

Stage 1 debate briefing for the Private Housing (Tenancies) (Scotland) Bill

21 January 2016

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

Key points:

- Shelter Scotland supports the principles of this bill and welcomes the move to modernise and simplify the tenancy for private renters in Scotland.
- Shelter Scotland strongly supports increased security of tenure through the abolition of “no fault” eviction.
- The grounds for possession should be tightened so that eviction orders are only granted where it is reasonable in the circumstances to do so, guaranteeing security of tenure for private tenants.
- The rent arrears ground should be changed to make sure tenants can’t be evicted for accruing one month’s rent arrears where they are unable to pay this off over a three month period.
- The bill should reference the sections of the Rent (Scotland) Act 1984 which create the offence of illegal eviction.
- Proposals to set down a different tenancy type for specific tenant groups risks creating unhelpful loopholes which could undermine security of tenure for all private tenants.

Increasing security of tenure

Shelter Scotland strongly supports the principles of the bill, in particular the Scottish Government’s commitment to increase security of tenure for private renters through the abolition of “no fault” repossession. This is the crucial change necessary to ensure that the 330,000 households currently living in Scotland’s private rented sector – around 85,000 of which contain children – have the legal certainty that they can stay in their private rented home for as long as they need.

Reasonableness and the grounds for possession

While the intention to increase security of tenure is very welcome, there is a risk that this positive policy initiative is undermined by grounds for possession which put tenants at risk of eviction where little justification or evidence is supplied.

Recommendation: the bill is amended to give the First-tier Tribunal the ability to consider whether granting an eviction order is reasonable given the circumstances of the case, particularly where the ground relates to the landlord's intention. For example the landlord intends to sell, refurbish, live in the property or change its use.

Where the landlord intends to sell the let property

The provisions which relate to a landlord pursuing an eviction action due to their wish to sell the property should be rigorous and a high threshold should be met when an order is sought at the tribunal.

Recommendation: the bill is amended to ensure that a landlord is actively marketing the property for sale at an appropriate price in accordance with professional advice where they are seeking an eviction action because they want to sell.

Rent arrears

The ground for possession for rent arrears as currently set out in the bill is confusing and could lead to disproportionate outcomes for tenants. Private tenants who fall into arrears of only one month's rent could be evicted where they are unable to clear their arrears over a three month period.

Recommendation: the bill should be amended to ensure that evictions for rent arrears are granted only where it is reasonable in the circumstances to do so. Where mandatory evictions are granted these should only be for cases where a minimum of three months' rent arrears have been accrued.

Protecting private tenants from illegal evictions

While the bill does much to improve private tenants' right to stay in their homes for as long as they need, clarity is needed in respect of protection from illegal eviction. This is particularly important where the landlord serves a notice to leave and asserts that a consensual termination of the tenancy has taken place.

Recommendation: the bill is amended to clarify that the provisions of the Rent (Scotland) Act 1984 which relate to illegal eviction apply to the new tenancy.

Student lets

Shelter Scotland has noted that some stakeholders have expressed the view to the committee that a specific type of tenancy should be drawn up for students, enabling

landlords to bring that tenancy to an end at a fixed end date. The Scottish Government and the committee should be mindful that setting down a different tenancy type for a particular set of private tenants could provide a loop hole, enabling some private landlords to circumvent the security of tenure the bill currently provides. This could result in a similar situation to the one the private rented sector is in today: where a tenancy type that was never intended to be the norm becomes the default tenancy for the majority of private tenants.

Recommendation: the provisions in the bill remain and information, advice and support are offered to tenants and landlords to help them adapt management of tenancies to the new arrangements

Rent

Shelter Scotland welcomes the approach taken to rents in the bill. We do, however, want to see private tenants given the power to refer initial rents to a rent officer, as well as rent increases, where they believe that their rent is above market levels. Crucially this system must also lead to better and more widely available evidence on private rents in Scotland to inform policymakers in particular where rents are putting pressure on private tenants' household budgets. In response to evidenced need for affordable housing in Scotland¹ the Scottish Government should commit to building at least 60,000 affordable homes over the course of the next parliament.

Recommendation: the bill should be amended to enable private tenants to refer initial rents to the rent officer where they believe their rent is above market rent.

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¹ Shelter Scotland, Affordable Housing Need in Scotland, 2015
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/affordable_housing_need_-_final_report_september_2015