

CIH Scotland's ICI Committee submission



Evidence submitted by CIH Scotland Private Housing (Tenancies) (Scotland) Bill 2015 19 November 2015

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse and growing membership of people who work in both the public and private sectors, in 20 countries on five continents across the world including 2,300 in Scotland.

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1. General comments

- 1.1 CIH Scotland welcomes the introduction of the Private Housing (Tenancies) (Scotland) Bill (the Bill). As we stated in submissions to the Scottish Government's public consultations in 2014¹ and 2015², the introduction of a new tenancy has the potential to improve conditions in the private rented sector (PRS) by simplifying the system for both tenants and landlords and increasing security of tenure.
- 1.2 However, if the new system is to work, it is vitally important that the needs of tenants are balanced with the needs of landlords. This will require a robust system for repossession when there is a genuine need for a landlord to recover their property, underpinned by a tribunal system that is effective, efficient and well resourced.
- 1.3 Specific areas of concern are outlined below.

2. Removal of the 'no fault' clause

- 2.1 We support the removal of the 'no fault' clause. There should be no circumstances under which a person or family can lose their home without reason. However, we do understand the concerns raised by PRS landlords and their representatives and these must be addressed if the new tenancy regime is to work well in practice.
- 2.2 The provisions within the Bill will allow for landlords to seek possession under a range of predetermined grounds. We believe that the grounds are sufficient to cover all reasonable circumstances under which possession could be sought by landlords. However, the fact that possession will have to be sought through the new First Tier Tribunal (the Tribunal) if the tenant does not agree to leave raises some concerns.
- 2.3 Because this is a new system, it is not known how many cases will be referred to the Tribunal every year or how long these will take to be processed. We appreciate that estimates for the use of the Tribunal were set out in the Financial Memorandum of the Housing (Scotland) Act 2014 and revised upwards in the Financial Memorandum to this Bill to reflect the expected increase in cases resulting from the removal of the 'no fault' clause. However, these are only estimates and we cannot know the true scale of demand until the Tribunal is up and running and the new tenancy regime has had time to bed in.
- 2.4 **We seek assurance that the operation of the Tribunal will be closely monitored with additional resources being made available to deal with cases if the volume of work cannot be dealt with in reasonable time.**

¹ http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Scotland/PRS_Tenancy_Review_Consultation_Response

² http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Scotland/CIH_Scotland_Response_to_Second_Consultation_on_a_New_Tenancy_for_the_Private_Sector



3. Grounds for possession

- 3.1. As stated above, we agree that the proposed grounds for possession are sufficient to cover all reasonable circumstances under which a landlord may wish to recover their property. However, more detail is required on how these grounds will work in practice and what types of evidence will be required if the case is taken to the Tribunal by a landlord seeking possession or by a tenant who feels they have been wrongfully evicted.
- 3.2. We have particular concerns with grounds 1, 3, 4 and 5 which are based on the landlord's *intention* to use the property for another purpose. The wording of these grounds means that they are open to interpretation and therefore potentially open to abuse from a landlord seeking to remove a tenant from their property.
- 3.3. For example, a landlord may regain possession of their property under ground 1 (landlord intends to sell the property within three months of the tenant seeking to occupy it). The landlord may go through the motions and market the property therefore providing evidence of their *intention* to sell. But if the asking price for the property was much higher than comparable homes in the area or if the property was not widely marketed, would this be taken into account if a tenant appealed their eviction? This is not clear at the moment.
- 3.4. The wording of grounds 1, 3, 4 and 5 should be updated to include a requirement that the landlord takes reasonable steps to fulfil the ground for possession. For example:
- The landlord intends to sell the property within three months of the tenant ceasing to occupy it **and takes reasonable steps to achieve the sale.**
 - The landlord intends to refurbish which includes significantly disruptive works to, or in relation to, the property **and takes reasonable steps to carry out the specified refurbishment work.**
 - The landlord or family member intends to live in the property **and takes reasonable steps to move into the property.**
 - The landlord intends to use the property for a non-residential purpose **and takes reasonable steps to have the property reclassified.**
- 3.5. **We expect further consultation to be carried out with all interested stakeholders in the development of guidance on eviction under the new tenancy regime.**

4. Creation of a model tenancy

- 4.1. We support the introduction of a single model tenancy for the PRS which should be beneficial to both landlords and tenants by making the system simpler to understand. The new tenancy should clearly set out the rights and responsibilities of each party.
- 4.2. However, it is difficult to comment in any detail before the new tenancy has been drafted. **We expect that further consultation will be undertaken with all interested stakeholders in the development of the model tenancy.**



5. Rent

- 5.1. We support the proposal to limit the number of rent increases to one per 12 month period. It does not seem in any way reasonable that a tenant's rent should be increased more than once a year. Research carried out by Lettingstats in December 2014³ suggests that the proposals will not create an issue for the vast majority of landlords with 86% of tenants surveyed reporting that they had never received a request for a rent increase during a tenancy and 90% never having experienced a rent increase they deemed to be unreasonable.
- 5.2. The proposal for the introduction of powers to designate rent pressure zones must be carefully managed. We acknowledge that this is a discretionary power and not likely to be widely used but where an application is made, Ministers must be satisfied that designating a rent pressure area will be of benefit to private tenants and will not have a detrimental impact on landlords' ability to provide homes for private rent. We would not want to see a situation where the designation of a rent pressure area forced private landlords out of the market and ultimately resulted in their former tenants becoming homeless.
- 5.3. We also feel that it is important to highlight that increasing rents are a symptom of a lack of adequate supply of housing and that limiting increases in rent will not address the long term shortage of housing across all sectors in Scotland. Recent research commissioned by CIH Scotland, Shelter Scotland and SFHA⁴ outlines the need for 18,700 new homes every year to keep up with our increasing population. The Commission on Housing and Wellbeing⁵ sets out an even more ambitious target of 23,000 new homes each year.
- 5.4. **Where a local authority seeks to make use of this power, we recommend that their application should outline the wider context of the housing market in the area including analysis of housing need and longer term plans to address any identified shortfall.**

³ <http://www.letsotland.org/News/Article5>

⁴ http://www.cih.org/news-article/display/vpathDCR/templatedata/cih/news-article/data/New_research_Scotland_needs_12000_new_affordable_homes_a_year

⁵ <http://housingandwellbeing.org/>