

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

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

### **The Scottish Property Federation (SPF)**

#### **Introduction**

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors including major institutional investors, lenders, developers, landlords of commercial and residential property, and professional property consultants and advisers.
2. We welcome this opportunity to provide evidence on the general principles of the Private Housing (Tenancies) (Scotland) Bill. We argue below that there are significant consequences flowing from the Bill in its current form for both the existing PRS sector and crucially in our view, for the current and future potential of attracting capital investment for the sector in Scotland. We support the case for a streamlined tenancy which the Bill introduces and we reaffirm that particular support. However, the government has significantly shifted the balance of risk in some of the details of the landlord and tenant relationship and this will have negative consequences for smaller landlords in particular. Finally, the government has simply failed to identify the repercussions of the consequences of the Bill for the purpose-built student accommodation sector and this is an urgent threat to the vitality of investment in PBSA which must be addressed as a priority.

#### **Key Issues**

- **We believe that the overall impact of this Bill could be to weaken the PRS by fuelling a perception of regulation and risk for investors that will undermine efforts to attract capital investment to the sector. This will either continue or even exacerbate the crisis in housing supply and would represent a missed opportunity for Scotland if international and UK capital is located elsewhere.**
- **We support the intention of the Bill to introduce a single tenancy regime that is simplified and transparent. We support strengthening of the tribunal process as well but it is critical that this process is clearly funded and resourced.**
- **On rents we support the ability of tenants to refer what they believe to be unjustified rent increases to adjudication and we further support the application of one rent increase per twelve months.**
- **We regret that a balance has not been achieved in the relationship between landlords and tenants. This will undermine the confidence of landlords in the sector and will exacerbate perceptions of increased risk for landlords and investors under the new regime. In particular the removal of ‘no faults’ end to tenancies and the application of lengthy periods of rent arrears before repossession action can be initiated by a landlord have transferred the balance of risk heavily onto the landlord.**
- **The government has utterly misread the practicalities of the purpose built student accommodation sector and risks causing chaos in the**

**accommodation processes of the sector. This part of the bill, which is not 'unintended consequences' must be rectified if future students are not to be at risk of lacking the important certainty of first year accommodation, not to mention putting at risk the significant private sector investment that has been achieved for the higher education sector's accommodation requirements in recent years.**

### **Large Scale Investor Attitudes**

3. Our colleagues in the British Property Federation have consulted with major investor members as part of the Better Renting for Britain Campaign, which is backed by a wide range of organisations including not-for-profit Housing Associations, publicly quoted companies, pension funds, global institutional investors, and corporate investors. The outcome is a clear commitment signed by 41 company Chief Executives which sets out what would be required for the signatories to deliver £30bn of new housing. There is some £10bn of firm commitments within this total to invest in Build-to-Rent across the UK a figure picked up by the PRS Champion for Scotland in his submission to the Scottish Government where he has suggested that we should be aiming for some 10% of this investment. The BPF have begun to track this new build to rent investment across the UK and currently, Scottish PRS either completed or in the planning process represented fewer than 2% of this total (792 out of 21,680 homes).
4. Sentiment and perception are major drivers in determining investor capital flows. We should be under no illusion that we are competing for not just UK capital but international capital in order to get investment into our nascent PRS sector. Perception can be difficult to quantify but there is little doubt that the disproportionate bulk of current build to rent PRS investment is directed south of the border, including significant investments in the North West as well as the traditional hot spots of the South East of England. In summary therefore we fear that the sum effect of the Bill is to drive a perception of competitive disadvantage for Scotland that we can ill afford at a time when capital flows have finally begun to move for the PRS in the UK.
5. Larger scale, professionally managed, schemes will enhance the quality of PRS accommodation and empower tenants by providing choice. The sector has the potential to contribute to a significant increase in housing supply that can be achieved relatively quickly compared to traditional private sector housing delivery. If we fail to turn investor sentiment around then this opportunity will be missed.

### **Rent Pressured Zones: Part 4, Chapter 3 (s30-34)**

6. In Chapter 3 the Scottish Government introduces proposals for local authorities to apply to Ministers to introduce Rent Pressured Zones that would introduce a cap on rent increases (for sitting tenants) of at least CPI + 1% per year. There is no detail on the triggers required for a local authority to make such an application although Ministers are required to lay out a series of reasons for establishing an RPZ under s33. This is the first form of rent control to be applied for many years in Britain and has been received with a broadly negative viewpoint from our members. The evidence on rent increases is mixed – Aberdeen rents have been

falling in the past year as a result of the oil sector downturn, while across Scotland the uplift in rents has been low (in fact lower than social rents). There are exceptions and parts of Edinburgh have increased in rent levels, yet we believe the answer to this is to improve supply of housing (for all tenures), not to regulate. RPZs may even be counter-productive for sitting tenants. Even if specified by postcode there is a danger that the RPZ proposals could even lock in rent increases where landlords had no original intention of increasing rent levels.

7. Rent inflation is not exclusive to the PRS but the same underlying cause is evident - supply shortages, coupled with high demand, are pushing up social rents for Registered Social Landlords. The most recent data available from the Scottish Housing Regulator shows that average RSL rents rose by 3.7% in 2013-14 whereas the most recent Scottish Government Housing Market Review identified ONS statistics suggesting a 2.1% annual increase for PRS rents in June 2015.
8. The introduction of rent controls or localised rent cap zones, may also cause significant distress to smaller landlords in particular because it would also give no protection from any increased borrowing costs (an increase in the Bank of England base rate for example). The consequence of increased borrowing costs not being met by commensurate rental increases at review could lead smaller landlords to exit the PRS which will diminish housing supply rather than increase it, thus exacerbating pressures on supply.

### **Landlord and Tenant - Part 5 and Schedule 3: Grounds for Repossession**

9. We have significant concerns with the grounds and processes for repossession under the new tenancy regime. Specifically, we comment below on the end of 'no faults' end to tenancies and the processes involved where a landlord seeks repossession on the grounds of rent arrears.
10. There was little quantitative evidence during the consultative process that the use of the 'no fault' ground was being abused by anyone other than those operating irresponsibly outwith the regulatory environment. Indeed the vast majority of tenants surveyed identified other issues such as repairing obligations as being of a higher concern. The removal of 'no faults' may therefore have limited effect as those operating outside of the regulatory environment may not be affected. In addition members have raised concerns with the lengthy process of initiating repossession grounds based on rent arrears, whereby it may be up to 3 months before these grounds can be initiated. Combined with the end of no faults grounds for repossession, the increase in security of tenure for the tenant and introduction of lengthy and uncertain processes for land lord repossession will add unacceptable risk for existing and prospective investors, as well as a decrease in asset value. The reality is that it is not in the interest of most landlords to evict tenants and thus reduce their own income. This is why eviction rates in the professionally managed PRS are only around 0.5% and the vast majority of those are due to rent arrears or antisocial behaviour. Indeed, the vast majority of tenancies are ended by tenants themselves.

11. We have heard evidence from existing landlords that the removal of the 'no fault' ground (and associated rent arrears regulations) may result in existing landlords exiting the PRS. This will mean that the sector will be left with fewer homes for rent, less choice and consequently higher rents. We fear that there may also be a further polarisation of the sector between compliant regulated landlords and largely unknown and unregulated landlords which will not improve standards for this part of the sector. This would be disastrous for the private rented sector, would exacerbate the crisis in housing supply, and damage the wider Scottish economy.
12. Our members are also concerned that the new grounds are open to interpretation and may require some development before a body of case law exists to interpret the provisions. This leaves more room for legal technicalities and fees. Particularly with properties of substantial value, institutional investors will require legal advice and representation in respect of disputes which could markedly affect the value of their investment. As the First Tier Tribunal could face a significant increase in workload, there remain questions over the ability of the Tribunal to deal with these claims efficiently and effectively. The SPF is firmly of the view that it is unacceptable at this stage for the Scottish Government not to have decided whether to charge for applying to the FTT and whether legal aid will be made available, given the decision to remove the 'no fault' ground for repossession and the likelihood that the landlord/investor will be several months down in rent. Furthermore it is unlikely to be possible to recover legal expenses against tenants and as such this adds significant further unrecoverable costs to landlords with no greater risk or expenditure on the part of the tenant. A tenant in rental arrears is unlikely to be able to cover a landlord's reasonably incurred legal costs. This will add a further risk premium to the PRS in Scotland.

### **Impact on Purpose Built Student Accommodation**

13. The government have thoroughly misunderstood this sector. Our members have expressed strong concerns about the impact of the Private Housing (Tenancies) Bill on the purpose-built student accommodation (PBSA) sector and are firmly of the view that it should be exempt from the proposals in the Bill to require indefinite length tenancies. At present, the Bill exempts university-owned accommodation, but not that held by private providers, even although the product delivered and management challenges faced by each sector are the same.
14. PBSA has always been delivered on the basis that it is to support students in their studies and therefore is let for periods just short of a year. There is a specific planning class for the sector, underpinning the different status of this form of accommodation. There has always been a desire to guarantee first-year students a place in 'Halls', so that they are safe and assimilate better into academic life; for many their first time living away from home. As Universities have expanded, that promise increasingly relies on both University and private-owned accommodation. The major PBSA providers are also either a member of a Code of Practice run by UUK or ANUK/Unipol and therefore can be defined as such. The consequences of this Bill are that because of the extensive security of tenure provisions it will no longer be possible to *guarantee* the availability of first year accommodation for students and this could lead to chaos for both higher

education institutions and their reputable private sector accommodation providers.

15. Accommodation is a key consideration for students in deciding which academic institution to attend. As the Bill stands and for the reasons outlined above, because there will be less certainty around the availability of accommodation for student occupation, this uncertainty could deter students and particularly the key overseas/rest of the UK student sector from choosing to study in Scotland. This will clearly have a detrimental impact on providers of higher education in Scotland, and indeed the Scottish economy. Lack of available supplemental accommodation outside the academic year for tourists or those engaged with key conferences and cultural events could also have a detrimental impact on the tourism industry in city centre locations in Scotland.

**The Scottish Property Federation (SPF)  
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