

Update on PRS reform in Scotland



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This article gives an overview of the changes in the Private Housing (Tenancies) (Scotland) Bill with discussion on the main features introduced by the Bill.

The private residential rented sector is in the midst of radical proposals for reform. Following two public consultations earlier this year, the Private Housing (Tenancies) (Scotland) Bill was introduced at the beginning of October. We outlined the key reform proposals contained in the consultations, in a [previous article](#).

Now that the promised Bill has been introduced, we look at the key issues, particularly from the perspective of what has changed since the consultation proposals were published.

Media attention has focussed on the abolition of the “no fault” ground for recovering possession and the possibility of “rent control”, both of which were flagged in the consultation and form a part of the Bill’s proposals.

“No fault” ground

The removal of the no fault ground – popular with landlords – effectively means the end of the “short assured tenancy”. This means that a landlord will no longer have the option to enter into a tenancy under which he is assured of an absolute entitlement to remove the tenant, by virtue only of the tenancy having come to an end. The reality of course is that most tenants will leave when the period of their agreement comes to an end, but the provisions of the Bill mean that in future, if they do not, the landlord will always require to establish

one of the grounds for recovery of possession.

Rent pressure zones

Michael Henderson and Scott Ritchie consider this controversial proposal in a [recent article](#), which also highlights some unintended consequences of the reforms for private lets for student accommodation. It is most likely that these zones will be within major Scottish cities like Edinburgh and Aberdeen where rent is highest, however, there are a variety of steps which would need to be followed before any rent cap introduction could take place.

But there are a number of other provisions in the Bill which private sector landlords and tenants should be aware of as well.

The Scottish Government’s vision is to create a “new modernised and simplified tenancy system” in Scotland. The proposals aim to achieve this by:

- creating a single new tenancy to cover all lettings within the private rented sector – the Private Residential Tenancy - which will replace the current options of short assured and assured tenancies;
- modernising and simplifying the grounds for recovery of possession of a property, critically removing the “no fault” ground for removal;



- introducing a new model tenancy agreement; and
- simplifying notice procedures to end tenancies.

The new Private Residential Tenancy

Once the Bill is enacted, no new short assured or assured tenancies will be able to be created. All new leases of residential property will be Private Residential Tenancies unless they fall within one of the exceptions in the Bill. In fact these are essentially the same exceptions under the current assured tenancy regime and include, for example, agricultural tenancies, holiday lets and university halls of residence.

Statutory Terms

Despite the stated aims, the Bill does not contain any model tenancy agreement, although any tenancy agreement must contain the statutory terms set out in Schedule 2 of the Bill relating to such things as rent receipts, rent increases, notification about other residents, sub-letting and access for repairs or other work. In what appears to be a somewhat circuitous provision, Scottish Ministers will have the right to prescribe statutory terms which will apply to every private residential tenancy from time to time, provided they "are prescribed in relation to those tenancies already". This may allude to future regulations which contain a model tenancy agreement, but power is given to state circumstances in which certain statutory terms may be excluded.

If a tenant fails to comply with a statutory term of their tenancy then this provides a ground for eviction which, if established, the Tribunal must grant. A breach of any other non-statutory terms of the tenancy would only provide a discretionary ground for eviction.

The whole terms of the tenancy must be set out in writing on the day the tenancy commences or the day 28 days after the tenancy became a private residential tenancy. If not, a tenant may apply to the First Tier Tribunal (which is the new body set up to regulate disputes between tenants and landlords and which includes the current Tribunals for housing – the Private Rented Housing Panel (PRHP) and the Home Owners Housing Panel (HOHP)) who may draw up the tenancy terms and can impose a financial penalty on the landlord of up to three months' rent, where the landlord has failed to comply with this requirement without reasonable excuse.

Initial Information

There will no longer be a requirement to serve any pre-tenancy notices (like AT5s) or other documents (like the Tenant's Information Pack) on the tenant although the Bill leaves the door open for the Scottish Ministers to produce regulations requiring the landlord to provide the tenant with certain information in the future, if they see fit, so this may change.

A landlord may not charge the tenant a fee for the provision of such information, or for providing a written tenancy agreement.

Duration

A landlord cannot offer a tenancy of less than 6 months unless the tenant requests this.

Rent increase

In a fairly uncontroversial move which gives tenants a degree of certainty, the Bill provides that there can be no more than one increase in rent in a period of 12 months.

For a landlord to increase rent, a "rent-increase notice" must first be issued notifying the tenant of the rent payable, and the date on which the increase is to take effect. At least 3 months' notice is to be given of the proposed increase. If the tenant disagrees with the proposed increase then, (unless there is a rent pressure zone as mentioned above) they have the right, within 21 days of receipt of the rent-increase notice, to refer matters to a "rent officer" who may determine the rent. Either the landlord or the tenant may appeal the rent officer's rent determination to the Tribunal. In each case, the rent to be determined is to be an open market rent.

Grounds for Recovering Possession

Arguably, the intent to modernise and simplify the grounds for recovery of possession has not been achieved as there are still 16 separate grounds which can be used.¹ In addition to the grounds proposed in the consultations, additional grounds contained in the Bill are:

- The property is purpose-built student accommodation and the tenant is no longer a student;
- The landlord's local authority registration has been withdrawn or refused;
- The landlord's HMO licence has been revoked; or
- An overcrowding statutory notice has been served on the landlord.

The abandonment ground has been adjusted to not occupying the let property and the antisocial behaviour ground split into separate criminal behaviour and antisocial behaviour elements.

Provided that correct notice has been served and the landlord has been able to successfully establish one of the grounds, then the Tribunal must, in the majority of cases, grant an eviction order. This provides both parties with greater certainty of outcome, however, there are still concerns that because of the detail of a number of these grounds it may in fact be difficult for landlords to establish them, and for certain grounds, the Tribunal still retains an element of discretion. For example the rent arrears ground leaves room for tenants to persistently



under-pay or delay in payment without fear of eviction, the refurbishment ground requires the landlord to pay the tenant’s removal costs which could be high and, if the landlord wishes to use the property for himself or his family, the definition of “family” is limited, and the property must be required for that individual’s only or principal home for at least 3 months.

As for criminal behaviour of the tenant, the criminal offence must have been either (a) committed by using, or allowing the use of the let property for an immoral or illegal purpose or (b) committed in the locality of the let property and punishable by imprisonment. Anti-social behaviour is an even more limited, ground relating to anti-social actings by the tenant to a person who resides in the let property or any other person visiting the let property or otherwise engaged in lawful activity when in the locality of the let property. This might cover anti-social behaviour to an agent carrying out an inspection on the property, but not when the agent is subjected to anti-social behaviour by the tenant in the agent’s office.

There are therefore concerns that some landlords will lack confidence to let out their properties under the new regime (particularly without the safety net of the no fault ground) which could mean that available housing stock on the market is reduced. It may also result in landlords being more selective over their tenants and so ‘higher risk’ tenants will find it harder to secure housing.

Notice to Leave

A welcome change is the introduction of a simplified notice procedure to terminate private residential tenancies. Regardless of who wants to end the tenancy only “Notice to Leave” requires to be served.

However, the level of notice to be given depends on who is giving it, how long the tenant has been allowed to live in the property, and the ground cited for eviction.

	Tenant has been entitled to occupy the property for no more than 6 months OR the only eviction ground stated in the notice is one or more of Grounds 9 – 13 above	Tenant has been entitled to occupy the property for over 6 months and the only eviction ground is NOT one or more of Grounds 9 – 13 above
Tenant giving notice	28 days	56 days
Landlord giving notice	28 days	84 days

However, as currently applies to eviction of a tenant under an assured tenancy, landlords will be unable to

raise eviction proceedings in the Tribunal unless they have also served a notice on the local authority in terms of s11(3) of the Homelessness etc (Scotland) Act 2003.

Inheritance/Succession changes

A private residential tenancy will not necessarily be terminated by the death of a sole tenant. The tenancy can be taken over by a husband or wife, civil partner or cohabitant if they were living in the property with the original tenant as their principal home at the time and various other conditions have been met.

Employment issues

A new ground for eviction enables removal from property which has been let to an employee under a private residential tenancy. The ground for eviction is triggered when the employment comes to an end. This should give landlords who provide employees with housing during their employment certainty that they can obtain vacant possession at the end of the employment. However, the changes in relation to succession could lead to unintended consequences for employers. If the relevant conditions are met, the employee’s spouse or partner may well succeed to the tenancy agreement if the employee dies in service.

As many arrangements with employees will be on a ‘no rent’ basis, they are likely to be classed as tied-agreements or licences to occupy which arguably still fall outwith the realms of the new regime as a tenancy of low rent.

Employers should review their existing arrangements, and should consider the implications of the new proposals when offering accommodation as part of an employment package.

Transitional Provisions

Once the Bill is enacted, no new short assured tenancies or assured tenancies can be created. For existing assured or short assured tenancies, the landlord and tenant can agree to convert the tenancy into a new private residential tenancy, but if they fail to agree to do so, no automatic conversion will take place. It seems that existing short assured or assured tenancies that were entered into before the Bill became law will therefore continue on their existing terms until they come to their natural end and the tenant vacates.

The future for residential tenancies

The Bill is in its early stages, and therefore subject to change. The Scottish Government has invited further comments on the Bill to be submitted [here](#) by no later than **Thursday, 19 November 2015**.

It is clear that the reforms will have a major impact on the private rented sector and, in its current format could have some unintended negative implications, in terms



of lack of availability of rental property if landlords lose confidence in letting as a result of these changes.

If you are interested in hearing more about the proposed Bill or would like our assistance with a submission to the Scottish Government on the proposed reforms, please do not hesitate to contact a member of our real estate or rural property and business teams.

¹ The grounds referred to in the Bill are:

1. The landlord intends to sell the property;
2. The landlord's lender intends to sell the property;
3. The landlord intends to refurbish – or rather carry out significant disruptive works to, or in relation to – the property (making it impracticable for the tenant to continue to occupy the property);
4. The landlord or a member of the landlord's family intends to live in the property;
5. The landlord intends to use the property for a non-residential purpose;
6. The property is required for religious purposes;
7. The tenancy was given to an employee and the tenant is no longer an employee;

8. The property is purpose-built student accommodation and the tenant is no longer a student;
9. The tenant is not occupying the property as their home;
10. The tenant has materially breached their tenancy agreement;
11. The tenant has been in rent arrears for three or more consecutive months;
12. Criminal behaviour (i.e. the tenant is convicted of a relevant offence);
13. The tenant has engaged in relevant anti-social behaviour;
14. The landlord's local authority registration has been withdrawn or refused;
15. The landlord's HMO licence has been revoked; or
16. An overcrowding statutory notice has been served on the landlord.

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