



Private Housing (Tenancies) (Scotland) Bill
Stage 1 debate
January 2016

Crisis is the national charity for single homeless people. Crisis has first-hand experience of working to help people into the private rented sector in Scotland. We work with local authorities across Scotland to improve access to the PRS for vulnerable people and those on low incomes, including acting as the National Co-ordinator for Rent Deposit Guarantee Schemes¹ in Scotland on behalf of the Scottish Government.

The PRS has grown significantly in Scotland over the past few decades and is increasingly used to meet housing demand and provide long term homes for a growing range of households.

Through our experience, we know that the PRS can be a viable housing option, even for vulnerable people, with the right support and safeguards in place. At present, however, there are serious problems: the sector is not fit for purpose and there are long-standing issues around security, affordability, conditions and access.

Context and key points

Research by Crisis and Shelter on the experiences of people moving out of homelessness into the private rented sector² found that housing security is a key concern. People wanted somewhere they could settle and stay long term, enabling them to plan ahead and make positive changes in their life. Our research also showed that tenants are reluctant to report a problem or request maintenance work out of fear that they would be evicted and be unable to access another property.

Therefore we **strongly welcome the Bill**. The provisions offer the potential for a major improvement in the operation of the private rented sector in Scotland through a significant enhancement of tenants' security of tenure for tenants and measures to protect tenants from excessive rent increases.

The proposals should create a **simpler and fairer system for both tenants and landlords**, including through a model tenancy agreement, clearer rules around notices and defined grounds for eviction. The **removal of no-fault eviction, introduction of indefinite tenancies and restrictions on rent increases are particularly to be welcomed**, will end any possibility of retaliatory evictions, and will facilitate much greater security and peace of mind for Scottish tenants in the private sector.

¹ Rent deposit guarantee schemes are run by local authorities or third sector organisations and offer low income tenants help with a deposit and more general support with accessing the private rented sector.

² Crisis, Shelter (2014) A roof over my head: the final report of the Sustain project, a longitudinal study of housing outcomes and wellbeing in private rented accommodation

There are some areas of the Bill which need clarification and strengthening. These are primarily around how the new regime will operate in practice, rather than with the principles themselves. Key points include:

- The **eviction grounds need to be clearer** so that landlords and tenants have certainty about how they are to be used and there are no loopholes which would undermine the intention of increasing tenants' security. The Tribunal should be able to determine the **reasonableness** of any eviction action.
- **Penalties for wrongful eviction are not sufficient**, particularly if a landlord has wilfully misled tenants and the tribunal. They need to be set at appropriate levels to reflect the impact of their actions and to act as a deterrent to potential offenders.

Parts 1-3: Private residential tenancy

We welcome the development of a new model tenancy containing statutory and non-statutory clauses. A standardised tenancy with some flexibility will give increased clarity and transparency for tenants, landlords and people working to support them, such as housing advice workers.

Part 4: Rent restrictions

We strongly welcome the restriction of the frequency of increasing rents. A maximum of one rent increase a year with three months' notice will increase certainty for tenants and enable them to budget more effectively.

Challenging rent increases

The ability to challenge rent increases and refer these to a Rent Officer and the Tribunal if necessary is important. This process needs to be accessible to tenants, particularly more vulnerable tenants.

Tenants should have sufficient time to refer to a rent officer. Currently the Bill allows tenants only 21 days to challenge a notice. A longer period of at least a month would ensure tenants have full opportunity to consider and respond to the rent increase, including taking advice from an external agency if appropriate.

Liability for over or under paid rent (paragraph 26)

While it is important that the landlord can receive any rent due quickly following a dispute about a rent increase, this should not be done in such a way that the tenancy is put at risk. As drafted, if a dispute about a rent increase notice is decided after the date specified in a rent increase notice, and a rent officer or tribunal determines that the tenant has underpaid rent during that period, the tenant would immediately be liable to pay the full balance within 28 days (paragraph 26(5)).

If the rent officer or tribunal's decision takes several months and the tenant cannot pay the full difference between the old and new rent within 28 days, then the tenant would be at risk of eviction for rent arrears under schedule 3, paragraph 11. The rent officer

and tribunal should be given discretion to allow payment over a longer period where arrears accrued during this process are substantial.

Rent pressure zones (chapter 3)

Crisis welcomes the intention to limit rent increases in areas where this is particular problem.

One of the main challenges with rent controls are unintended consequences. When making an application to use these powers, local authorities will need to set out what other steps they intend to take to address housing affordability during the operation of the Zone. Without these measures, there is a risk that at the end of the period of the Rent Pressure Zone rents for existing tenancies will increase to match the open market rents for new tenancies (which will not be regulated during the operation of the Zone).

Part 5 & Schedule 3: Termination of a tenancy and grounds for possession

Crisis strongly welcomes the increased security of tenure for tenants introduced by this part of the Bill, both through setting out specific grounds for eviction and through the specified notice periods. These will have the effect of trebling the length of notice most tenants will receive from their landlord, if the eviction is through no fault of their own.

We strongly welcome the provision in paragraph 46 that a landlord cannot make an application to the Tribunal for an eviction order without giving notice to the local authority. This will enable local authorities to be proactive about preventing homelessness for tenants in this situation.

How the grounds for possession operate in practice will be critical, and so legislation, regulations and guidance need to be clear about the requirements and evidence needed to support an eviction ground at both the issuing of a Notice to Leave and at Tribunal. A number of the **grounds for possession need to be clearer** to avoid confusion in their use, and to avoid creating loopholes which could undermine tenants' rights to retain their home. These include the grounds for sale, refurbishment, rent arrears, gaining possession for a family member to move in, and if the tenant is not living at the property.

We believe the Tribunal should have the power to determine whether a repossession made under any particular ground is reasonable through the introduction of a **reasonableness test**.

Penalties for wrongful eviction

We welcome that a tenant will be able to challenge the landlord through the tribunal where they believe they have been wrongfully evicted. The effectiveness and accessibility of this measure is critical to the success of these provisions in improving security of tenure.

The penalty set out in the Bill (paragraph 49(3)) is a maximum of three months' rent to be awarded to the tenant. Based on average Scottish rents, this would equate to a

maximum penalty of just under £1800 for a wrongful eviction from a two bedroom property³. This is the same penalty as for a failure to provide specified information.

Yet the impact of an eviction on a tenant is very substantial. They are likely to face moving costs, a possible rent increase in moving to a new property, gathering a new deposit before they have had their previous deposit returned, in addition to all the emotional costs of losing their home. If the tenants become homeless as a result of a wrongful eviction, the local authority may incur substantial costs dealing with the tenants' homelessness and it seems reasonable that the landlord be liable for some or all of these costs if they have wilfully misled the tribunal and the tenant.

The penalty for a landlord failing to register with the local authority or not having an HMO licence is now £50,000. Under the Irish system, the Private Residential Tenancies Board can award damages of up to 20,000 euros in certain circumstances⁴.

We therefore do not believe that the proposed maximum penalty is sufficient, either as compensation to a tenant for a wrongful eviction, or as a deterrent against wrongfully evicting or misleading the tribunal into issuing an eviction order.

Comment on the role of First Tier Tribunal

The First Tier Tribunal has a crucial role in the operation of the new system. However, as the Tribunal has not yet been set up and its rules of operation are still to be agreed, we do not yet know how it will work, how accessible it will be, what the cost (if any) will be for using the tribunal, how quickly hearings will be arranged following an application and how decisions will be enforced. We believe that the Tribunal should be free to access for tenants.

It should be a principle of the operation of this legislation that an application to the First Tier Tribunal is a last resort. It must not be left to tenants to police the system and ensure compliance with the law by taking cases to tribunal. This is especially important for tenants who may not have the financial or personal resources to take a challenge further. Primary and secondary legislation and accompanying guidance should have sufficient clarity, for example around the ending of a tenancy, that tenants, landlords and their representatives are clear what evidence would provide acceptable proof of meeting the grounds, and do not need to go to tribunal to resolve issues.

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³ Scottish Government (2014) Private sector rent statistics, Scotland (2010-2014)
<http://www.gov.scot/Resource/0046/00463199.pdf>

⁴ Department of the Environment, Heritage and Local Government (no date) Residential Tenancies Act 2004: A quick guide
<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,1996,en.pdf>