

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

PRS 4 Scotland

1. About PRS 4 Scotland

PRS 4 Scotland, is an alliance of people and businesses who want to see a strong, modernised and sustainable Private Rented Sector (PRS) in Scotland serving tenants and enhancing supply by contributing to the nation's housing stock. It includes agents, landlords, portals and investors, and was established in response to the Scottish Government's consultation into a new tenancy regime for the Private Rented Sector.

2. Key messages

We commend the Scottish Government's desire to improve Scotland's PRS and there are a number of features in the Private Housing (Tenancies) (Scotland) Bill that we do support and which will create more secure tenancies that serve the interests of landlords and tenants alike, especially by creating longer term and more secure tenancies. Yet a number of key aspects of the Bill represent risk, potentially damaging conditions for the majority of ordinary tenants by deterring new Build to Rent developments while forcing existing landlords to cut back on maintenance or leave the sector altogether.

We would therefore urge the Committee to consider and examine the following key points during its scrutiny of the Bill:

- A shortage of market data clearly hampers the capacity of the Bill to create a stronger, more sustainable PRS that delivers more affordability for people in the sector. The evidence we have demonstrates that rental prices in Scotland are not out of control and there is a clear risk to housing supply of creating legislation in a vacuum of reliable information.
- That is why PRS 4 Scotland urges MSPs to work with the sector to put in place mechanisms that allow Government and local authorities to gather, track and publish accurate information on market trends in the PRS *before* the changes in the Bill come into force.
- We completely support the Scottish Government's aim to improve professional standards across the PRS and put rogue landlords out of business. However, it is clear that the problem is not a lack of regulation in the PRS, but a failure to use the extensive powers that already exist to tackle rogue landlords.
- In the meantime, we would urge MSPs and the Scottish Government to be open to amendments to the Bill that will provide greater flexibility for groups of tenants who need it most. For example, we would suggest allowing students and short-term or corporate tenants to opt in to a specialist tenancy agreement with a defined duration covering a fixed term of say 9, 10, 11 or 12 months.
- Price control measures are likely to deter investment in new homes. PRS 4 Scotland is concerned that the Bill will mean that Scotland will have the least investor-friendly PRS regime in the United Kingdom and Ireland, making any

Build to Rent provision far more expensive to secure for the Scottish Government and local authorities. We would therefore urge MSPs to consider carefully amendments to the wording of the Bill that protects Scotland's status as a destination for potentially significant Build to Rent investment.

3. Tackling rogue landlords

PRS 4 Scotland completely supports the Scottish Government's aim to improve standards across the sector and put rogue landlords out of business. The actions of a few have led to a perception, in some quarters, that the practices of the entire PRS are a cause for concern.

The sector has embraced change and welcomes regulation that supports both tenants and landlords and, contrary to the picture painted by a handful of campaigners, is one of ongoing improvement. Scottish Government figures show 85% satisfaction with providers in the PRS¹, while the largest tenant survey of over 6,448 private tenants by Lettingstats shows just 14% of sitting tenants experienced rent rises². According to the Scottish House Condition Survey, only 6% of properties were 'below tolerable standard'³, while the proportion of PRS dwellings meeting the stringent Scottish Housing Quality Standard broadly reflects that recorded for local authority and privately owned stock⁴.

We acknowledge that there is room for improvement in the PRS, just as we acknowledge that there is a problem with rogue landlords in some areas of the sector. More must be done to tackle landlords who flout regulations designed to protect tenants – especially where those tenants are vulnerable. Yet the best route to making that happen is through existing regulation rather than new legislation. Figures released by the Scottish Government⁵ show that the number of PRS providers registered under the Landlord Registration Scheme has grown from 104,758 in 2007 to 259,509 in 2015. In that time, the Scheme has received more than £20.7 million in fees from landlords to local authorities. Yet, since January 2011, just 25 cases of breaches of the Scheme have been reported to the Procurator Fiscal, 86 landlords have been deemed to be not "fit and proper" and 139 landlords have been refused registration or had their registration revoked.⁶

We question whether one of the key problems leading to a failure to tackle rogue landlords has been a concern among local authorities over the burden that re-housing tenants in decent accommodation would put on already pressured housing lists. Put simply, PRS 4 Scotland would like to see far tougher sanctions taken against landlords who flout housing and tenancy regulations, and statutory possession of unfit properties should be used more often in the event of repeated breaches that harm tenants. Local authorities have their hands tied, however, by a

¹ [Scottish Government, Private Rented Sector - Evidence Review](#), 18 April 2012,

² [Lettingstats – Tenant Survey 2014](#), 9 December, 2014

³ [Scottish House Condition Survey](#), 4 December 2014

⁴ The [Scottish House Conditions Survey](#) (2014) showed that while more than half (55%) of PRS dwellings do not meet the Scottish Housing Quality Standard, 51% of local authority stock, and 53% of privately owned stock also fail this stringent standard, while the PRS showed marked improvement.

⁵ [Scottish Parliament, Written Answers](#), 17 September 2015

⁶ [Scottish Parliament, Written Answers](#), 17 September 2015

shortage of funding to purchase properties or build new social housing. It is clear that the problem is not a lack of regulation in the PRS, but a failure to use the extensive powers that already exist to tackle rogue landlords.

4. Evidence based policy

A principal aim of PRS 4 Scotland is to promote the use of accurate, meaningful market data to help shape effective policy. This is because it is clear that there is currently no standardised, authoritative methodology for monitoring actual rents at the local level in Scotland's PRS. We are very concerned that this lack of data clearly hampers the capacity of the Bill to create a stronger, more sustainable PRS that delivers affordability for people in the sector.

SPICe's briefing paper on the PRS demonstrates this clearly.⁷ It shows that annual statistics for the PRS, which have been published by the Scottish Government since November 2014, are gathered using a variety of means, "including private landlord and letting agent returns, mailshot initiatives, as well as advertised rental information." Meanwhile, further data is available from private sources including Your Move, Citylets, Homelet and Lettingweb. Each source of information has its strengths, but the variety of methodologies means that results inevitably differ and sometimes conflict.

In fact, the only true measure of broad market trends in the PRS would be a detailed analysis of all rents *achieved* in each area. Currently, neither the Scottish Government nor private sector sources have a mechanism to collect such data accurately and systematically. Compared with the Republic of Ireland, where a Private Residential Tenancies Board centrally registers and releases data on achieved rents in the country, Scotland's policymakers are working in a comparative vacuum of relevant data. The result has been that the data we do have available has been cherry-picked as 'evidence' to support calls for rent controls in so-called hotspot areas.

As SPICe notes, the majority of statistics that have shown recent upward trends in rental levels are based on mean rental values. We know that mean values can easily be distorted by a small number of 'outliers' in a sample. For example, in an area where average rents for 2-bedroom properties have remained static or fallen, the addition of one or more new, large premium developments to the local market can cause the overall average to rise. Overall, there would be little reason to suppose that the majority of the PRS in that area was subject to any rise at all, but the impact of outliers may suggest that it is nonetheless becoming a rent rise 'hotspot'. A more useful and realistic measurement would be to use median rent levels as an indicator of trends. These necessarily put less weight on statistical outliers and give a better indication of the situation faced by the majority of tenants. If we look at median rents for 2 bed properties in Scotland from 2010-2014, rents have actually declined by 5.4% in real terms.⁸

⁷ [SPICe Briefing, Private Rents](#), 16 October 2015

⁸ [SPICe Briefing, Private Rents](#), 16 October 2015,

Moreover, the justification for localised rent controls is based on the idea that rent rises in hotspot areas put individual communities under pressure and that the only means of making the PRS more affordable is to regulate the market. There is evidence, however, that the market is entirely capable of adjusting independently. In Aberdeen, where there have been considerable average rent rises over 2010-14, encouraged by a booming economy, the evidence tells us that rents are now dropping rapidly in response to a contraction in the local economy as a result of the collapse in the oil price. The most recent ONS private rent index shows rent rises in the year up to September 2015 were just 1.6% in Scotland compared with a far higher rise of 2.7% across Britain⁹.

The myth of uncontrolled PRS inflation is therefore not borne out by the facts. That is why we would urge MSPs to work with the sector to put in place mechanisms that allow Government and local authorities to gather, track and publish accurate information on market trends in the PRS. We are confident that, as in Ireland, accurate tracking of achieved rents is achievable with modest additional investment, and that it is a necessary prerequisite to formulating regulatory policy that steers clear of damaging unintended consequences that deter additional supply in the sector.

We remain deeply concerned that failure to put in place accurate measurements of achieved rents would make the system of localised rent controls proposed in the Private Housing (Tenancies) (Scotland) Bill largely unworkable. Put simply, the PRS, and future investors in rented housing, will have little confidence that local authorities have the capacity to determine accurately the size, location and conditions of so-called 'hotspot' areas because the evidence they and Government would need to make decisions does not currently exist.

5. Continued need for flexible tenancies

While many aspects of the Bill will strengthen the relationship between landlords and tenants, we are concerned that the 'one size fits all' approach used for the standard tenancy will actually work against the interests of some tenant groups, especially students.

At the moment, a significant proportion of students opt to take a 9-10 month lease so that they can vacate the property in the summer months and save money and/or move back home. In many cases, this allows landlords to take vacant possession of properties for holiday lets, which is a popular and economically vital option in cities like Edinburgh, where Festival visitors place high demand on local accommodation. Under the terms of the Bill, landlords and students will be unable to mutually agree a lease of a fixed duration (e.g. 9 or 10 months) and the removal of the no fault clause for repossession will mean that landlords, agents and specialist university accommodation providers will have no advance knowledge of when their accommodation will be available to let, and so will not be able to advertise properties for rent when most students are looking. The consequence will be that students looking for accommodation for the first time or looking to move at the end of summer term, will face a severe shortage of options.

⁹ [ONS Index of Private Housing Rental Prices](#), July to September 2015, published 29 October 2015

Moreover, the overnight removal of a significant portion of these properties from the short stay lettings market, which the Bill in its current form will lead to, will leave the organisers of summer events like The Open in St Andrews and Edinburgh's Festivals at a loss over where to accommodate visitors.

We are conscious that the intention of the Bill was not to disadvantage students in this way but that is what the proposed single tenancy combined with the removal of the no fault clause will do. To cite one warning from the Scottish Government's second consultation, Unite Students said, "*We are wondering whether this will have an impact on whether students will select to study in Scotland or in England or Wales. In the event there is no fair opportunity to access student accommodation in Scotland, students may want to select the security provided by the English and Welsh legislation as we would not be in a position to guarantee a room in Scotland in advance to receiving notice from the current tenant.*"¹⁰

Ultimately, the conclusion among significant investors in the student lettings sector will be that the terms of the Bill make practical investment untenable going forward.

It is unclear what – if any – in-depth consultation has taken place with student bodies over the implications of these changes and PRS 4 Scotland is in the process of undertaking detailed research into the matter, which we aim to share with the Committee.

In the meantime, we would urge MSPs and the Scottish Government to be open to amendments to the Bill that will provide reassurance to the sector. We would suggest allowing students and short stay tenants the ability to opt in to a specialist tenancy agreement with a defined duration covering a fixed term of say 9, 10, 11 or 12 months. PRS 4 Scotland looks forward to engaging further with MSPs on the best means of amending the bill to that effect.

6. Investor sentiment

With the percentage of Scotland's households in the PRS climbing to 14% in recent years, it is clear to investors that there is enormous capacity to finance the building of thousands of new homes for rent. Indeed, research by Savills¹¹ estimates that Build to Rent could attract more than £30bn of new investment in the United Kingdom over the next five years with full policy support. This would deliver more than 150,000 homes and create a platform for thousands more to be financed and built. If Scotland can create the right conditions for investment, then we can expect to attract a rightful share of this investment.

This represents an enormous opportunity, not just for tenants but also for the public purse, because funders are ready and willing to deliver unprecedented levels of finance for Build to Rent without recourse to public subsidy. Investor sentiment is crucial. Scotland remains a proportionately small target for investor finance and there are increasing signs that it is being overlooked by major funders because of a

¹⁰ [Second Consultation on a New Tenancy for the Private Sector - Non-confidential responses](#), August 2015

¹¹ [Savills Residential Spotlight](#), 2015

growing perception that regulation of the sort contained in the Bill will place considerable uncertainty over investment options.

If the Scottish Government really wants to promote Build to Rent, it needs to be proactive in sending out positive signals to the market that we are a safe destination for capital invested in the sector. Unfortunately there are growing signs that the attention of major funding players is being directed toward more favourable regulatory environments elsewhere in the UK. We would urge MSPs to take note that the governments in Wales and the Republic of Ireland have each recently stepped back from plans for rent control measures because of concern that they would deter investment in housing supply. The shelving of rent control plans in Ireland was followed by the announcement of plans to build 20,000 additional homes by 2020. As Public Expenditure and Reform Minister Sean Howlin has said: “it’s a two-sided coin, one side is supply and the other is rent”.¹²

We would urge MSPs to ensure that the rent control measures proposed in the Bill are rejected or significantly tightened to ensure that they do not harm investor sentiment in the PRS. If we are to enact regulation, which we know will deter investment, then the other side of the coin must be a wider policy and taxation environment that encourages new PRS housing without disadvantaging the public purse. Germany is often held up as an exemplar for the use of rent controls. However, while in Scotland’s largest cities in 2014 there were on average 2.7 homes built per 1,000 people, in Munich, where rent regulation is balanced by a healthy policy environment that incentivises existing landlords and encourages institutional investment to ‘build for rent’, there were 4.69 new dwellings per 1,000 inhabitants.¹³

The important point is that carefully considered price control measures that prevent excessive rental inflation should only be considered if steps have been taken first to ensure that investors are not deterred from funding the new homes we so desperately need. That has not happened to date in Scotland and PRS 4 Scotland is concerned that the Private Housing (Tenancies) (Scotland) Bill will mean that Scotland will have the least investor-friendly PRS regime in the United Kingdom. The result will be that those investors will look to secure more security from public finance, making any Build to Rent provision far more expensive to secure for the Scottish Government and local authorities.

We would therefore urge MSPs to carefully consider amendments to the wording of the Bill that protect Scotland’s status as a destination for significant build to let investment.

Further information

For more information about PRS 4 Scotland and the issues contained in this paper please contact Dr John Boyle at john.boyle@rettie.co.uk.

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¹² [Irish Examiner, ‘Budget 2016: Tenants left uncertain on rent control’](#), 14 October 2015

¹³ [Archy World, ‘Munich is Germany’s construction master’](#), 26 July 2015