

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

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1. Preliminary

1 Survey Response to Q 9: We disagree on the basis that market forces would naturally take care of rent increases beyond others in the area and a concern about what would be viewed as "similar" properties especially in rural areas.

2 Survey Response to Q12 - we are both landlords' representatives and tenant representatives.

3 The proposed Model Tenancy Agreement and proposed Notice to Leave should be made available for consideration at the earliest opportunity.

2. The Impact of the Bill on Student Accommodation:

We understand that if the Bill is passed, it will no longer be possible for a private owner of student accommodation to grant a fixed nine month tenancy to a student which allows the landlord to require the student to leave at the contracted expiry date (ie at the end of the academic year). Instead, if a private landlord wants to recover possession of the property from a tenant after the contracted expiry date, then we understand the landlord must identify at least one of sixteen specified eviction grounds (to justify the removal of the tenant).

It is noted that there is no eviction ground set out in the Bill which would allow a landlord to recover possession from a student tenant (at the contracted expiry date) because the landlord wishes to rent the property out as a "holiday let" during the summer (e.g. during the Edinburgh Festival). This may result in the loss of important premium rental income for some landlords, which could, in turn, have a material adverse impact on the valuation of such properties.

If passed in its current form, the Bill will also prevent private investors from properly managing student accommodation (including purpose built student accommodation). Many private providers of student accommodation look to secure lettings several months in advance of the start of an academic year (whether by way of advertising "direct lets" with students or entering into nomination agreements with universities). However, the Bill, if implemented today, would mean that the existing student tenants could not be asked to leave at the end of the 2015/2016 academic year (unless the tenant in question is no longer a student). As a consequence, private owners of student accommodation would be unable to guarantee to new incoming students and universities the availability of a set number of beds in their accommodation at the start of the 2016/2017 academic year.

The Position of Universities

We also note that the Bill allows universities and colleges to grant finite short term tenancies to their students (which align with their academic year). Education institutions will therefore be provided with the flexibility to properly manage their properties whereas private student accommodation investors (who often work alongside such education institutions) will not be provided with the same level of control.

This lack of control may adversely affect not only private student accommodation providers, but also the education institutions with whom they work (as it will make it more difficult for the private providers to guarantee the availability of rooms to the students of those institutions).

Recommendation:

In order to address the abovementioned concerns, we would request that the Bill be amended in either one of the following ways:

1 A letting of student accommodation to a student could be excluded from the types of tenancy that can be a “private residential tenancy” (and therefore such a letting would be included within the types of tenancy listed in Schedule 1 of the Bill (Tenancies which cannot be private residential tenancies)); or

2 An additional eviction ground could be included within Schedule 3 to the Bill (Eviction grounds) which allows a landlord of student accommodation to recover possession from his tenant at the expiry of the initial agreed lease term (ie at the end of the usual nine month tenancy).

3. Determination of open market rent

Section 27(3) of the Bill provides that

“In making the determination, the order maker is to disregard any effect on the rent attributable to (a) the granting of a tenancy to a sitting tenant, (b) any improvements carried out by the tenant, or a predecessor of the tenant to the tenancy, otherwise than in pursuance of the terms of the tenancy, or (c) any failure by the tenant to comply with the terms of the tenancy, **except to the extent that the failure has a direct effect on the open market rent of the property as calculated under subsection (1).**”

The last phrase of this provision (highlighted in bold) appears not to make sense from a commercial perspective.

It makes sense that a tenant breach will be disregarded from an OMR determination as a tenant should not be able to benefit from his own breach (if that breach results in the OMR being lower than it would otherwise have been). This reflects the standard position agreed in a commercial lease, for example. However, the wording in bold appears to be suggesting that if the failure on the part of the tenant does

have a direct effect on OMR, then this will not be disregarded. We have studied this provision and consider that it is capable of more than one interpretation – it should be clear that whatever is disregarded or not, a breach by the tenant that has an adverse effect on value should be taken into account when determining the rent, but that consideration should not be to prejudice the landlord. ie if a reduction in value and therefore the likely rent would be lower was the result of a tenant breach, that would be invidious. In effect, any breach by the tenant that results in a drop in OMR should be disregarded. This section seems on one reading to be saying the opposite. Taking this to extremes, it would mean that it was in the tenant's interest to breach the lease in such a way as to cause a drop in value eg by causing extensive damage, because the result would be a lower rent. This cannot be parliament's intention.

4. Rent Pressure Zones

Section 32(2) of the Bill provides that “An area may not be designated as a rent pressure zone more than once on the basis of the same application under section 30”.

It is unclear when this subsection would apply.

We think it is supposed to mean that once an area is designated as a RPZ, then it cannot be made subject to further RPZ regulations until the existing RPZ regulations have expired, but this requires to be clarified.

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