

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Kincardine Estate

Summary:

I have been a PRS landlord since 1979. Since the introduction of Short Assured Tenancies (SAT) I have invested in new and converted rural properties as well as upgrading existing properties so that we now provide 4 ½ times as many affordable rented homes as Aberdeenshire Council does in and around this village. In the last 20 years we've provided 21 extra rented homes (there are only 13 council houses) of which 18 are let at affordable rent. Occupancies, under annual SATs, average over 9 years.

As a result of the proposed new tenancy I will be less inclined to provide affordable rented housing, more inclined to charge market rents or move the properties to self-catering; I will be less inclined to invest in additional rented housing, more inclined to disinvest and to move my investment to other countries with governments more supportive of the private rented sector. Other PRS landlords in a similar situation have advised me that they are thinking likewise.

The result of this bill will be the opposite of the aspirations of the Scottish Government which hopes to see increased investment by the PRS, longer occupancies, and no doubt does not wish to see a reduction in affordable rented housing provision.

The effect of the bill will be a reduction in the supply of affordable rural housing which, since it costs more than urban affordable housing to produce, is unlikely to be replaced by social housing providers. The bill, as written, will be devastating to rural Scotland's affordable rented housing supply with negative consequences on Scotland's Rural Economy.

Introduction:

Kincardine Estate is a fairly typical medium-sized rural estate. Enterprises include the typical land-based ones of farming, forestry and field sports but extend to cover the provision of residential rural housing, workshops, offices, shops, a stone quarry, a food business and provision of corporate and private entertainment. Of these enterprises the biggest is the provision of rural housing where we provide 61 properties at affordable rent and a further 8 are provided at market levels. This compares with 13 council houses and no RSL houses in and around Kincardine O'Neil.

This delivery of vital affordable rented housing is typical of rural estates. For example: In Deeside, west of Banchory, while the Council rents 390 mainstream houses and RSLs rent 155 houses, just 19 estates provide 647 houses of which 58 are let as self-catering. Of the 589 let as full-time dwellings 492 (85%) are leased at affordable rents (i.e. <80% of the Local Housing Allowance).

This Bill, together with other elements of Scottish Government Policy (Succession and Land Reforms) threaten the continued provision of this vital affordable rural rented housing. It would seem the Scottish Government is shooting itself in the foot.

General Comments:

Rural Proofing:

In the first instance it would seem that there is either a complete lack of understanding within the Scottish Government of the role played by the rural private rented sector (rPRS) in providing affordable rented rural housing or a preparedness to sacrifice existing affordable rural rented housing as part of a strategy of breaking up rural estates. There does not appear to have been any attempt to 'rural proof' the measures contained in the bill.

There is not a single mention of the word 'rural' in the Bill or in any of the documents issued with it including the SPICE briefing. It appears that the role of the rural PRS in providing affordable, long-term, rented rural housing in far greater quantities than either Local Authorities or RSLs has been completely ignored.

The effect of the Bill will be:

1. To make rural PRS landlords less likely to rent at affordable rents; more likely to seek market rents. Result - a reduction in rural affordable housing and a shortening of average length of occupancy.
2. To make rural PRS landlords more likely to convert housing to self-catering property (there are tax advantages). Result - a reduction in rural affordable housing.
3. To make rural PRS landlords less likely to invest in converting / refurbishing empty properties for affordable rent. Result – less, not more investment in Scotland's rural housing.
4. To make rural PRS landlords less likely to invest in providing new affordable rented housing. Result – less, not more investment in Scotland's rural housing.
5. To make PRS landlords less likely to invest in rented housing in Scotland.

The cost of providing new rural affordable rented housing is much higher than in urban Scotland. Housing Association Grant (HAG) of £59,000 per unit is insufficient and Housing Associations advise that HAG of £75,000 to £84,000 per unit will be required if replacement social housing is to be built. It therefore seems highly unlikely that publicly funded affordable rented housing will replace the PRS affordable rented housing that will be lost as a result of this Bill.

The Infrastructure and Capital Investment Committee, of all organisations, should appreciate the irony of a bill that, as currently drafted, will result in a reduction in the existing infrastructure (provision of affordable rented rural housing by the PRS) and an increased reluctance for further investment by the PRS. Also that replacement of this lost infrastructure which could be done by the PRS at less cost than the Scottish Government currently spends on Social Housing provision*, to be too expensive for the taxpayer to fund. Shooting oneself in the foot springs to mind, or have I mentioned that?

*Kincardine Estate proved in 1999 we can deliver up to 75% better value for public money. Since then the Scottish Government has steadfastly ignored opportunities to save a billions of pounds of public expenditure and to resolve the affordable housing crisis by working with the PRS.

Simplification:

I support the aim of the Bill to simplify processes.

Inward Investment:

The aim of the Bill to encourage inward investment is laudable but will be undermined by the legislation mentioned above. Scotland will be regarded as less attractive a location for investing in rented residential property than other countries.

Length of tenure:

Under SAT we currently achieve average occupancy of over 9 years. This is typical of rural estate landlords. (*Arneil Johnston: Dumfries and Galloway; Rural Private Rented Housing & Fuel Poverty - Final Report; February 2004, and others reports*). The Bill will encourage us to let at market rather than affordable rents. Higher rented properties tend to let for shorter periods. We therefore expect to see a reduction in the average length of tenure as a result of this Bill - the opposite of one of the aims of the Bill.

Specific Comments:

Chapter 1:

Annual rent reviews are what we do. So happy to support this.

Chapter 2:

Happy that the role of the Rent Officer can continue. However regarding (section 29) the duty to make information available – you need to recognise that while in an urban situation anonymity prevails the same doesn't exist in a rural one where listing properties would, in effect, reveal all to the public. (See Rural Proofing – above).

Chapter 3:

Rent Pressure Zones: Rent controls, which existed from their introduction in 1915 until the 1980s, were a total disaster for the PRS and resulted in a backlog of disrepair that is still evident today combined with disinvestment in the sector. Again, this is the opposite to the aims of the Bill.

Part 5: Termination:

As I have constantly pointed out there is no justification for changing the current level of security. The Scottish Government's own research proved this – with just 1/3rd of 1% of tenants, when prompted, mentioning security as a problem. (*The Scottish Government, Review of the PRS: Views and Experiences of Tenants in the PRS, 2009*). We lease on Short Assured Tenancies – annual lets – yet our average occupancy is over 9 years. Security is not a problem.

Until now we have been prepared to take a chance with letting houses at modest rent to people who have no track record as tenants. We could do so in the confident knowledge that if things proved unsatisfactory we could use the No-Fault Ground to terminate the agreement – with no fault attributed to the tenant(s) who could move

elsewhere without a stain on their character. While we have used it only rarely the knowledge that the provision was there gave us confidence to house people in housing need. We have only ever used the ground when there were justifiable reasons – usually continually late rent payments or anti-social behaviour. The case for evictions on No-Fault ground need not involve neighbours (see below) which is important in a rural context.

Removing the No-Fault Ground is going to make us far more selective about selecting our tenants in future so that our current role, in providing affordable rented housing in rural areas where both Councils and RSLs find it more difficult and expensive to deliver, will diminish. We shall, in future, be seeking to rent at market rents where we know that turnover is higher and where we find that tenants are generally more respectful of our property. The net result is precisely the opposite of what the Bill intends – less stability and higher rents for the rural PRS which sector is, currently, delivering the outcome the Bill seeks for urban areas.

Furthermore the fact that under the new Bill tenants will have moved ‘for a reason’ an underclass will develop of people and families that the PRS will not wish to house – they will fall on the already hard-pressed social housing sector.

Grounds for Repossession:

Since the original consultation I note that additional grounds have been added. I have no doubt that those who drafted the original thought they’d covered everything – clearly they hadn’t – and the Bill still doesn’t cover all eventualities – indeed no prescriptive list will ever anticipate every situation where a landlord may need to seek repossession. For example:

- an industrial expansion may require a neighbouring property to be vacated because of noise, dust or other emissions.
- the list of grounds doesn’t provide for a rural landlord to repossess a property in order to house an extra employee – thus the Bill may impede rural development. See Rural Proofing above.
- Likewise there is currently no provision to allow us to repossess a property in order to house a retiring employee. This is a custom on many rural estates See Rural Proofing above.
- A property may require upgrading to meet statutory standards and the cost of that upgrading may be such that it is a totally unviable investment.

Everywhere I look it is evident that this Bill has been drafted with urban Scotland in mind and the needs, practices and customs of rural Scotland’s landlords have been ignored.

Ideally the no-fault ground should be retained. If not, then a catch-all ground should be provided permitting the landlord to appeal to the Tribunal for repossession on any reasonable grounds. This would cover the unexpected situations that legislators have overlooked.

Procedures:

We have used no-fault grounds when either the rent hasn't been paid or when the tenant has been, in our view, anti-social. You might argue that under the new Bill we are covered. However you forget the rural context. If we have to seek termination on anti-social behaviour we as landlords and the tenant's neighbours, are going to have to amass evidence in order to make a case to the Tribunal. Should an appeal on those grounds be unsuccessful then, in a community where everyone knows each other and providing 'evidence' anonymously impossible, then living together in a small rural community after such a case is going to be difficult to say the least.

Furthermore if the tenant is evicted on grounds 9-13 then their cards will be marked and they will find it more difficult to find a PRS landlord willing to accept them. (Again the outcome is contrary to the goals of the proposed legislation). Currently, under 'no fault' the outgoing tenant(s) move on without a stain on their character. We shall, as a result of this Bill, be enquiring on what grounds applicants have left a previous tenancy.

By failing to give landlords certainty of being able to terminate a tenancy the Bill encourages us to let properties as self-catering rather than full-time residences and discourages us from investing in improving and developing our rented housing portfolio in Scotland. Faced with the option of investing say in Scottish rented housing; or putting that money into property elsewhere – **the odds are now against investing that money in Scotland.**

Part 6: Death of a tenant:

There are a number of questions. What if there's no money to pay the ongoing rent? Or no executors? In winter who ensures the property is protected from frost etc. This measure has not been thought out.

Gap Lets:

Landlords may, for example, let to students for 9 months and then have a summer letting programme – e.g. for the Edinburgh Festival. Gap lets may also affect other landlords who may need to provide accommodation for seasonal workers but who then lease on a short-term basis to people who may be in housing need. (We sometimes help out the Local Authority by housing homeless households). How are we to have confidence that these 'gaps' will appear if the occupant has is given the right to stay put? A second-year student remains a student during the summer holidays and may elect to stay put. It will therefore be impossible to manage a summer letting programme sufficiently in advance to meet the customers' (the short term tenants') need for planning ahead. While the Bill provides for short tenancies there is no guarantee that the tenancy will end as agreed – this is wrong. The Bill thus undermines a fundamental element of property letting – a contract for a definite term – which in turn undermines the ability to have a gap letting programme.

To help you visualise the difficulties please imagine if you were running a car-hire business and the lessee has been given the right to hang on to the hire car for as long as they like. How would you cope?

Conclusion:

As I said at the beginning this Bill shows the Scottish Government is shooting itself in the foot. Government wants longer, more-stable tenancies with more investment and a growing PRS providing, no doubt, affordable housing. Rural Scotland's PRS, especially the vast majority of rural estates, are already providing this – affordable rural rented housing, with long-term occupancies, under the existing SAT regime.

The outcome of this new Bill, unless changed considerably for the better, will be the opposite - a reduction in the stability in rural housing, higher rents and lower investment. Brilliant. Think Rural. Think again.

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