

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

University of Stirling

Given the evidence that has already been submitted for the Committee's consideration of this Bill, I thought it might be helpful to reflect back on the sole recommendation made by the Tenancy Review Group, which Scottish Ministers, following two further pieces of consultation, acted upon to produce this Bill. The unanimous recommendation from the 19 members of this Group, which I chaired, was the following:

“The Group has one recommendation to make to Scottish Ministers, namely, that the current tenancy for the Private Rented Sector (PRS), the Short Assured Tenancy (SAT), and the Assured Tenancy (AT) be replaced by a new private tenancy that covers all future PRS lets.

This change is considered necessary in order to allow the rights and responsibilities inherent in the legal agreement between tenants and landlords to be clearly stated and to ensure that the implications of the agreement for both parties are understood. This recommendation for legislative change was unanimously agreed by the Review Group, which drew its membership from a comprehensive cross section of PRS interests”¹.

I consider it important to restate this recommendation because the Bill's clauses seek to fulfil that simple recommendation and in doing so have come forward with a carefully considered set of proposals which fall from this. I would also, in a personal capacity, offer three broad observations on the proposals currently before the Committee.

Broad commitment to a modern tenancy

The only recommendation made by the Tenancy Review Group to the Scottish Government was for a modern tenancy. Under these proposals, a new private rented tenancy, the Scottish Private Residence Tenancy, will replace the current Assured and Short Assured Tenancy regime. The most noticeable change from the SAT is that landlords will no longer have the ability to ask a tenant to leave and thus regain possession of their property simply because the tenancy has reached its end, or 'ish' date, commonly known as the 'no-fault' ground. Rather, landlords will now have 'modern protection for repossessing their property', via statutorily specified circumstances such as their intention to sell, or to move back into the property themselves, or that their tenants have breached the tenancy agreement, via engaging in criminal or anti-social behaviour. So in future landlords can only end the tenancy from this legally defined list of specified grounds. Given the core business here is the renting of residential property this seems to be a more appropriate

¹ Robertson, D (2014) **Report of the Review of the Private Rented Sector Tenancy Regime: Final Report**. Edinburgh: Scottish Government. <http://www.gov.scot/Resource/0045/00450792.pdf>

tenancy model, given it seeks to ensure an income stream and minimise unnecessary additional costs incurred through the re-issuing of tenancies. In addition, there will also be more progressive repossession grounds for rent arrears cases. So the inherent weakness in the current system, of tenants passing the six-months contractual period and then being on a month-to-month arrangement which has no legal standing is effectively addressed.

Surprisingly, research commissioned specifically to inform the work of the Tenancy Review Group noted that neither tenants nor landlords knew their contractual tenancy position, once the six-month period had passed and they had moved onto what both considered a month-by-month tenancy arrangement. Legally no contract existed between parties, so there was no tenancy in operation, yet few, if any, were actually aware of that, neither tenants nor landlords². Given the Assured tenancy system had been operational since 1988, this was felt by the Group to be a quite intolerable situation. The Bill's recommendations comprehensively deal with this inadequacy. Given, from the commissioned survey evidence considered by the Group, that the average length of a SAT was far longer than just six- months, then the short timeframe offered under the current tenancy regime also seemed inappropriate, and thus if being re-issued, as would be required to ensure a legally binding tenancy, then unnecessary added expenses falls on all parties.

The Group did offer the following observations on tenancy length.

“On length of tenancy, the new tenancy would set a minimum period, as is currently the case. There are a variety of reasons why either party would want a specific minimum term for the tenancy, take for example students, or people letting a home while they are working away. However, the evidence also shows that very few tenants only stay for the current statutory minimum of six months. So while the minimum could stay at six months, it is sorting out the roll-over arrangements, or having a requirement to issue a new tenancy, within a defined period, that will be more important to both tenants and landlords*.

The Bill's recommendations thus clearly follow on from this.

Importance of knowing and then being able to access rights

In outlining what would be the format of a modern private residential tenancy the Group offered this advice.

“The new statutory private tenancy regime would set down, in a single document, all the current statutory requirements for a private tenancy, as detailed in all the relevant statutes. Each requirement, set down in statute, would thus be made explicit within this document. This would therefore mean, for example, that the landlord registration requirements, the repairing standard, the defined building requirements / standards, the details of the

² Robertson, L Little, S and Simpson, S (2014) [Qualitative Research to explore the implications for Private Rented Sector Tenants and Landlords of longer term and more Secure Tenancy Options](http://www.gov.scot/Resource/0044/00445977.pdf). Edinburgh: Scottish Government.

rights that apply to both parties and how to enforce them, as well as the tenancy pack expectations would automatically be detailed within the tenancy document.

A section for the addition of clauses specific to the property and / or parties involved would also be included, so that landlords can set down any particular requirements and expectations, as long as these do not contradict the statutory requirements.

To help ensure that landlords and tenants clearly understand the provisions of these statutes and specific clauses, there would be an accompanying prescribed statutory guidance note which would be a required part of the tenancy documentation. This would ensure that both parties were aware, right from the outset, of their rights and responsibilities, as well as the operational procedures that govern the tenancy.

The three elements, taken together, would constitute the tenancy. The statutory requirements of the tenancy, the additional property specific clauses and the accompanying guidance notes would be made available to tenants to view, prior to signing the tenancy, and would be formally issued to tenants at the time of signing the tenancy. It should be made possible to sign the tenancy contract electronically”.

The thinking here drew, in part, on the approach adopted in developing the Scottish Secure Tenancy, namely, that the new tenancy should be in three distinct parts. Firstly, it needed to contain all the requirements demanded of current legislation, in regard to the PRS, and that this is properly detailed within the actual tenancy document. In addition, there would be a section for specific requirements set by the landlord for the property, which would require to accord with statutory requirements. Finally, there needs to be a section that provides, in plain English, a clear statement as to what the listed legal requirements actually mean. The Bill recommends pursuing this approach.

To assist in this exercise the Bill also argues the value and worth of a model tenancy so that landlords can get their tenancy legally correct, and tenants have the ability to challenge a tenancy offered against the provisions detailed by the model. Such uniformity also has clear benefits to those wishing to assert their rights in law, whether tenants or landlords, as well as those charged with adjudicating on such matters, an issue discussed in some more detail below.

The other clear advantage of the recommendations for the new Scottish Private Residential Tenancy is that through its improved security provisions it now allows tenants to exercise the rights which Parliament, through five previous Acts, passed over the last decade and a half, has seen fit to enact to protect their respective rights. With the short-term nature of the previous tenancy, although such rights existed in statute, for practical reasons associated with the six-month tenancy being the norm, they proved largely inoperable because the timeframes involved in exercising these rights were typically longer than that which was left on the tenancy. For Parliament to have made the effort and taken the time to ensure these rights were on statute, it only seems appropriate, where necessary, they can actually be

utilised. Further, the building up of Tribunal adjudications / decisions on such matters will also help all parties to better understanding their respective rights and responsibilities.

Requirement and importance of rent regulation given advent of the modern tenancy

Given the significant changes, recommended for this new tenancy, then the possibility now opens up for excessive rent rises to be used by landlords as a means to evict tenants, so there is a need to build in some safeguards. Under these proposals rents can only rise once in a 12-month period, and any rise will require 12 weeks' notice. This should provide all parties involved in the tenancy more predictable rents, as well as a degree of protection for tenants against subsequent excessive rent increases. As already noted above, the cost of having void property should also be reduced, given the longer tenancy timescales involved, better reflecting the actual tenancy pattern, and the predictability of when a tenancy will end.

If a proposed rent rise is considered too high, taking it in the tenants' opinion beyond the local market rate, then they can request rent adjudication through Rent Service Scotland. Following that, if the tenant is still unhappy with the proposed rent increase, there will be an appeal available to the about to be established First Tier Tribunal (as set out in the 2014 Act), where all PRS tenancies matters will be considered. This will be the final destination for appeal on all rent adjudications. For all other PRS tenancy disputes in the future, they will first be considered at the First Tier Chamber, with any subsequent appeals going to the Upper Chamber.

Critical for all parties working in this particular context will, however, be the quality of locally generated rent data for private residential property. One source that might be worth considering to improve the quality of rent data is the rent information that can be gleaned from the three officially approved rent deposit businesses that currently operate within Scotland. While they could already offer useful rent data, based on the information they collect for deposit purposes, some minor adjustments on the forms they currently employ could offer the possibility of a continuous rent tracking facility, at a scale appropriate to undertake the required local comparisons.

Finally, it is also important to stress that these recommendations are not about imposing rent restrictions, as has been wrongly reported in the press, but rather about the regulation, a practice which is common within many other market contexts. That said, I am also pleased that within quite unique and challenging circumstances such a power, to regulate rents, operating within a quite narrowly defined geographic area, should be available for local authorities to pursue with Ministers, and the proposed legislation also makes provision for that.

Overall, given the dramatic expansion of private renting in recent years, driven in large part by ready access to Buy-to-Let mortgage products, it is now crucial that a modern tenancy regime which everyone properly understands replaces the outdated Assured Tenancy, which was devised for a quite different private rented sector. With some 15 per cent of all Scotland's housing stock now in private renting, on a par with both housing association and local authority housing respectively, and the fact that

some 35% of under 36 year olds now rent privately, the need for a clear modern tenancy system is critical. Should you wish me to expand on any of the points made in this short submission I am happy to avail myself to the Committee.

Members of the Private Rented Sector Tenancy Review Group

Chair, Douglas Robertson, University of Stirling
Association of Residential Letting Agents - *Ian Potter (Daryl Macintosh)*
Association of Local Authority Chief Housing Officers - *Jim Hayton (Liz Dickson)*
Chartered Institute of Housing - *Sue Shone (Nicola Clark)*
Citizens Advice Scotland – *Fraser Sutherland*
Confederation of Scottish Local Authorities - *Silke Isbrand*
Council of Mortgage Lenders - *Kennedy Foster*
Edinburgh Private Tenants Group - *Liz Ely (Jon Black)*
Hillhead Community Council, Glasgow - *Jean Charlsey*
Homeless Action Scotland - *Robert Aldridge*
Royal Incorporation of Chartered Surveyors - *Johnathan Gordon*
Scottish Association of Landlords - *John Blackwood*
Scottish Land and Estates - *Sarah-Jane Laing (Ailsa Anderson)*
Scottish Federation of Housing Associations - *Lorna Wilson (Alison McDermod)*
Scottish Property Federation - *David Sivewright*
Shelter Scotland - *Rosemary Brochie*
Sustainable Communities - *David Middleton*
T C Young Solicitors, Glasgow - *Andrew Cowan*
University of Glasgow, Urban Studies - *Nigel Sprigings*

Names in brackets acted as substitutes at a single meeting.

Douglas Robertson, Professor of Housing Studies
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