

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

The National Landlords Association (NLA)

Background:

The National Landlords Association (NLA) is the UK's leading organisation for private-residential landlords. It works with 61,000 landlords, ranging from full-time landlords with large property portfolios to those with just a single letting.

NLA membership helps landlords make a success of their lettings business by providing a wide range of information, advice and services.

The NLA campaigns for the legitimate interests of landlords by seeking to influence decision-makers at all levels of government and by making landlords' collective voice heard in the media. It seeks to raise standards in the private-rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities.

General Points:

The NLA is concerned that a number of the provisions contained within this bill will have the effect of reducing the ability of landlords to react to tenant demand and the overarching flexibility of the PRS to provide housing which supports communities and the economy.

Specifically, the NLA believes that the removal of the 'no-fault' possession process will dramatically alter the nature of landlords' investment in PRS accommodation in the future. It is likely to make existing landlords more selective about the tenant profiles they are prepared to work with and the margins they are willing to accept relative to the risk of being unable to efficiently end a failed tenancy.

It is very likely that the vetting and income requirements landlords apply to prospective tenants when assessing their suitability for specific property will be affected, as will the rent levels landlords will determine best support their business models. Undoubtedly, some landlords will consider investing elsewhere, or in other asset types.

However, the most significant impact is likely to be on future investment in the sector. Landlords will need to reassess their investment model in the light of a potential inability to regain possession swiftly. It is likely that landlords will view investing in residential property in Scotland as higher risk than was previously the case, and higher risk relative to other parts of the UK.

Of particular concern will be the perception of financial institutions (lenders) upon which much of the PRS' stock is reliant. Buy to let lenders are likely to view with concern plans to remove the no-fault procedure and the impact it may have on their exposure to taking on receivership responsibilities for potentially perpetual rental

agreements. While we acknowledge the existence of a proposed ground for use by lenders intending to sell a property, there remains a degree of uncertainty, which is likely to persist until sufficient precedent exists to assuage uncertainty.

Rent Setting:

Part four of the Bill (Rent) outlines restrictions to landlords' ability to set and vary rent levels in relation to their properties. The NLA has significant concerns about the content of this part of the Bill and the impact it is likely to have on investment and practices in the PRS.

According to the ONS Index of Private Housing Rental Prices indicates that rental prices paid by tenants in Scotland rose by 1.6 per cent in the 12 months to September 2015. This compares favourably, in affordability terms, with England where prices rose by 2.8 per cent (1.9 per cent excluding London)¹.

Furthermore the Scottish Government's own 'Second Consultation on a New Tenancy for the Private Sector' states that *"At the Scotland level, there had been an 11.2% cumulative increase in average rents from 2010 to 2014 for 2-bedroom properties, compared with an increase in the Consumer Price Index (CPI) of 11.7% for the same period"*².

In areas with a more pronounced, and above inflation, increase in average rents the same consultation notes that *"To some extent these rent increases will have reflected considerable average income growth in particular areas during the period."*

Accordingly, while limited upward pressure on rents exists, there appears little justification for government intervention to control inflation.

Never-the-less clause 30 introduces the power to designate an area a 'rent pressure zone' and subsequently intervene in price setting.

The NLA does not believe this is a justified policy response, or a proposal likely to have the desired outcome. Such a policy is likely to restrict investment and compound the effect of undersupply in areas of cost pressure. We would suggest that a more appropriate approach for the Government would be to focus its efforts on increasing supply, in turn reducing the imbalance between demand and supply.

If clause 30 is not removed from the Bill during consideration, the cap proposed by clause 31(1) must be re-based according to either CPI-H or RPI, which reflect housing costs.

Furthermore, clear and transparent criteria for approval of an application for designation should be published, against which decisions may be judged and ultimately challenged if deemed unjustified.

¹ Index of Private Housing Rental values, ONS, October 2015
(<http://www.ons.gov.uk/ons/rel/hpi/index-of-private-housing-rental-prices/july-to-september-2015-results/index.html>)

² Second Consultation on a New Tenancy for the Private Sector, Scottish Government, March 2015

Grounds for Possession & Ending Tenancies:

Notwithstanding the NLA's earlier stated objection to the removal of the no-fault possession procedure, we have a number of concerns relating to the Bill's provisions for ending a tenancy.

In relation to notice periods, the NLA is concerned that landlords faced with significant rent arrears, will have to experience a period in excess of four months (three months and 28 days) before applying for an eviction order. During this time it is highly likely that arrears will accumulate significantly.

We would recommend that the period of required rent arrears be reduced to two months. This will still lead to significant financial detriment, but it will cut the time landlords will be required to wait while continuing to provide a period of in excess of three months (two months and 28 days) during which tenants may consider their circumstances and rectify the situation.

While the NLA recognises that Ground 11 does not require a full three months equivalent debt, it is highly likely that non-payment will be absolute if allowed to accrue to a level sufficient to indicate tenancy breakdown.

Additionally, we are concerned that landlords needing to end a tenancy as a consequence of reported anti-social behaviour will be unable to apply for an eviction order until 28 days' notice has elapsed. This will unnecessarily delay regaining possession and is likely to have a significant impact on the quality of life experienced by those in neighbouring properties. This is likely to have severe consequences in the instance of shared properties and those where close proximity of dwellings is a factor.

Arrears

Looking at the specific grounds outlined in Schedule 3, we are concerned that Ground 11 (rent arrears) does not allow for possession as a result of persistent late or underpayment of due rent. We recognise that Ground 11 of Schedule 3 makes provisions for arrears equalling a sum in excess of one month over the course of a three consecutive months, this does not provide protection in relation to consistent and long-term underpayment, which may take significant time to reach the stated threshold and is likely to continue to accrue during the prescribed three month period and 28 day notice period.

Further to our concerns about the criteria that must be fulfilled to ensure possession using Ground 11, we have significant doubts concerning the exclusion of arrears resulting from "*a delay or failure in the payment of a relevant benefit*"³.

Landlords are generally sympathetic towards issues with payment of housing related benefits and frequently assist tenants in making relevant claims. It is common for landlords familiar with the administration of such benefits to take a flexible approach to accrued arrears. However, if arrears have accumulated to such a point that a

³ Private Housing (Tenancies) (Scotland) Bill (as introduced) Schedule 3, Ground 11(c)

landlord feels he or she has no choice but to end the tenancy it is unreasonable to deny possession on the basis that an administrative third party is to blame. By such point many landlords may be struggling to service their own mortgage payments and the viability of the letting may be at risk. It is also likely that such a decision will be made considerably more difficult by the introduction of the single combine 'Universal Credit' payment which will not identify monies intended specifically for housing.

ASB

In relation to Ground 13, the NLA is disconcerted to find that there does not appear to be mandatory element to eviction in the grounds of anti-social behaviour. Further to points made earlier in this evidence concerning the length of notice, it is disheartening that communities may be forced to endure continued abuse at the hands of tenants landlords encounter difficulty in removing from premises.

Historically, landlords find it very difficult to obtain possession on the basis of ASB due to the challenge of finding neighbours and others affected willing to give evidence without the certainty that the offending individual(s) will be removed. We believe that a discretionary ground will perpetuate this difficulty and the lack of access to a 'no-fault' ground will exacerbate the problem further.

Succession

The NLA believes that the introduction of succession rights in relation to private tenancies will lead to unintended consequences and the potential for landlords to suffer significant financial detriment.

Aside from the potential consequences of spurious claims generated by alleged partners, it is not uncommon for individuals to die intestate. In such circumstances, landlords may find themselves with an extended wait to regain possession of a vacate property. We would strongly recommend that provision be made for landlords to be able to apply to the tribunal for possession upon the death of a tenant.

Student tenancies

The NLA has received a number of representations from landlords and tenants concerning the impact that these reforms will have on the availability, status and viability of student accommodation.

We are seriously concerned that landlords will be unable to contract with tenants for tenancies ahead of the academic year, as they will have no certainty of possession in relation to existing tenants until they serve notice. Likewise many landlords who rely on short-term lets outside of the academic year will be reluctant to agree tenancies on the same terms as previous years and will have to revise their offer – potentially leading to a significant number adapting properties for alternative, perhaps more lucrative, markets.

It has been brought to the NLA's attention that it is common practice in parts of Edinburgh to split their businesses between catering for students during the relevant part of the year, while meeting the demand for accommodation during the festival.

Without this means of guaranteeing occupancy landlords may decide to target traditional long-term lets, drastically reducing supply of student accommodation and potentially jeopardising the viability of major spectacles such as the Edinburgh Festival which require a considerable volume of short-term housing supply.

We strongly recommend that consideration be given to the introduction of a mandatory ground relating to the end of an agreed fixed term in order to safeguard the provision of student and short-term tenancies in high demand areas.

The National Landlords Association (NLA)
November 2015