

## Private Housing (Tenancies) (Scotland) Bill

### Written submission to the Infrastructure and Capital investment Committee

#### Dunecht Estates

##### Introduction

Dunecht Estates covers 53,000 acres within Aberdeenshire and Kincardineshire and lets over 200 houses under a range of private rented tenancy agreements including Short Assured Tenancies, Assured Tenancies and Regulated Tenancies. A substantial number of these residential lets would be classed as affordable in terms of the Aberdeenshire property market. Although we recognise a number of good points in the Bill we also have several very significant concerns which are set out in our response below:

##### 1. 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. We also support the proposed 3 month notice period.

###### Chapter 2. Rent variation instigated by the landlord's notice

We have concerns regarding the duty to make information available (section 29) in relation to 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 are opposed to any form of rent control or capping. Rents should be driven by the market and currently where supply exceeds demand rents decrease and where demand exceeds supply rents generally increase. The introduction of rent limits could disincentivise landlords from making improvements to their properties as they may not be able to increase the rent to reflect the improvement. Rental limits have the potential to discourage landlords from letting especially if the return on their investment is likely to decrease. There is grave danger of such a provision resulting in stock being removed or not brought into the Private Rented Sector.

We strongly argue that this issue should be addressed instead by increasing the supply of housing. To tackle this Government needs to refresh and arguably amend planning legislation or at least proactively manage local authorities to be satisfied that they are delivering sufficient numbers of houses within Strategic and Local Development Plans.

We believe that as presently the ability of the tenant to refer an unreasonable rent increase to adjudication is enough of a safeguard against excessive rent increases.

## 2.Part 5. Termination

### Chapter 1. Security of tenure

We still believe the no-fault ground is vitally important for landlord confidence in the sector particularly in relation to the capital value of houses. Any uncertainty over the ability to obtain possession has potentially negative implications for values.

The private rented housing industry is vibrant at the moment and the extent to which this is because landlords feel secure in the ability to regain possession of their property should not be underestimated. The ability to regain possession on a no fault basis preserves capital values and encourages investment, bringing much needed stock into the Private Rented Sector. Dunecht Estates is meantime reviewing the opportunity to bring 10 new units into the sector, principally through conversion of redundant buildings at very significant cost and a decision on this will be influenced by the future direction on the introduction of the new tenancy and any removal of the no-fault ground. We strongly urge Government to rethink its position on the removal of the no-fault ground and thus preserve the success that the Short Assured Tenancy has brought to delivering properties into the Private Rented Sector.

We are also not sure why a new ground for possession has been added where the property is required to house a full-time religious worker. We believe this ground should be opened up for any business that needs a property to house an employee. We cannot see the justification in only allowing this ground for religious workers. This suggested expansion of the new ground is of significant importance to the success of local land based businesses many of which habitually provide housing with employment eg, farm workers, forestry workers, gamekeepers etc. There is grave danger of a property owner deciding to leave a house vacant in case a property is required for an employee thus removing available stock from the Private Rented Sector.

### Chapter 3. Termination at landlords instigation

Although grounds for repossession have been improved through the consultation process we still think without the no-fault ground they will leave landlords with little confidence to maintain and increase the supply of let houses. This could potentially result in a decrease in private housing stock and greater scrutiny of potential tenants. We believe the only way to prevent a potential decrease in housing supply is to continue to allow the no-fault ground to be used.

We support the wrongful termination provisions in the Bill and believe they provide a strong enough disincentive to prevent abuse of the grounds for repossession by landlords.

### Comment on Schedule 3

Please see below comments next to the relevant grounds for possession in bold.

### Grounds for Possession

Part 1: Let property required for another purpose (with the exemption of ground 2 all of these grounds are mandatory)

1. The landlord intends to sell the property within three months of the tenant ceasing to occupy it. **No comments.**
2. Property to be sold by the mortgage lender. (Discretionary if the landlord did not make the tenant aware that the property has an outstanding mortgage and the mortgage provider requires the tenant to leave before disposing of the property.) **No comments.**
3. The landlord intends to refurbish which includes significantly disruptive works to, or in relation to, the property. **Further clarity necessary on the extent of works required to be classed as 'refurbishment'.**
4. The landlord or family member intends to live in the property. **We are concerned that this provision does not apply to properties held in trust or by executors or a company structure.**
5. The landlord intends to use the property for a non-residential purpose. **No comments.**
6. The property is held for use in connection with the purposes of a religion and the property is required for that purpose. **No comments.**

Part 2: Tenant's status (all of these grounds are mandatory)

7. The tenancy was granted to an employee and the tenant is no longer an employee. **No comments.**
8. The tenancy is in purpose-built student accommodation and the tenant is no longer a student. **No comments.**

Part 3: Tenant's conduct (some of these grounds are mandatory and others are discretionary)

9. The tenant is not occupying let property as their home (Mandatory). **We welcome this ground but would like greater clarity in terms of how this ground could be proved sufficiently to the First-tier tribunal.**
10. The tenant has breached their tenancy agreement – this excludes the payment of rent. (Mandatory where the tenant has materially failed to comply with a statutory term of their tenancy agreement. Discretionary where they have failed to comply with any other term of the tenancy). **We support this ground but worry that its application will be dependent on the detail of the model tenancy agreement.**
11. The tenant is in rent arrears. (Mandatory, if for three or more months, the tenant has been continuously in arrears of rent and at any point during that period the arrears were equal to, or greater than, one month's rent – The Tribunal must be satisfied that arrears were not due to a delay or failure in the payment of a relevant benefit. Discretionary if the tenant has been in arrears of rent for three months or more months and the Tribunal are satisfied that it is reasonable on this basis to issue an eviction order. In deciding whether it is reasonable to evict, the Tribunal will consider whether the tenant being in arrears is due to a delay or failure in the payment of a relevant benefit). **We have concerns with this ground in relation to the word 'continuously' and the number of months a tenant needs to be in arrears before a notice to leave can be issued. If the landlord cannot issue a notice to leave until the end of three months and then has to go through the tribunal (with no assurance**

**given as to how long this process will take) we could find ourselves in a position further down the line where 4/5 months' rent is outstanding. Landlords are legally entitled to only hold a maximum of 2 months' rent as deposit.**

12. After the tenancy has begun, the tenant is convicted of using, or allowing the use of, the let property for an immoral or illegal purpose. (Mandatory). **Greater clarity is needed on this ground.**
13. Anti-social behaviour where the tenant has acted in an anti-social manner to another person who lives in the property or any other person while visiting or in the locality of the property. (Discretionary). **We are concerned about the burden of proof required to use this ground. There will be a need to gather evidence from neighbours which could put both them and the landlord in a difficult position.**

#### Part 4: Legal impediment to let continuing (all of these grounds are mandatory)

14. Landlord registration has been refused or revoked by a local authority. **No comments.**
15. House in Multiple Occupation (HMO) licence revoked by the local authority. **No comment.**
16. Overcrowding statutory notice in respect of the property has been served on the landlord. **No comments.**

#### Additional grounds required

We still believe an additional ground is required for gaining vacant possession of a property needed to house an employee who needs to live on-site in order to better fulfil the duties required of the job. The removal of the no-fault ground, which we oppose, does not help in this respect.

Often when houses become vacant because an employee has retired or moved jobs that property can be let on a short term basis until a replacement employee is found. A replacement employee is sometimes not required instantly or the first replacement found maybe does not require a house but the next replacement in the future might. Therefore it is extremely important for employers to have the ability to supply employees with a house as and when it is required. If a house is left vacant because it might be needed for an employee in the future not only does this effect the income stream of a business but it also effects the supply of housing available in rural areas. Therefore if this ground is not included in the Private Housing (Tenancies) (Scotland) Act it will be detrimental to both landlords and tenants in the future.

We also argue that there should be a ground added to account for any other reasonable circumstances in the event of the no-fault ground being lost. This could be discretionary so the first tier tribunal can regulate the use of this ground. This would hopefully account for any circumstances where no specific ground applies but it would still be reasonable to ask a tenant to leave.

#### Part 6. Death of Tenant

The Bill sets out provisions for the partner of a tenant who dies allowing them to inherit the tenancy provided they have been occupying the property and the landlord was aware of that fact, the deceased tenant did not already inherit the tenancy, the

person inheriting the tenancy was married to, in a civil partnership with or cohabiting with the deceased. We would like to see this restricted to only one succession as it is at present through the Housing (Scotland) Act 1988.

We believe that on the death of a tenant the tenancy should automatically come to an end unless there is a successor of whom the landlord has been notified of under Schedule 2. To require the executor to end the tenancy through notice is over complicated and time consuming. It also presents problems in terms of ongoing property management and maintenance.

#### First Tier Tribunal

Finally we would like to emphasize the need for the First tier tribunal to be robust, unbiased and not too lenient on tenants when the grounds for repossession have been met. If the no-fault ground for possession is to be removed landlords need to have confidence that the new system for letting houses and specifically the ability to regain possession is quick and reliable.

#### Conclusion

Dunecht Estates has experienced great success in the use of the Short Assured Tenancy as a means for letting residential accommodation for many years. As stated we have a number of concerns with the changes proposed in the Bill. Short Assured Tenancies have been the driving force behind encouraging property owners to let housing due to the confidence they promote, maintaining capital value and the ability to remove undesirable tenants at the expiry of their lease. We believe current regulations in relation to the repairing standard, tenancy deposits, notice procedures, landlord registration, health & safety and the move towards regulating letting agents provide a framework that cannot be abused by landlords unless it is unpoliced. With this in mind we would argue that the current system is fit for purpose.

Going forward it is vital that the no-fault ground is maintained to ensure the growth of the Private Rented Sector continues.

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