

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

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At the outset, it is worth saying that there is much to commend in the bill. On the whole, it is clear in its organisation and strong arguments may be made, particularly with the parallel rules in other European systems for the security of tenure which is central to the bill's operation. The list of grounds of discretion appears to me to strike an appropriate balance between the interests of landlord and tenant.

There are, however, some points where a little more work might be done to iron out some difficulties.

Mandatory grounds of eviction

The most important are the concerns that my colleague Dr Frankie McCarthy has raised regarding the human rights implications of mandatory eviction grounds. In light of the case law which she highlights, I suggest that discretion should be conferred on the tribunal in these cases from the outset.

Detail of drafting

Sub-section 2(1) seems unnecessary, particularly given the section heading.

In sub-section 2(2), the reference to individuals is unnecessary in light of s22 of the Interpretation and Legislative Reform (S) Act 2010. That invites the question of why they are mentioned specifically, which I suspect was not intended.

Drawing up of rental agreements by the Tribunal

The provision in s 12 requiring the Tribunal to draw up terms seems likely to give rise to unwieldy procedure. It would be wiser to provide a mandatory set of terms which will apply if the landlord fails to provide written terms as required by the legislation (including rent to be fixed by the rent officer). This would avoid extensive proofs on what had actually been agreed.

Designation of rent control zones

It is difficult to see why both s33(2)(a)(i) and (ii) are necessary: a rent rise can only cause *undue* hardship if the rent rises by too much. The value of sub-paragraph (iii) is also doubtful. No doubt, it would be useful evidence of undue hardship but, if undue hardship is suffered by the tenants it is difficult to see why the absence of pressure on the local authority should be a reason not to intervene. Therefore, (ii) alone might be better, perhaps supplemented by conditions which specify what might constitute undue hardship.

Failure to comply with an obligation under the tenancy as a ground of eviction

Strictly, there is no problem with the relationship between s 43(2)(b) and (c) and between s 44(3)(b)(ii) and (iii), given the clarification in Sch 3 para 10 but it would be a little neater and clearer to call it a breach of a “non-rent obligation”.

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