

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Association of Local Authority Chief Housing Officers (ALACHO)

Introduction

As the representative body for Scotland's Local Authority chief housing officers, ALACHO welcomes the opportunity to respond to the ICI's call for evidence on the proposed changes to the private rented sector tenancy regime.

Scotland's councils have a substantial interest in the private rented sector as:

- strategic housing authorities seeking to improve supply and overall condition of the housing stock;
- the registration and licencing authority for landlords and Houses in Multiple Occupation;
- the organisations with the statutory responsibility to assist those who are homeless or threatened with homelessness; and
- in a small but growing number of areas, as a provider of mid market rented housing in the private sector.

The growth in the PRS since 1999 has been well documented. As well as providing accommodation for a much wider range of households the nature of investment in the sector has changed. Much attention has been focused on the fact that around 75% of all landlords own just one property, usually a former family home. However, these landlords own just 36% of the stock¹. Sixty four per cent of tenants in the sector rent from investor landlords.

Security of tenure has, quite rightly been seen as fundamental to ensuring that the sector is capable of providing long term high quality accommodation that meets the needs of the widest possible range of households. There has also been a significant focus on the rights of landlords and lenders to sell their properties if they so wish.

Our view is that effective rights to redress for landlords, including repossession where tenants fail to abide by the terms of their tenancy are critical to investor confidence and the proper functioning of the sector. However, investors should not be in a position where they are wholly immune from the wider negative impacts of their disinvest decisions or in the case of mortgage default, business failures. We will return to this point later in this submission.

Shelter Scotland has recently provided evidence that 40% of the calls they receive to their helpline come from private tenants. In 2014-15 a total of 16,735 private tenants approached their local authority either to make a homeless application or to seek help with their housing options. And whilst the proportion of homeless applicants

¹ Spotlight on the private rented sector in Scotland, CIH briefing 2013.

http://www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Private%20Rented%20Sector/CIH_SPRS.pdf

from the public sector has fallen slightly in recent years that from the PRS has risen from 15% in 2009-10 to 18% in 2014-15².

In both our submissions to the consultations issues by the Scottish Government prior to the publication of this Bill we have welcomed the proposal to remove the “no fault” ground for possession. In common with other respondents we have also cautioned that the success of the legislation will depend on how the revised grounds for possession will operate and the ability of the First Tier Tribunal to process cases quickly, consistently and at a cost that tenants in particular do not consider a barrier to access.

Having reviewed the Bill as published we still believe that it represents an improvement in the overall position of tenants in the PRS. In particular the creation of a model tenancy, the simplification of the various notices required to create and end a tenancy and the removal of the “no fault ground” are all to be welcomed.

However, it is our view that the overall approach to the drafting of the grounds for possession has taken too little recognition of the relationship between private renting and the public sector particularly in relation to business change and failure and will continue to leave many tenants feeling insecure and vulnerable in their homes.

We also raised concerns in our earlier submissions about the proposals for Rent Pressure Zones and the extent to which these are likely to be effective in protecting tenants. We remain unconvinced that these proposals will have any significant effect on protecting tenants or that they will be fully effective as a response to local rent hotspots.

Tenancy terminations and business change or failure in the PRS

As we have already said, it is our view that the overall approach to drafting the grounds for possession has been weighted in the interests of landlords rather than being directed at encouraging the continued growth of a more professional sector characterised by long term investors.

We would point to four of the proposed grounds for possession in particular, all mandatory, that have the effect of transferring the negative consequences and cost of business change and failure on to tenants and the public sector. These are:

- the landlord wishes to sell the property;
- a lender wishes to sell the house because the landlord has broken a loan agreement;
- the landlord’s HMO licence has been revoked; and
- the landlord’s registration has been revoked.

² Housing options (prevent) statistics 2014-15 and the operation of the Homeless Persons Legislation 2014-2015. Available on the Scottish Government web site. <http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/RefTables>

The last two were not included in the earlier consultation process and we have not previously had an opportunity to comment on them or consider their wider implications for the regulation of the sector.

Each of these grounds relate to a process of business change of failure. And in each case the immediate impact and cost falls on the tenant with the Local Authority providing a safety net through the homelessness legislation.

ALACHO's view is that it isn't appropriate that investors in the PRS should be underwritten in this way. We would go further and argue that if encouraging investment in the sector is to be an objective for both the Scottish Government and Local Authorities and indeed the sector is to be given some specific status through the Planning System as suggested by the recent letter to local authorities from the Scottish Government's Chief Planning Officer, then we need to have some confidence that the sector can manage risk, change and failure without transferring the cost to tenants and the public sector.

To the extent that this would require landlords to plan business change (including disinvestment) in the medium term and carry the cost of business failure in a way that doesn't disadvantage tenants or place additional cost on local authorities we would argue that this is no different from any other commercial activity. And we would repeat the point we made in our introduction that close to three quarters of the stock in the PRS is now held by landlords consciously making a decision to invest in the sector as a business venture.

Looking specifically at the two grounds that relate to the removal of an HMO licence or landlord registration it also seems likely that the risk of causing the homelessness of some or all of a landlord's tenants will play into any decision to take enforcement action.

We do not disagree that a landlord who is no longer regarded as a fit and proper person should be prevented from managing property, but we do not consider it to be fair that tenants should lose their homes as a result. We believe that the Scottish Government should look again at these provisions and give some further consideration to the relationship between the requirements of the Landlord Registration and HMO Licencing provisions, the tenancy regime and the need to protect tenants from the consequences of failures on the part of their landlord.

To the extent that the tenancy regime can impact on investment and new provision in private renting, it seems unlikely to us that removing or modifying the four grounds we have focused on will discourage institutional investment.

Those seeking to invest at scale will want their own assurances as to the character and reputation of the landlords they are dealing with, are unlikely, for very practical reasons, to be able to remove significant numbers of tenants as part of a disinvestment process and in any event will have a much stronger interest in keeping properties tenanted and rental income available to support the cost of borrowing secured against the stock and its revenue stream.

We are also of the view that the recent growth of secondary investment vehicles, allowing small investors to invest in the sector without directly owning homes can provide a continuing route to investment by individuals and provide both a reasonable return for investors and a route to further professionalising the sector and developing stronger culture of customer service.

In the light of this we would recommend that the mandatory grounds listed above should be removed from the bill. We are also of the view that the ground relating to a desire on the part of a landlord to move into a property should be limited to those properties that were genuinely the landlord's former home. Prospective tenants should also be made aware of this before they sign the tenancy agreement.

Where a landlord has been deregistered or had an HMO licence revoked tenants should be protected at the very least in the short to medium term. There are a number of options to achieve this ranging from a requirement to place all aspects of the management of the homes in the hands of an independent managing agent to the reformulation of the former 1987 Act "Control Order" power that previously allowed a local authority to take control of an HMO where there was risk to the health or wellbeing of occupants.

Our point is that options are available to address these concerns though they may also require changes to the legislation relating to landlord registration and HMO licencing. We have resisted the temptation to set out a prescription for achieving this at this stage because we believe that representatives of the PRS should be involved in designing an alternative approach. ALACHO will in any event be happy to contribute to a wider discussion on the matter.

Rent control and Rent Pressure Zones

The proposals as set out in the bill appear to us to have been significantly weakened from the approach suggested during the consultation process. We previously expressed the view that it was unlikely that these powers would be widely used. The draft bill and policy memorandum has reinforced that view.

Recent evidence on rent rises across Scotland would suggest that only the City of Aberdeen, Aberdeenshire and the City of Edinburgh have seen rates of rent increase that may qualify for such an intervention. At the time of writing only Edinburgh continues to face significant upward pressure on rents in the PRS.

The proposed cap of 1% above inflation would run the risk of embedding above inflation rent rises over a five year period and in any event is neither linked clearly to the sorts of cost increases that landlords face nor is it likely to benefit tenants who would still have to resign themselves to real terms rent increases or face a move out of the area.

Applying the provisions to current rents and not "asking" rents will further reduce the practical impact of the proposals.

The Policy Memorandum includes the statement that:

“landlords would be able to increase the rent reasonably to recover their legitimate property improvement costs (for example, if they had recently replaced the boiler in their property).”

We would argue that installing a heating system for the first time could reasonably be considered an improvement that should be reflected in the rent (assuming some initial discount on the rent for a property without a heating system, though in areas of shortage it may not be the case). Replacing a defective or inefficient boiler is good practice, not an improvement and shouldn't result in a rent rise.

Our firm conclusion is that the provisions relating to Rent Pressure Zones may have little practical benefit for tenants even on the rare occasions when they are used.

Summary

We are conscious that much of our evidence has been critical in tone. In summarising our position we would repeat that we regard much of the Bill as providing significant improvements in the legislative framework for the Private Rented Sector. It includes many important safeguards for tenants and clarifications and simplifications of the process of creating and ending tenancies and increasing rents that we welcome.

Our position on the proposals for Rent Pressure Zones is underpinned as much by our understanding that the answer to unreasonable rent rises is action to end shortages of affordable housing across Scotland as any practical concerns as to how the provisions would operate in practice.

On the issues we have raised in relation to the grounds for possession we would make the point that this is the first significant recasting of the law around private renting since 1989. In the years since the introduction of the Assured Tenancy regime much has changed in Scotland's housing system, amongst those changes the growth in the Private Rented Sector is certainly to be welcomed; as is the increasing professionalisation of the sector and the beginnings (but no more than that) of a culture of customer service on the part of some landlords and agents.

If the PRS is to play a significant role in meeting housing needs and aspirations in Scotland in the long term it must be supported by a tenancy regime that is focused on security of tenure and on promoting a tenant focused culture. It also needs to be subject to the same constraints and considerations in respect of business failure and change as other areas of commercial activity. This Bill can go a long way to helping drive these changes, but if it is to do so then the grounds for possession as currently drafted need to be revised and the links with other areas of housing law need to be looked at in some detail.

We look forward to elaborating on these points at the Committee's evidence hearing on 18 November.

Tony Cain
Policy Manager, ALACHO
November 2015