

Private Housing (Tenancies) (Scotland) Bill: stage 2 briefing

10 February 2016, Infrastructure and Capital Investment Committee

Shelter Scotland support this bill and welcome the move to modernise and simplify the tenancy for private renters in Scotland, in particular we welcome increased security of tenure introduced through the abolition of “no fault” eviction. This briefing sets out Shelter Scotland’s view on selected amendments to the bill lodged at stage 2 in the order which they will be debated.

In particular we would like to draw the committee’s attention to the following:

- Reasonableness and the ground for possession: Shelter Scotland strongly recommends that the grounds for eviction should be accompanied by a reasonableness test to ensure they are not simply a tick box exercise for private landlords. **We therefore urge the committee to support amendments no. 168 and 170 from David Stewart MSP.**
- Proof of a landlord’s intention: we welcome amendments to the bill from the government which set down types of information that the tribunal can consider in deciding whether to grant an eviction order where a ground relates to a landlord’s intention.
- Rent arrears: we strongly recommend that the threshold for mandatory eviction for rent arrears is increased to three months, and where arrears are below this amount the tribunal can grant an order where it is reasonable in all the circumstances to do so. **We therefore urge the committee to support Amendments no. 183, 185 and 186 from David Stewart MSP**
- Power to refer rent to a rent officer: we strongly recommend that tenants should be able to refer their initial rents and rent increases in a rent pressure zone to a rent officer where they believe they are being charged, or will be charged, above the market rate. **We therefore urge the committee to support Amendments no. 152 and 153 from David Stewart MSP**
- Student accommodation: if government amendments exempting purpose built student accommodation are passed the **Scottish Government should commit to a review of the student accommodation sector, alongside commitments to ensure students are not charged up-front fees and that this type of accommodation is subject to the repairing standard.**
- Removing security of tenure: we strongly oppose any amendments which seek to introduce fixed term tenancies and remove security of tenure, as well as amendments which seek to weaken the grounds for eviction.

Meaning of private residential tenancy

Amendments no. 1-9 and 102 from Margaret Burgess MSP

Shelter Scotland accepts that purpose built student accommodation may perform a different function to “mainstream” private rented sector lets, and therefore understands the government’s reasoning to exempt this accommodation from the private residential tenancy. This should, however, be accompanied by a review of the student accommodation sector and commitments to ensure students renting from this type of accommodation are not charged pre-tenancy fees and are protected by the repairing standard under section 13 of the Housing (Scotland) Act 2006.

Statutory terms of tenancy

Amendment no. 150 from David Stewart MSP

Shelter Scotland strongly support this amendment to ensure that any term of the contractual tenancy which is contrary to one of the statutory terms cannot be enforced by the landlord.

Amendment no. 151 from Adam Ingram MSP

Shelter Scotland strongly support this amendment which applies the requirement to notify a landlord of additional residents only to those additional residents who are using the dwelling as their principal home.

Tenant’s right to refer rent

Amendment no. 152 from David Stewart MSP

Shelter Scotland strongly support this amendment which will enable a private tenant to refer their initial rent to a rent officer where they believe it exceeds market rents. This is particularly important for tenants who may not have a detailed understanding of the local rental market, for example migrant workers and students from overseas.

Amendment no. 153 from David Stewart MSP

Shelter Scotland strongly support this amendment which will enable a private tenant to refer a rent increase to a rent officer if they live in a rent pressure zone.

Grounds for eviction: rent arrears

Amendments no. 183, 185 and 186 from David Stewart MSP

Shelter Scotland strongly support these amendments which will clarify the ground for eviction for rent arrears and ensure that tenants cannot be evicted for accruing as little as one month's rent arrears over a three month period. These amendments will provide for a mandatory eviction where a tenant is in three months' rent arrears at the time a case reaches the First-tier Tribunal. Where arrears are below this amount the tribunal will be able grant an eviction order where it is reasonable in the circumstances to do so.

Amendment no. 111 from Margaret Burgess MSP

Shelter Scotland welcome this movement from the government on the rent arrears ground, which will ensure that a mandatory eviction cannot be granted unless the tenant is in arrears of at least one month's rent at the time the case reaches the tribunal. We are, however, still concerned that one month's rent arrears is too small an amount of arrears for a mandatory eviction to be granted, and we encourage the committee to consider whether a higher level of arrears should be the threshold for a mandatory eviction. We therefore strongly support amendments no. 183, 185 and 186 from David Stewart MSP.

Amendments no. 172, 173, 184, 111A, 111B and 187 from Alex Johnstone MSP

These amendments would have the effect of significantly weakening protection from eviction for tenants who have fallen into rent arrears. Consequently Shelter Scotland does not support these amendments.

Grounds for eviction: property required for another purpose

Amendments no. 88, 89, 90, 91, 94, 95, 96, 97, 98 and 99 from Margaret Burgess MSP

Shelter Scotland welcome these amendments which tighten up and lay down further requirements for landlords in respect of establishing the grounds for possession. However, we are of the view that without applying a "reasonableness" test the tribunal's power to investigate will be limited and we urge the committee to support amendments 168 and 170 from David Stewart MSP which would ensure that the tribunal only grants eviction orders where they are of the view that it is reasonable in all the circumstances to do so.

Amendments no. 177, 178 and 179 from Alex Johnstone MSP

Shelter Scotland does not support these amendments which could lead to an eviction for a tenant who has been living in a property for significant period of time, simply because their landlord wants to house an employee, a shareholder or a beneficiary where the landlord is a trust. This could have significant consequences, particularly in rural areas, where alternative accommodation for the tenant and their family could be in very scarce supply.

Termination by agreement or end of tenancy

Amendments 159, 160, 169, and 176 from Alex Johnstone MSP

Shelter Scotland strongly opposes these amendments which would have the effect of removing security of tenure for tenants. Removing “no fault” eviction from the private rented sector and guaranteeing security of tenure for all private rented sector tenants should be the cornerstone of this legislation.

Grounds for eviction: tenant’s status

Amendments no. 100 and 101 from Margaret Burgess MSP

Shelter Scotland supports these amendments which would have the effect of limiting the application of the ground for eviction, where a tenant is no longer an employee of a landlord, to 12 months after the tenant ceased to become an employee of the landlord.

Notice of termination

Amendment no. 84 from Margaret Burgess MSP

Shelter Scotland strongly support this amendment which will help ensure that a notice to leave from a tenant is not gained through coercion from a landlord.

Amendment no. 163 from Patrick Harvie

Shelter Scotland strongly support this amendment which would reduce the notice period that a tenant needs to serve on a landlord to exit a tenancy to 28 days in all cases.

Amendment no. 86 from Margaret Burgess MSP

Shelter Scotland welcome this amendment which would have the effect of clarifying that a tenancy can be ended earlier than is specified in the sections of the bill which relate to notice periods, where both parties consent to this.

Amendments no 166 and 167 from David Stewart MSP

Shelter Scotland strongly support these amendments which would have the effect of clarifying that the offence of illegal eviction will apply if the landlord fails to follow the correct procedure when ending a tenancy. This is particularly important in respect of s.40 of the bill as introduced, which provides for “consensual termination” between landlord and tenant. There is a risk here that landlords may assert that a tenant has left their home and attempt to regain possession of the property, where in actual fact the tenant wishes to remain in their home and challenge the eviction notice.

Initial period

Amendments no. 85, 87, 123, 128, 130 and 137 from Margaret Burgess MSP

Shelter Scotland strongly supports these amendments which would have the effect of removing the initial period from the private residential tenancy. This would ensure the new tenancy is flexible for all private tenants and, importantly, address concerns raised by stakeholders that the initial tenancy period could unfairly tie in tenants who need to leave their accommodation quickly due to domestic abuse.

First-tier Tribunal: application of reasonableness test

Amendments no. 168 and 170 from David Stewart MSP

Shelter Scotland strongly support these amendments which would ensure that an eviction order could only be granted where the tribunal judges that it is “reasonable in all the circumstances” to grant it. Providing the tribunal with this ability would ensure that the grounds for eviction are not simply a tick box exercise and give tenants a cast-iron protection from eviction in unreasonable circumstances. Without this amendment there is a risk that the positive move to remove “no fault” eviction from the private tenancy is undermined by grounds for eviction which are light touch and enable landlords to evict tenants with minimal checks and balances.

Suspension of execution of order

Amendment no. 174 from David Stewart MSP

Shelter Scotland strongly supports this amendment which would enable the tribunal to delay the execution of an eviction order where there is evidence that its immediate execution is likely to cause undue hardship for the tenant. Providing for a delay in this way could enable private tenants and their families to find alternative accommodation if a landlord seeks an eviction under a mandatory ground.

Amendment no. 175 from Adam Ingram MSP

Shelter Scotland strongly support this amendment which would enable the tribunal to adjourn proceedings to, for example, monitor repayments to rent arrears.

Grounds for eviction: tenant's conduct other than rent arrears

Amendment no. 180, 181 and 182 from David Stewart MSP

Shelter Scotland strongly support these amendments which would lay down a set process for abandonment, drawing on the provisions for the social rented sector set down in the Housing (Scotland) Act 2001. Landlords will be required to make reasonable inquiries and serve a notice on the tenant informing them that they believe the property to be abandoned. This is essential to ensure that tenants are not evicted where they are absent from their homes for a short period of time, for example while they are receiving treatment in hospital.

Amendments no. 107, 108, 109 and 110 from Margaret Burgess MSP

Shelter Scotland strongly supports these amendments which will change the eviction ground which relates to a breach of the tenancy agreement to discretionary. This will be an important protection from arbitrary eviction.

Grounds for eviction: criminal and anti-social behaviour

Amendments no. 112, 113, 114, 115 and 116 from Margaret Burgess MSP

Shelter Scotland support the direction of travel in relation to these amendments which limit the use of the eviction grounds in relation to antisocial behaviour and criminal convictions to 12 months after either the offence or the antisocial behaviour occurred. However, we are still of the view that eviction orders should only be granted where it is reasonable in all the circumstances for the tribunal to grant the order.

Grounds for eviction: legal impediment to let continuing

Amendment no. 188 from Patrick Harvie MSP

Shelter Scotland support this amendment which would remove the ground for possession which relates to a landlord being ceased to register. Alternative solutions should be considered here, for example a local authority taking on the management of the property to ensure the tenant is not evicted due to poor conduct by their landlord.

Amendments no. 117, 118, 119, 120, 121 and 122 from Margaret Burgess MSP

Shelter Scotland support these amendments which have the effect of making the grounds for possession which relate to a landlord ceasing to be registered, an HMO license being revoked and an Overcrowding Statutory Notice being served on the property all discretionary. As outlined above alternatives courses of action should be considered before evicting a tenant on these grounds, for example a local authority taking over the management of that property.

Wrongful termination

Amendments no. 126 and 127 from Margaret Burgess MSP

Shelter Scotland support these amendments which would place a duty on the tribunal to notify a local authority where a wrongful termination order has been granted for the purposes of landlord registration.

Amendments no. 192 and 193 from Clare Adamson MSP

Shelter Scotland strongly support these amendments which would have the effect of increasing the penalty for wrongful termination from three months' rent to six months' rent. We are of the view that this will more accurately reflect the costs and financial harm incurred by private tenants should they be wrongly required to move by their landlord.

Death of tenant

Amendments no. 143A, 194, 195, 196, 197 and 198 from Clare Adamson MSP

Shelter Scotland support these amendments which will ensure that a member of the family is able to inherit a tenancy, as well as a resident carer where the property was their principal home at the time of the tenant's death, and it had been occupied by the carer for a year preceding that.

For more information please contact:

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