

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Scottish Land & Estates

Scottish Land & Estates is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. Scottish Land & Estates' members are significant providers of let property, a substantial proportion of which is at affordable rent, and welcome the opportunity to respond to the Infrastructure and Capital Investment Committee's call for evidence.

Introduction

Scottish Land & Estates supports the majority of proposals in the Private Housing (Tenancies) (Scotland) Bill but we do have outstanding concerns regarding the increased risk to landlords and the potential unintended impacts this may have on the sector.

The general aims of the Bill are welcomed. We believe a simplified regime will aid the understanding of responsibilities for both landlords and tenants. The vision for a private rented sector that provides good quality homes and high management standards, inspires consumer confidence and encourages growth by attracting increased investment is fully supported.

We have the following comments to make on specific parts of the Bill:

Part 4. Rent

Chapter 1. Restrictions in relation to rent and other charges

We support the restriction to only review rents once in a 12 month period. This is common practice for our members already. We also support the proposed 3 month notice period as it allows tenants time to plan for the alteration, and reduces uncertainty.

Chapter 2. Rent variation instigated by landlord's notice

The continuation of the ability for tenants to refer rent increases which they believe to be unreasonable to a Rent Officer is welcomed. For people to be forced from their homes due to unreasonable rent increases would be unfair. However, this process must be quick and fair. We have concerns regarding the duty to make information available (section 29). These concerns relate to the content of the information, and its potential use. We do not believe the listing should identify specific properties and there must be identification of similarities and differences considered to ensure that any comparisons are on a like for like basis.

Chapter 3. Rent pressure zones

We continue to oppose any form of rent control or capping except in line with the market. We believe the rent pressure zones could lead to additional problems and is not based on adequate research and data. We understand the data currently when considering rents is the advertised rates for new tenancies rather than the rents of existing tenancies. It is therefore an uncomfortable fit to link this data to caps on rent reviews. The criteria require further thought as 'rents are increasing by too much' is not adequate, we question how tenant hardship can be demonstrated, and how it can be shown that increased pressure on the Local Authority is due to rent increases. We welcome the inclusion of a consultation period with landlords and tenants in a proposed rent pressure zone.

However, if rent controls are to be introduced, the measures contained in the Bill would appear to be a targeted approach which will likely be only used in the rarest of circumstances and we therefore think it would be the best way to bring in control. We would like to see further research conducted and a link to RPI (which includes housing) rather than CPI.

Part 5. Termination

Chapter 1. Security of tenure

The Tenancy Review Group's final report in May 2014 stated: 'What would be put in its place, following this modernisation exercise, would be a clear route for landlord re-possession, where the tenant was found to be in breach of the new private tenancy, or following expiry of the agreed tenancy term.' Scottish Land & Estates is concerned that the later part of this recommendation has not been acknowledged by the Scottish Government in the formation of this Bill and would urge reconsideration of this area of the Bill.

We believe there is a lack of evidence of insecurity of tenure, and therefore do not agree that there is a need for the mechanism to end tenancies at the end of their contractual period to be removed. In 2009 the Scottish Government's review of the sector reported that 'Landlords felt that SATs offered them valuable flexibility in managing properties and risk. Most tenants also valued the flexibility, with one in two tenants preferring to keep the minimum six month period, although one in five would like the minimum period increased to one year and one in ten would like it increased to two years. No preference was found for longer tenancies by household type, for example, families with children.' (p4 Scottish Government's 2009 Review of the Private Sector). And last year The Review Group stated in its report: 'tenants also believed that greater security of tenure would not make them feel any more able, or inclined to pursue their rights.' (p9 Report of the review of the private rented sector tenancy regime).

We do agree that the practice of SATs continuing on a month to month basis does not provide certainty and security for tenants. However, we do not believe that the removal of the no fault ground is a proportionate or reasonable measure to address this issue. Increasing notice periods and allowing tenancies only to renew for a term

equal to, or longer, than the initial term of the tenancy would in our view have delivered the policy objectives of the Bill in a more balanced manner.

Much of the evidence used to gain a picture of the PRS and support claims that a secure tenancy is required comes from urban data. The rural private sector, while not free from problems, is a rather different creature. For example, occupation periods tend to be much longer, the landlord often lives next to the let properties, and the private sector is often the only option for affordable housing as there is a lack of social housing options.

We believe the lack of ability for either party to end the agreement at the end of the contracted (or initial period) is a fundamental shift in contract law.

Chapter 3. Termination at landlord's instigation

Although the grounds for repossession have been improved since consultation we still do not believe they are comprehensive enough to alleviate landlords' and investors' concerns. Our members have experienced genuine circumstances which have led to them reasonably having to gain vacant possession of a property which would not be possible using the new grounds.

We are concerned that the increased risk could lead to reduced private housing stock (particularly the affordable housing stock), greater scrutiny of prospective tenants leading to any 'riskier tenants' struggling to find accommodation in the private sector.

Members have raised that the change of use from long term lets to holiday lets will be more attractive. This is already a good option as the tax circumstances are favourable and with the increased interest in agritourism and staycationing the returns can be healthy.

Scottish Land & Estates proposes that the bill is amended to reduce this risk. The ideal solution would be for landlords to retain some ability to regain vacant possession when the tenancy has reached its natural end. This could be linked to compliance with housing legislation and regulation. So, only registered landlords who are compliant and professional could use the mechanism.

Without any form of mechanism to regain possession at the end of the agreed term, the Scottish Parliament's promise in the programme for government of 'robust and comprehensive grounds' must be fulfilled. Landlords must be given confidence to let by having watertight grounds which is currently not the case.

Comment on Schedule 3

Ground	Detail	Comment
Property required for another purpose		
1. Landlord intends to sell the let property	The First-tier tribunal must find the ground applies if the landlord is entitled to sell the property and intends to put it up for sale within 3 months of the tenant ceasing to occupy it.	We have no issue with this ground.
2. Property to be sold by lender	<p>First-tier tribunal must find the ground applies if:</p> <ul style="list-style-type: none"> a. The property is subject to heritable security b. The creditor is entitled to sell and requires vacant possession to make the disposal c. The tenant was given written notice before the tenancy that the tenancy might be ended on this ground <p>The First-tier tribunal may find the ground applies even if written notice was not given.</p>	We have no issue with this ground.
3. The landlord intends to refurbish	<p>The First-tier tribunal must find the ground applies if:</p> <ul style="list-style-type: none"> a. The landlord intends to refurbish the property (or any premises of which the let property form part) b. The landlord is entitled to do so c. It would be impractical for the tenant to remain in residence 	We support the inclusion of this ground but note that impracticality would vary for type of tenant (i.e. single working person, family, elderly) and discretion should be taken on a case by case basis. Clarity would be helpful.
4. Landlord or family member intends to live in property	<p>The First-tier tribunal must find the ground applies if:</p> <ul style="list-style-type: none"> a. The landlord or family member intends to occupy to property as that person's only or principal home for at least 3 months. 	We are concerned that this provision does not account for properties held in trust where the property may be required for occupation by a beneficiary (for example a child reaching majority) or company structure. It is vital that

	<p>A family member is:</p> <ul style="list-style-type: none"> a. Married, civil partner or living together as though married b. Parent c. Grandparent d. Child e. Sibling <p>Half blood relatives are considered the same as full blood. A person's step child is considered the same as a person's child.</p>	these are accounted for.
5. Landlord intends to use for non-residential purpose	The First-tier tribunal must find the ground applies if it finds the landlord intends to use the property for a purpose other than to provide a person with a home.	We welcome this ground but there is a discrepancy between 'non-residential' and 'home'. For example, property going into agricultural tenancy. Ideally the ground should refer to schedule 1.
6. Property required for religious purpose	<p>The First-tier tribunal must find the ground applies if:</p> <ul style="list-style-type: none"> a. The property is held for the purpose of being available for occupation by a person engaged in the work of a religious denomination as a residence from which the duties of such a person are to be performed b. The property is required for that purpose c. The tenant was given notice in writing before the tenancy began that the tenancy might be ended on this ground 	We have no issue with this ground.
Tenant's Status		
7. Not an employee	<p>The First-tier tribunal must find the ground applies if:</p> <p>The tenancy was granted to the tenant in consequence of</p>	We have no issue with this ground.

	the tenant being an employee of the landlord, or in the expectation that the tenant would become an employee of the landlord, and the tenant is not employed by the landlord.	
8. Not a student	<p>The First-tier tribunal must find the ground applies if:</p> <ol style="list-style-type: none"> a. Planning permission for the construction or conversion of the property was given on the basis that it would be used exclusively for housing students. b. It was part of the basis on which the tenancy was granted that the tenant was pursuing, or intended to pursue, a course of study c. The tenant is neither pursuing or intending to pursue a course of study within the next three months 	We have concerns that this is not satisfactory. This could impact upon the availability of housing for both students and tourists.
Tenant's Conduct		
9. Not occupying let property	<p>The First-tier tribunal must find the ground applies if:</p> <ol style="list-style-type: none"> a. The tenant is not occupying the let property as the tenant's only or principal home. b. The tenant's not doing so is not attributable to a breach of the landlord's duties regarding the repairing standard. 	We welcome the addition of this ground but have concerns about its practical application. It will be vital for a landlord to be able to gain entry as soon as they suspect the tenant has left and cannot make contact.
10. Breach of tenancy agreement	<p>The First-tier tribunal must find the ground applies if the tenant has materially failed to comply with a statutory term of the tenancy.</p> <p>The First-tier tribunal may find the ground applies if the tenant has failed to comply with</p>	We support this ground but its use in practice will depend on the model tenancy and the robustness of the tribunal.

	<p>another term of the tenancy and the tribunal considers it to be reasonable to issue an eviction order on account of that.</p> <p>This ground does not include failure to pay rent.</p>	
11. Rent arrears	<p>The First-tier tribunal must find the ground applies if:</p> <ol style="list-style-type: none"> a. The tenant has been in arrears continuously for three or more consecutive months b. At any point during that time period the tenant has been in arrears by an amount equal to or greater than the amount which was payable as one month's rent, and c. The tenant's arrears are not wholly or partly a consequence of a delay or failure in the payment of benefits. <p>The First-tier tribunal may find the ground applies if:</p> <ol style="list-style-type: none"> a. The tenant has been in arrears continuously for three or more consecutive months and b. The tribunal is satisfied that it is reasonable to issue an eviction order. Consideration should be given to whether the tenant's arrears are not wholly or partly a consequence of a delay or failure in the payment of benefit payments. 	<p>We welcome the improvement from the current rent arrears ground. The operation of the current rent arrears ground is problematic and landlords suffer significant financial difficulties due to tenant arrears. We would seek for the word consecutive to be removed.</p>
12. Criminal	The First-tier tribunal must find	We query if 'punishable

Behaviour	<p>the ground applies if after the tenancy commences the tenant is convicted of an offence</p> <ul style="list-style-type: none"> a. Which was committed by using, or allowing use of, the property for an immoral or illegal purpose or b. Which was committed within or in the locality of the property and is punishable by imprisonment. 	<p>by imprisonment' means they actually have to have gone to prison or if it is sufficient for the offence to have the potential for a custodial sentence.</p>
13. Anti-social behaviour	<p>The First-tier tribunal may find the ground applies if the tenant has acted in an anti-social manner in relation to</p> <ul style="list-style-type: none"> a. A person who resides in the property b. Any person visiting the property or otherwise engaged in lawful activity while in the locality of the property. <p>A person can be regarded as acting anti-socially in relation to another person by:</p> <ul style="list-style-type: none"> a. Doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance. b. Pursuing in relation to the person a course of conduct (including speech) which causes or is likely to cause alarm, distress, nuisance or annoyance; or amounts to harassment of the other person. 	<p>We support this being separated from ground 12. We foresee this as one of the grounds used most often and it is imperative that it can be used effectively.</p> <p>We are concerned about the burden of proof required to use this ground. There will be a need to gather evidence from neighbours. This may put both neighbours and the landlord in a vulnerable position.</p>
Legal Impediment to lease continuing		
14. Landlord has ceased to be registered	The First-tier tribunal must find the ground applies if the landlord is no longer a registered landlord under the	We have no issue with this ground.

	Antisocial Behaviour etc. (Scotland) Act 2004.	
15. HMO licence has been revoked	The First-tier tribunal must find the ground applies if the property is in multiple occupation but is not licenced under Part 5 of the Housing (Scotland) Act 2006.	We have no issue with this ground.
16. Overcrowding statutory notice	The First-tier tribunal must find the ground applies if the landlord has been served an overcrowding statutory notice in respect of the let property.	We welcome the addition of this ground.

The expectation was for there to be no pre tenancy notices yet this is in the Bill for both ground 2 (property to be sold by a lender) and ground 6 (property is required for religious worker).

Additional Grounds Required

An additional ground is required to gain vacant possession if the property is required to house an employee who needs to live on-site in order to fulfil their duties. A common example is a farm worker. If a house cannot be made available to house a new employee the business operation would be affected, and business growth could be restricted impacting upon the business viability and the wider local economy. The alternative is for the landlord to keep the property vacant in times when staff requirements decrease thus reducing potential income to the business, or let on a holiday rental basis. Both of these options would reduce much needed rural housing supply. We therefore propose a further ground to allow repossession of a property to house an employee who requires to live in the property to fulfil their job. We would like to see this ground worded to also allow for the provision of housing for employees upon retirement. It is common practice for our members to offer longstanding employees a property on the farm or estates when they retire. This allows them to stay within their community and decreases the burden on councils and housing associations. The 'social housing' role of the rural housing sector is often over looked, and should be supported rather than deterred through insufficient grounds to regain a property.

We believe in the absence of a 'no fault ground' to end the tenancy after an agreed term, a final ground to enable repossession under any other reasonable circumstance is required. This will be discretionary so the first tier tribunal can moderate the use of this more open ground. This will account for the number of peculiar circumstances experienced where a ground would not apply but it would still be reasonable to ask a tenant to vacate the property. Without the 'no fault' mechanism this ground is absolutely vital to ensure confidence and investment is not lost from the sector. A couple of examples from members of where this ground would be required are as follows:

- a. A cottage is located on a flood plain. The local authority will not repair the flood defences and as a result insurers will not insure the property.

- b. A small cottage is on a private water supply serving only that property. The water supply is failing. The landlord has been quoted £25,000 to have a new borehole to serve the property. This cost is unviable given the value of the property or the low rental it attracts. The property is therefore unlettable.

We believe ground 9, tenant is not occupying the let property, is included in the grounds listed at section 43 (2). If the landlord reasonably believes ground 9 applies they must be able to take action quickly in order to protect the property.

Wrongful Termination

We welcome the mechanism to discourage wrongful termination of a tenancy. We do have a concern though that where there is a sanction against landlords who wrongfully evict a tenant there is no equivalent sanction for a tenant who wrongfully contests a notice under grounds 1 or 4 without justification (which may cause considerable difficulties particularly for the smaller, individual landlord) or who wrongfully accuses a tenant of wrongfully evicting them. We support the punishment of the equivalent of 3 months' rent. We are aware of concerns that landlords may wrongfully evict tenants and be willing to take the bill if it has led to a successful eviction but do not consider this is of any real substance. Landlord registration requires the landlord to be a fit and proper person and landlords will not put their ability to let properties at risk by trying to deceive the tribunal.

Chapter 4. Interpretation of Part

An initial period is vital for giving a landlord confidence that they will not have very frequent turnover of tenant and gives a tenant confidence that they have a secure home for that period unless they default.

Part 6. Death of Tenant

Succession to a partner is reasonable under most circumstances and we have no issue with its inclusion. We would like to see this restricted to only one succession as is the case under the 1988 Act.

The Bill proposes that upon the death of a tenant the tenancy does not end unless the executors give notice. We believe this brings added complication. What if there is no executor? What if notice is not given? What if there are no funds to pay the continuing rent obligation? Who will take responsibility for ensuring the heating is on etc.? A successor will also already be identified as if the tenant has someone living with them as a partner the landlord should already have been notified under schedule two of any person aged 16 or over residing in the let property including the relationship status.

'Gap' Lets

Scottish Land & Estates members have raised concerns that they will not be confident to let properties for short 'gap periods'. For example, at the moment if a house is going to be used for a new employee, seasonal workers or is a seasonal holiday house, a landlord will look for a tenant to fill the gap until that end use can be fulfilled. This approach is often used to provide crisis housing for a member of the

local community (such as someone whose home has flooded or whose relationship has ended). Although the Bill allows for short tenancies there is no guarantee that the tenant will actually leave at the end of that set time and the landlord is relying on the tenant's goodwill. Landlords will therefore avoid the risk and leave a house empty taking on extra costs of draining it down, ensuring security, and possible council tax payments depending how long it will be empty. Not having the ability to provide housing of this nature will also increase the burden on the local authority to provide homeless accommodation, which we do not believe is fully acknowledged by the Scottish Government.

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