agents are encouraged to make known the availability of properties coming available for the following academic year.

March 1st year students view available properties and secure suitable accommodation (for following Academic year) prior normally to sitting 1st year exams after Easter. Leave Halls in late May.

Whatever arrangements the student is making for their summer holidays on this basis they know before they leave at the end of their 1st year what their accommodation provision is going to be for the coming academic year and when they can they move into it.

The entire student market place revolves around defined dates of availability; the proposed indefinite end dates will result in a totally random timing of properties coming available limiting choice to consumers both in quantity and price

Letscotland suggests that the letting of properties to students is considered not so much as to the circumstance of the landlord (as is currently suggested by allowing exemptions for Universities) but that it should be the status of the occupier/consumer. For instance any tenant who is an enrolled student may enter into a time specific tenancy of up to one year renewable on a year by year basis if so desired.

This would allow the next influx of students to have a choice of accommodation at the time of most interest to them and permit them to concentrate on exams when required.

Management of problems within a tenancy

The current proposal suggests that issues within a tenancy will be resolved by reference to First Tier Tribunal. Under much of existing regulation, HMO Licencing in particular, a tenant’s behaviour is frequently considered to be the problem of the landlord. This is quite patently a nonsense since at no time can a landlord be responsible for the poor behaviour of a tenant; this is what happens however in the

current system of HMO Licencing for which landlords currently have the sanction of being able to terminate a tenancy at the end date. The proposed process of referring such matter to the Tribunal system will result in the community or neighbours continuing to suffer the problem of an unacceptable situation for much longer than may currently be the case.

The future process may require the landlord to report issues to the Police in order to establish proof of the issue, taking up valuable Police time, and also needing to give evidence at Tribunal in order to carry out an effective process of the Notice to Leave. This process will increase the time it takes to handle the problem and those suffering as a result will continue to suffer and at the same time possibly called to give evidence against the very persons creating the problem and by whom they may be intimidated; this may be to the extent that they would not appear at such a hearing or indeed make a valid complaint in the first place.

Letscotland is very concerned that the removal of the landlord's right to allow a tenancy to come to a natural end will make it much harder for landlords to cope with anti-social behaviour. The proposed alternative of the Tribunal system will need to be robust in how quickly it can resolve issues and be provided with the funding and other resources to cope with the cases referred to it.

The ambition of this new Private Housing Tenancy

As set out in The Vision of the Scottish Government's Strategy for the Private Rented sector in Scotland 2013 under the title

A PLACE TO STAY
A PLACE TO CALL HOME

THE VISION

“A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment”

Letscotland shares the same ambition.

The consumer is at the heart of these changes, not all consumers have identical needs so one tenancy to meet all eventualities is a very difficult document to draft and ensure it works for all. The co-ordinated strategy of improving standards and increasing supply is one that must be achieved and quickly. It is widely recognised that building to rent can bring supply to the market possibly 5 times as quickly as building for sale. This is an opportunity that must be grasped whilst investment appetite is strong. Whilst we commend the proposals we also encourage consideration be given to ensure some of the detail in the drafting is amended. The Letting Agents in Scotland wish to have a new Private Housing (Tenancy) which delivers and as such it needs to be fit for purpose for the wide range of consumers using the PRS in Scotland.

Sources

1 <http://www.gov.scot/publications/2015/08/3720/0>

- [2 http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousesMultipleOccupation](http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousesMultipleOccupation)
- [3 http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-68_Private_Housing_Tenancies_Scotland_Bill.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-68_Private_Housing_Tenancies_Scotland_Bill.pdf)
- [4 Lettingstats – Tenant Survey 2014](#)

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