



WHAT YOU NEED TO KNOW ABOUT THE PRIVATE HOUSING (TENANCIES) (SCOTLAND) BILL

Background

Following extensive consultation which attracted around 10,000 responses, the [Private Housing \(Tenancies\) \(Scotland\) Bill \(the Bill\)](#) was introduced to the Scottish Parliament on 08 October 2015. The Bill aims to improve security of tenure in the private rented sector (PRS) and provide clarity for landlords and tenants by creating a single model tenancy for the sector.

The main provisions within the Bill are outlined below.

Introduction of a new tenancy

The Bill makes provision for the introduction of a single tenancy for all PRS lets. The tenancy will include statutory terms that must apply to all PRS lets. We expect that the Scottish Government will consult on the content of the tenancy after the Bill has been passed early next year. The content of the new tenancy will have significant implications for both landlords and tenants as breach of tenancy conditions will be one of the new grounds for possession (listed below).

Removal of the 'no fault clause' and ending a tenancy

Under the current tenancy regime, if they choose to do so, landlords can take possession of their properties when a tenancy reaches its natural end even if the tenant is not at fault. The Bill will remove this clause from the new tenancy. Under the new regime, all tenancies will last for six months as standard (unless a different arrangement is agreed by both parties) and after the initial period, the tenancy could only be ended by the tenant giving notice or if the landlord can prove one of the following grounds for possession:

- Landlord intends to sell the property;
- Lender intends to sell the property;
- Landlord intends to carry out significant disruptive works to the property;
- Landlord or family members want to live in the property;
- Landlord intends to use the property for another purpose other than housing;
- Property required for use in connection with the purposes of religion;
- Tenancy was given to an employee and the tenant is no longer an employee;
- Property is student accommodation and the tenant is no longer a student;



- The property has been abandoned;
- The tenancy agreement has been breached;
- The tenant has been in rent arrears for three or more consecutive months, the amount at any point during that time has been at least one month's rent and not caused by a delay in the tenant receiving a relevant benefit;
- The tenant has engaged in criminal or antisocial behaviour;
- Landlord has ceased to be registered by the local authority;
- Landlord's HMO license is revoked;
- An overcrowding statutory notice has been served on the landlord.

If the tenant receives notice to leave from the landlord and agrees to move out, no further action is required. If the tenant does not agree to move out, the case would be heard by the First-tier Tribunal (the Tribunal) which is currently being established as part of the wider reform of the Scottish Court system and is expected to be up and running by December 2016.

If the Tribunal does issue an eviction order and the tenant believes that the landlord did not have a genuine reason for recovering the property (for example, the landlord claimed they needed the property for a member of their family but that family member did not move in) the tenant may take a case of wrongful termination to the Tribunal. If the Tribunal finds that the tenancy was wrongfully terminated, it can award compensation of up to three months' rent. The tenant can also apply to the Tribunal for compensation if they feel they were misled into accepting notice to leave the property by the landlord.

If neither party seeks to end the tenancy through one of these routes, it will continue indefinitely.

Rent Regulation

The Bill will limit private landlords to making one rent increase in any 12 month period and will require the landlord to give at least three months' notice if they intend to increase the rent. There will be no limit on how much the rent can be increased by but the tenant will be able to appeal to a rent officer if they feel that the increase is unreasonable. The rent officer will consider the rental rates of similar properties in the market area when making a decision. If the tenant does not agree with the outcome, they may appeal to the Tribunal.

In addition, the Bill will introduce discretionary powers for Local Authorities to be able to apply to Scottish Ministers to have an area designated as a 'rent pressure zone'. If the application is successful, Ministers will be able to specify a limit on the amount that rent can be increased by in that area. The lower limit that Ministers can specify will be CPI +1% but they may decide to allow for larger increases depending on the circumstances. The cap can remain in place for up to five years.



Implications for the Housing Sector

The provisions within the Bill should help to increase security for tenants who want to stay in the PRS over the long term while still allowing the flexibility that is favoured by many tenants such as students or those on short term employment contracts.

Increased security of tenure means that the sector will become more attractive for many and may become a more realistic option for people who are homeless or at risk of homelessness. Further discussion needs to take place on the ability for Local Authorities to discharge their duty to homeless households in the PRS and the appropriateness of this following the changes set out in the Bill.

As we have highlighted throughout the consultation process, there must be a balance between the rights of tenants and landlords. The Scottish Government must ensure that the sector remains viable for landlords and that they can take possession of their property if the tenant is at fault or if they genuinely need to use the home for another purpose. We have highlighted the need for the tribunal service to be adequately resourced and working effectively to ensure that where possession cases do need to be heard, they can be dealt with quickly. The Scottish Government has given assurances that the new tribunal system will be fit for purpose but, in our view, there are risks with establishing any new system and this must be closely monitored.

Some stakeholders have raised concerns with the introduction of measures to regulate rent suggesting that this may discourage investment or force some landlords out of business. However, we feel that the proposal to limit rent increases to one in a twelve month period is not unreasonable and there is evidence to suggest that the majority of landlords actually increase rent less frequently. A survey carried out by [Lettingstats in December 2014](#) found that 86% of tenants surveyed had never received a request for a rent increase during a lease and 90% had never experienced a rent increase that they deemed to be unreasonable.

The proposal to allow further rent regulation in designated areas could prove to be more problematic given that the powers allow for a cap to be placed on the amount of the increase, not just the frequency. However, the power will be discretionary and it is unlikely that any Local Authority would seek to make use of the powers without very good reason. The importance of the PRS in providing housing for a growing number of people is well recognised and this also seems to be reflected in a number of safeguards which have been included in the Bill. For example, consultation would have to be carried out with both landlords and tenants in the area before any decision to designate a 'rent pressure area' was made and landlords would still be able to charge additional rent for reasonable property improvement costs.