

## **Private Housing (Tenancies) (Scotland) Bill**

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

#### **Brodies LLP**

We welcome the opportunity to respond to the call for views on the Bill. Our comments on the Bill are based on our experience of what, to date, we have noted as being important to developers and investors. Taking student accommodation as one example (although the same points apply to any other large-scale PRS investment projects), in our experience universities are keen to encourage more and new student accommodation to be developed to support their academic success and increasing student numbers, especially from overseas. We understand from both developers and universities that to be fit for purpose, accommodation needs to be of higher specification than was the case in the past, with more individual rooms and facilities in locations close to public transport and the places of study. This requires external capital deployment and investment and innovation on the part of developers. Such parties require at least a level playing field with other markets if they are to be encouraged to bring their capital to Scotland and contribute to the continued success of the HE sector.

With the above in mind, we would comment on the Bill as follows:

We agree that the new Private Tenancy should replace the Short Assured Tenancy and the Assured Tenancy but would caution against any move to make every tenancy the same in every way since there will not be a one size fits all model which will suit every type of residential tenancy. We are also pleased to see that the procedures for beginning and ending tenancies have been streamlined and made easier for all to follow and implement.

The points in the Bill which we would suggest should be revisited and further amended are as follows.

#### **1. Removal of the no fault ground for repossession**

We would suggest that removing the no fault ground for repossession from residential tenancies will not incentivise landlords to invest in Scottish residential property when they can invest elsewhere in the UK and be certain about when they can recover possession of their rental properties.

We are pleased to see that the Bill allows the parties to agree an initial period shorter than 6 months but we do not believe the Bill goes far enough to allow landlords to plan ahead for new tenants taking occupation.

The Bill does not appear to allow the landlord and the tenant to come to an agreement on the length of the tenancy. Both parties are locked in to the agreement for the initial period and then indefinitely unless the tenant serves the requisite notice to end the tenancy or the landlord can found on one of the grounds for repossession.

We would suggest that the Bill provide a mechanism for the landlord and tenant to agree a break option which is exercisable by both parties, provided certain conditions are met. This could be introduced under Section 40 with both parties agreeing the date on which a notice to leave would have to be served to trigger the break option. If the conditions are not met at the date the notice of leave is due to be served or the notice is not served timeously, the notice to leave would be invalid. As well as having this option to break, the tenant could retain its right to serve a notice to leave as provided in the Bill.

Such a mechanism would be useful in shorter lets where, for example, accommodation is needed for: an employee being transferred to cover for another employee on a short term basis; entertainers, additional employees taken on by businesses and tourists increasing demand in Edinburgh during the Edinburgh Festival; summer school students looking for accommodation for a maximum of 2-3 months; seasonal workers looking for accommodation for 2-3 months either to cover summer or Christmas jobs. It could also work for longer term lets such as student accommodation.

## **2. Inability to bring student lets to an end after 10 months**

The student accommodation market has changed dramatically since the Housing (Scotland) Act of 1988 introduced new tenancies in January 1989. The legislation on Short Assured Tenancies and Assured Tenancies recognised that tenancies granted to students were of a different nature to those granted to other residential tenants and excluded student tenancies from the ambit of the legislation. The student lets excepted were those granted by an educational institution or another institution of the type listed in the Assured Tenancies (Exceptions) (Scotland) Regulations 1988. In 1989, the choice of accommodation for students was between the typical halls of residence provided by universities and flats provided by individual or small scale private landlords.

We know that the student accommodation market has changed beyond all recognition since then. There are now 5 main providers of student accommodation:

1. Companies whose business is to develop and manage custom built student accommodation;
2. Investors and funds who acquire purpose built student accommodation as an investment, often employing the third type of organisation below;
3. Property management companies who take care of the day to day running and administration of the accommodation and the lets to the students;
4. The universities, colleges and other educational establishments providing student accommodation. Such institutions now tend to rely on others to develop the accommodation for them and often lease the accommodation from the investor / developer and then sub-let it to the students; and
5. The individual private landlords who continue to rent properties to students.

The Bill currently makes special provision for the fourth category above, the educational institutions providing student accommodation, in allowing them to terminate the tenancy at the end of term time each year and pursue either new tenants or short-term summer lets. If none of the other grounds for repossession can be founded upon, removal of the no fault ground will mean that student tenants and private landlords will be locked into their agreements until either the student completes their studies or the student serves a notice to leave. We would suggest that the Government take advice on whether there is a justification for distinguishing between student accommodation provided by the private sector and that provided by educational institutions and whether such a distinction complies with Article 1 of Protocol 1 of the European Convention on Human Rights.

The Bill removes the flexibility the existing system provides private investors and operators. Whilst studios can be let for periods of a year, the majority of student accommodation tenancies (provided by all of the above) for cluster rooms work on 10 month cycles with it being agreed between the landlords and the tenants that the tenants will stay in the property for a 10 month period reflecting the term time of students and the landlord will recover possession of his property for 2 months over the summer break. The certain ability to recover possession allows the landlord in many cases to lease the property to a third party, often seasonal workers, tourists and summer students.

The removal of the no fault ground also raises the prospect of students notifying landlords of their intention to give up their tenancy at a much later stage and long after the landlord would normally look to either re-book or market the property for the following year. The changes proposed in the Bill would leave landlords uncertain whether rooms are going to be kept on by students until much later in the year and increase the risk of empty rooms at the start of the new term. This could discourage landlords from letting to students and reduce investment in this sector.

The issue with bringing student lets to an end could be addressed if the Bill is amended as follows:

- Amend paragraph 5 of Schedule 1 to the Bill to exclude tenancies provided by landlords of purpose built student accommodation
- Amend the ground for repossession dealing with students at paragraph 8(2)(c) of Part 2 of Schedule 3 of the Bill to allow the landlord to recover possession if the tenant will not be pursuing a course of study for a continuous period of 2 months. If landlords intended to recover possession at the end of term time, they could be required to notify the student at the beginning of the tenancy which could be done by including the break option suggested above.

The conditions listed at paragraph 8(2) of Part 2 of Schedule 3 do not appear to be prescriptive but as drafted may not work for some types of student accommodation. Planning legislation allows local authorities to take different approaches to granting permission for student accommodation meaning that many properties comprising student accommodation may not have planning permission which permits such use but instead have permission for general residential use.

### **3. More detail on model tenancy agreement**

A change in legislation inevitably results in uncertainty for those affected until the legislation is finalised. Given the uncertainty on where and when rent pressure zones may be introduced and how the new open ended tenancies are going to work in practice, we would urge the Scottish Government to produce the draft regulations containing the mandatory statutory terms as soon as possible and bring some certainty to the situation.

**Brodies LLP**  
**November 2015**