

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

The Council of Mortgage Lenders (CML)

Introduction

1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our over 130 members comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 95% of the residential mortgages in the UK. In addition, the CML's members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing of which just under £4 billion is in Scotland.

2. We welcome the opportunity to respond to the call for evidence from Scottish Parliament Infrastructure and Capital Investment Committee on the above Bill.

Part 1, 2 and 3 of Bill – new tenancy regime

3. We are supportive of the proposal to simplify the tenancy regime in Scotland by replacing the assured tenancy and short assured tenancy by a new form of private residential tenancy.

4. There are a number of areas within this Bill including potential statutory terms for the tenancy which it is said will be dealt with by secondary legislation. It will be important that these areas are properly consulted upon and are subject to an appropriate level of scrutiny. We have particular concerns around Clause 2 (2) (d) and Clause 3 in Schedule 3 – Part 1 (Property to be sold by the lender); and urge the Scottish Government to remove these clauses from the Bill.

Part 4 – Rent

Annual rent reviews

5. In its consultation paper on Tenancy reform, the Scottish Government referred to tenants having to plan ahead when managing their finances to cover the rent, as a reason for moving to annual rent reviews. We would add that landlords must also plan ahead; they too are faced with borrowing costs and other on-going costs in relation to their property. Although over the last six years there have been no Bank of England interest rate rises and inflation has remained low, interest rates are expected to rise in 2016 – how frequently remains to be seen. In an annual rent review environment, landlords, particularly those who may have borrowed to purchase their property in advance of letting it out, will now have to consider whether borrowing and other costs are likely to rise during the forthcoming 12 months, so that they are in a position to meet these costs and not default on their loan. This may cause some landlords to set rents at a higher level to ensure that any potential increased costs are covered, than would have been the case if rents could be adjusted as their costs vary. Should some landlords not have the necessary

expertise to anticipate interest rate rises and cost increases, lenders could be faced with increased buy to let mortgage arrears as a result.

Rent increases

6. The Landlord has to give the tenant three months' notice of the intention to increase rent with the tenant having the right to refer to a rent officer to set the rent within 21 days of receipt of the notice and both the landlord and tenant having 14 days to appeal the rent officer's decision to the First Tier Tribunal. It will be important that both the rent officer service and First-Tier Tribunal are adequately staffed to deal timeously with these matters and hopefully most can be dealt with within the notice period otherwise where landlords are reliant on an increase they may face financial difficulties and where they have borrowed to purchase the property may have difficulty in meeting their mortgage payments.

Rent pressure zones

7. In our responses to the Scottish government consultations we advised that we were opposed to the introduction of rent controls. The Scottish Government does however seem intent to proceed with this proposal.

8. It is difficult to say at this stage what impact the proposed introduction of rent pressure zones will have on the availability of buy to let lending, but lenders will monitor developments closely, to establish the number of zones being created and their potential impact on returns available to landlords; in terms of allowing them to meet their costs and maintain economically viable property investments.

Part 5 – Termination

Protection for sub tenants

9. We would imagine that most landlords will include a provision in the private residential tenancy that a tenant cannot sub let the property without their express consent in writing. They will not want to see a continuation of the sub tenancy if they have not had the opportunity to vet the sub tenant. We note that the protection available to sub tenants will not apply where the tenancy of the person who was the landlord is being brought to an end by an eviction order.

Termination by tenant

10. The proposed notice periods for the tenant to give to a landlord of 28 days where the tenant has occupied the property for less than six months or 56 days where the tenant has occupied for more than six months are reasonable in our view.

Termination by landlord

11. We are supportive of the concept that in the case of termination by the landlord the notice to leave period should be based on the period the tenant has occupied the property. The 28 day period where the tenant has occupied for less than six months and 84 days where the tenant has occupied for more than 6 months seem

reasonable. The fact that the 84 day period can be reduced to 28 days when certain of the mandatory grounds for possession arise should provide some protection for landlords.

12. We are however concerned regarding the provision contained at Clause 40(2) which states that the tenancy comes to an end on the later of the date the tenant ceases to occupy the property or the date specified in the notice to leave.. The tenant could in effect cease to occupy the property almost immediately after receiving the notice to leave but the landlord could not take the property back for up to 84 days. During this period the property will be lying empty, could deteriorate and be subject to vandalism. It is also likely if the tenant has vacated that they will cease to pay rent and as a consequence a landlord with a buy to let mortgage could be faced with financial difficulty in meeting their mortgage payments. We would call for this provision of the Bill to be reviewed.

13. We remain concerned regarding the impact which these notice periods will have when a lender wishes to sell the property and discuss this in detail later in this response.

Part 6 – Death of tenant

14. We cannot recall the rights of spouses and partners of the tenant being able to inherit the tenancy on death being consulted upon. If the surviving spouse or partner does not have the financial means to meet the rental payments then the landlord would have to issue a notice to leave and await the expiry of the specified period. This could place the landlord in financial difficulty.

Schedule 3 – Part 1

Property to be sold by the lender

15. It was our understanding that where a lender was to sell the property this would be regarded as a mandatory ground for possession. However, the way the Bill has been drafted this would now be discretionary – where the tenant did not receive notice from the landlord prior to the granting of the tenancy that a Standard Security had been granted over the property to the lender; and that this could result in the tenancy being terminated by the lender wanting to sell the property.

16. This provision seems to ignore the way in which buy to let mortgages operate, in that a general consent to let the property is given by the lender at the outset; and lenders have no involvement in the tenancy contract entered into between the landlord and tenant. In addition, following the provision of a general consent to let, lenders do not need to be notified when tenants change and new tenancies are entered into. Lenders, therefore, have no way of ensuring that landlords include such a provision notifying the tenant. It, therefore, seems wholly wrong that a lender could be refused an eviction notice as a result of something over which they have no control. It is our view that this provision will have a detrimental effect on the availability of buy to let lending in Scotland. We would call on the Scottish Government to amend this provision by deleting Clause 2 (2) (d) and Clause 3 in their entirety.

17. The report of the review of the private rented sector tenancy regime prepared by Professor Douglas Robertson highlighted that lenders to the sector were likely to require certainty that they can obtain vacant possession in the event of a default on a loan provided to a landlord. It indicated that there was a particular issue in Scotland as there was no equivalent to the position in England and Wales which allowed a lender to appoint a Receiver of Rent and as a result it gave lenders fewer options to assist both landlords and tenants when they were in difficulty.

18. We remain concerned particularly about the position where the landlord with a mortgage is not making payments to their lender; notwithstanding that the tenant may be paying rent to the landlord. In England and Wales a lender could appoint a Receiver of the Rent, which would allow the rent to be paid to the Receiver and who could then pass it on to the lender thus potentially allowing the tenant to stay longer in the property if the rental payments were kept up to date to the lender.

19. It is likely with the new notice to leave periods proposed in the Bill that there will be between five and six missed mortgage payments before the lender can proceed to obtain an eviction order as lenders will have initially taken the landlord through their early strategies for payment when the mortgage payments were initially missed. This will potentially increase bad debt levels for lenders which will certainly not assist with their appetite for buy to let lending in Scotland.

The Council of Mortgage Lenders (CML)
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