

Private Housing (Tenancies) (Scotland) Bill: stage 3 briefing

17 March 2016

Introduction

This briefing sets out Shelter Scotland's view on the draft legislation as well as our comments on selected amendments lodged at stage 3, in the order in which they will be debated.

Shelter Scotland strongly support this bill and welcome the move to modernise and simplify the tenancy for private renters in Scotland, by replacing the current assured and short assured tenancy with the new private residential tenancy. In particular we welcome the increased security of tenure that this bill provides by removing "no fault" eviction from the private tenancy in Scotland. This essential rebalancing of legal rights between landlords and tenants will give more certainty and stability for the 330,000 private renter households in Scotland currently renting under insecure tenancy agreements, many providing as little as two months' security of tenure.

Importantly, the new private residential tenancy alongside the transfer of private rented sector cases from the sheriff court to the First-tier Tribunal will provide greater certainty and clarity for private landlords. In Shelter Scotland's view this new tenancy will play a vital role in providing the essential bedrock from which to raise standards and improve the quality of private rented sector accommodation in Scotland today.

The bill as amended at stage 2

In general, Shelter Scotland is pleased with the amendments to the bill at stage 2. These go some way to ensuring that this legislation will deliver genuine security of tenure for private tenants in Scotland. In particular we support amendments from the Minister Margaret Burgess MSP setting out the evidence that the First-tier Tribunal can take into account in establishing whether a ground for eviction is met and amendments which remove the initial period from the tenancy.

Proposed amendments to the bill at stage 3

We **support or strongly support** amendments: 26, 27, 35-42, 59-68, 70-77, 83, 89, 90, 91, 98, 99, 100,101, 102, 103,104,105,106, 108, 109 and 110.

We **oppose** amendments: 84, 85, 86, 87, 88, 92, 95, 96, 97 and 107.

Group 3: Consequential modifications to other enactments

Amendment no. 110 from David Stewart MSP: Shelter Scotland **strongly support** this amendment which would amend the terms of the Rent (Scotland) Act 1984 to ensure that the offence of illegal eviction references the requirement for landlords go to the First-tier Tribunal to secure an eviction.

Group 7: Review of operation of Part 4

Amendment no. 83 from Patrick Harvie MSP: Shelter Scotland **support** this amendment which seeks to secure a review of the affordability, availability and quality of accommodation in the private rented sector within three years of Royal Assent. We recommend that the Scottish Government give detailed consideration to taking this action forward.

Group 9: Eviction ground: landlord or family member intends to live in property

Amendments no. 102 to 106 from David Stewart MSP: Shelter Scotland **strongly support** these amendments which would have the effect of introducing a reasonableness test to the eviction ground which relates to a landlord or a member of their family intending to live in the property. This will enable the First-tier Tribunal to take into account whether the granting of the eviction order is reasonable, guarding against potential arbitrary eviction from landlords.

Amendments no. 26 to 27 and 59 to 68 from Margaret Burgess MSP: Shelter Scotland **support** these amendments which change the ground for eviction which relates to a landlord or a member of their family intending to live in the property, changing this ground from mandatory to discretionary in respect of a landlord's family member. While this does not go as far as Shelter Scotland would like, it is an important movement in the right direction in terms of the security of tenure that the private residential tenancy offers.

Group 10: Initial period

Amendments no. 84 to 88 and 92 from Alex Johnstone MSP: Shelter Scotland **oppose** these amendments which would reintroduce the initial period to the private residential tenancy. Without a workable alternative this could leave victims of domestic abuse and other vulnerable tenants tied into a six month lease.

Group 12: Death of the tenant and succession to tenancy

Amendments no. 35 to 42, 70 and 77 from Margaret Burgess MSP: Shelter Scotland **support** these amendments which clarify the circumstances in which the partner of a tenant, a family member and a carer of a tenant can inherit a private residential tenancy.

Group 13: Private residential tenancy charter

Amendments no. 89 to 91 from Ken Macintosh MSP: Shelter Scotland **support** the aim of these amendments in driving up standards in the private rented sector and recommend that the Scottish Government give detailed consideration to taking these actions forward.

Group 14: Eviction ground: landlord intends to sell

Amendments no. 98 and 99 from David Stewart MSP: Shelter Scotland **strongly support** these amendments which would allow the First-tier Tribunal to consider whether an eviction action is reasonable where a landlord states that they intend to sell. This will provide private tenants with an important protection from arbitrary eviction.

Group 15: Disapplication of provisions in relation to student accommodation

Amendments no. 95 to 97 from Alex Johnstone MSP: Shelter Scotland **oppose** these amendments which would remove the security of tenure that the private residential tenancy provides from all student tenants. We believe that students are not one homogenous group and that security of tenure is just as vital for students as it is any other group of private rented sector tenants.

Group 17: Eviction grounds: landlord intends to refurbish or to use property for non-residential purposes

Amendments no. 100 to 101 and 105 to 106 from David Stewart MSP: Shelter Scotland **strongly support** these amendments which enable the First-tier Tribunal to consider whether an eviction action is reasonable where a landlord is seeking an eviction action because they intend to refurbish, or use a property for a non-residential purpose.

Group 18: Eviction ground: property required for employee or retired employee

Amendment no. 107 from Alex Johnstone MSP: Shelter Scotland **oppose** this amendment which could undermine the security of tenure that this tenancy provides simply because a landlord wishes to house an employee. We do not believe that a sitting tenant's security of tenure should be trumped by their landlord's current or prospective employee. This could be particularly destabilising in rural communities.

Group 19: Eviction ground: not occupying let property

Amendment no. 108 from David Stewart MSP: Shelter Scotland **strongly support** this amendment which defines a process for private landlords to follow in respect of an abandonment action. Crucially, this includes a clear provision for private tenants to challenge an abandonment action.

Continued on page 4

Group 20: Eviction ground: rent arrears

Amendment no. 109 from David Stewart MSP: Shelter Scotland **strongly support** this amendment which would increase the level of rent arrears required for a mandatory eviction from one month's rent arrears to two months' rent arrears. From the experience of Shelter Scotland's clients we are of the view that one month's rent arrears leading to a mandatory eviction is too a low a threshold and could lead to eviction in cases where tenants may be able to negotiate a repayment arrangement at the First-tier Tribunal.

Ensuring that the private residential tenancy is a success

This bill, as it stands, is a crucial step forward in respect of private tenants' rights in Scotland. It means that private landlords will soon be required to actively provide a reason to evict a private tenant from a defined list of circumstances. To ensure that this step-change in private renting is successful the Scottish Government should begin work soon after Royal Assent to raise awareness of the new tenancy, and its key provisions, among both private tenants and private landlords. The operation of the tenancy should also be reviewed post-implementation, as the ICI committee recommended and the government accepted. This review should consider, in detail, how the tenancy's provisions on security of tenure are working in practice, to ensure that this security of tenure is genuine and effective for private tenants across Scotland.

For more information please contact:

Debbie King, Campaigns and Public Affairs Officer

Tel: 0344 515 2447

Email: Debbie.King@shelter.org.uk