PRIVATE HOUSING (TENANCIES) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Private Housing (Tenancies) (Scotland) Bill introduced in the Scottish Parliament on 7 October 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 79–EN.

BILL CONTENT

2. Part 1 concerns creation of a private residential tenancy to replace assured tenancies and short assured tenancies for all future lets.

3. Part 2 concerns statutory tenancy terms.

4. Part 3 concerns tenancy information.

5. Part 4 concerns rent.

6. Part 5 concerns termination.

7. Part 6 concerns death of a tenant.

8. Part 7 concerns consequential and transitional provisions.


POLICY OBJECTIVES OF THE BILL

10. The Scottish Government’s vision is for a private rented sector that provides good quality homes and high management standards, inspires consumer confidence and encourages growth by attracting increased investment.
This document relates to the Private Housing (Tenancies) (Scotland) Bill (SP Bill 79) as introduced in the Scottish Parliament on 7 October 2015

11. The Bill will contribute to realising that vision by introducing a new private residential tenancy for the private rented sector which will improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors.

12. The Bill will also provide tenants with protection against excessive rent increases and provide rent predictability, including the ability for Ministers to introduce caps on rent increases for sitting tenants in rent pressure zones.

BACKGROUND

13. The Private Rented Sector (PRS) Strategy was published in May 2013. It was informed by the work of the Private Rented Sector Strategy Group, which helped the Scottish Government to produce and consult on a draft Strategy in 2012. The Strategy aims to improve and grow the sector by enabling more effective regulation, applying tougher more targeted enforcement action on the worst landlords and letting agents and attracting new investment. The Strategy sets out our vision for the sector, which is:

“A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.”

14. To realise this vision, the Strategy identified three aims:

- to improve the quality of property management, condition and service
- to deliver for tenants and landlords by meeting the needs of people living in the sector, consumers seeking accommodation and landlords committed to continuous improvement
- to enable growth and investment to help increase overall housing supply.

Private Rented Sector Tenancy Review Group

15. One of the ten key actions in the Strategy was to “consult with all stakeholders to examine the suitability and effectiveness of the current private rented sector tenancy regime, considering legislative change where required”. To take this forward, in September 2013 the Scottish Government set up the Private Rented Sector Tenancy Review Group.

16. The Review Group was independently chaired by Professor Douglas Robertson from the University of Stirling. Its 18 members represented a cross-section of interests from the sector. They considered a range of evidence and expert opinion in their discussions. This included research by Craigforth who were commissioned by the Scottish Government to explore private rented sector tenants’ and landlords’ knowledge and understanding of the current tenancies. Craigforth’s report was published on 12 March 2014. Before this, in September 2013, the

1 http://www.gov.scot/Publications/2013/05/5877
2 http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/government/prsreview/strategy
4 http://www.gov.scot/Publications/2009/03/23134949/0
This document relates to the Private Housing (Tenancies) (Scotland) Bill (SP Bill 79) as introduced in the Scottish Parliament on 7 October 2015

Scottish Government’s Communities Analytical Services did an evidence review of the private rented sector in Scotland (the 2013 Evidence Review)\(^5\).

17. The Review Group produced a report for Ministers on 9 May 2014. It had one main recommendation, “that the current tenancy for the private rented sector, the short assured tenancy and the assured tenancy, be replaced by a new private tenancy that covers all future PRS lets”. The Scottish Government accepted this recommendation and this Bill gives effect to that recommendation.

ALTERNATIVE APPROACHES

18. Primary legislation is required to change the current short assured and assured tenancies. Margaret Burgess, Minister for Housing and Welfare, announced to the Parliament on 14 August 2014 (Official Report, col 33463) the Scottish Government’s intention to introduce a Bill in this parliamentary session that would establish a new tenancy for the PRS. The Minister restated this commitment on 21 January 2015 during an appearance at the Infrastructure and Capital Investment Committee (Official Report, col 10). During the Programme for Government debate on 27 November 2014 the Deputy First Minister advised the Parliament (Official Report, col 92) that the Scottish Government would bring forward legislation before the end of this parliamentary session. During her appearance at the Conveners Group on 18 February 2015 (Official Report, col 10), the First Minister also confirmed the intention to legislate this autumn. The First Minister reconfirmed this commitment during the Programme for Government debate on 1 September (Official Report, col 17).

19. The alternative is to do nothing, which would mean that the Review Group’s recommendation would not be implemented and the current tenancies (whose complexity and ambiguity is unsatisfactory) would continue to be used for future lets.

CONSULTATION

20. The policy objectives of the Bill have been developed by building on the Tenancy Review Group’s report and through extensive consultation and discussion with stakeholders. In October 2014, the Scottish Government launched a Consultation on a New Tenancy for the Private Sector\(^6\). The key proposals in the consultation included:

- removing the so-called “no-fault” ground (i.e. removing the ability of a landlord to ask a tenant to leave a property because their tenancy agreement has reached its end date)
- introducing notice periods linked to how long the tenant had lived in the property, which include shorter notice periods under certain specified circumstances
- modernising and simplifying the grounds under which a landlord could regain possession of their property
- removing the need for a landlord to issue a pre-tenancy notice to a tenant to say that they may recover possession under any of the new grounds

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\(^5\) http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/evidencereview

\(^6\) http://www.gov.scot/Publications/2014/10/9702
21. In addition to seeking views of the proposals for a new tenancy, the consultation also sought stakeholders’ views on rent levels in Scotland.

22. The consultation received more than 2,500 responses. They came from a range of interested parties including tenants, tenant-representative organisations, landlords, landlord-representative organisations, letting agents, investors and local authorities. The responses were analysed by an independent social research company and they produced a findings report for the Scottish Government.

23. Broadly, stakeholders were supportive of the majority of the proposals. Removing the “no-fault” ground and the possibility of introducing rent controls appeared to be the most contentious issues for some stakeholder groups: mainly landlords and investors who contended that these could discourage investment in the sector. That said, the majority of respondents to the consultation did support the removal of the “no-fault” ground. The findings from the consultation analysis were used to help the Scottish Government develop proposals for inclusion in a second consultation.

24. The Scottish Government launched the second consultation in March 2015 which explained in more detail how the new private residential tenancy would work in practice. It also included proposals to protect tenants against excessive rent rises and provide predictability on rent increases and sought views on whether further rent regulation may be required. The key proposals in the second consultation included:

- introducing an open-ended private residential tenancy for all future PRS lets
- replacing the notice to quit and notice of proceedings with a single notice to leave
- an increase in the number of repossession grounds from 8 to 11 based on responses to the consultation
- limiting rent increases to no more than one per year, with 12 weeks’ notice of any change required
- introducing a course of adjudication for tenants who consider that any proposed rent increase would take their rent well over rents charged for comparable properties in the area.

25. As mentioned above, the consultation also sought views on whether further rent regulation may be justified to protect sitting tenants in areas where rents are rising faster than the national average, for example by limiting these increases.

26. The second consultation received 7,689 responses: 340 were standard responses from individuals and organisations and 7,349 supported one of four organised campaigns. The
responses were again analysed independently and a findings report was published on the Scottish Government website. The campaigns were:

- Living Rent
- Scottish Association of Landlords
- PRS4Scotland
- A letting agent campaign.

27. As well as publishing both consultations on its website, the Scottish Government used a range of methods for widening the reach to stakeholders. These included social media, face-to-face meetings and presentations at conferences and events. Further, in order to understand as fully as possible what tenants thought of the initial proposals, the Scottish Government arranged a number of focus groups during December 2014 to gather the views of tenants in the Aberdeen, Edinburgh, Falkirk, Glasgow, Paisley, Scottish Borders and Stirlingshire areas.

28. Overall, there was general support for modernising and simplifying the tenancy and helpful suggestions were made to improve the proposals. The specific provisions section below contains further detail on the consultation responses to individual proposals.

**SPECIFIC PROVISIONS**

**New type of tenancy**

29. The short assured tenancy and assured tenancy, as outlined in the Housing (Scotland) Act 1988, will be replaced for all future PRS lets by the new, simplified and modernised statutory private residential tenancy.

**Consultation**

30. Stakeholders were strongly supportive of a simplified and modernised tenancy that provides clarity for tenants and landlords on their respective rights and responsibilities.

**Removing the “no-fault” ground for repossession (i.e. removing the ability of a landlord to ask a tenant to leave a property because their tenancy agreement has come to an end)**

31. A landlord will no longer have the ability to ask a tenant to leave a property because their tenancy agreement has reached its end date.

**Consultation**

32. The majority of respondents to the first consultation agreed with the proposal that the “no-fault” ground should be excluded from the new tenancy, while most landlords and letting agents were against it. Improving security of tenure for tenants is a key aim of the new tenancy

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9 http://www.gov.scot/Publications/2015/08/3653

10 These were undertaken by Craigforth and their analysis published as part of the report on the second consultation exercise, which is available here: http://www.gov.scot/Publications/2015/08/3653
and the Scottish Government considers that tenants should only be asked to leave their homes for a good reason.

33. The Scottish Government did not seek further views on the proposal in the second consultation. However, many respondents still made reference to removing this ground and called for it to be included in the new private residential tenancy.

34. The Scottish Government remains committed to removing the “no-fault” ground as tenants should also feel secure in their homes and be able to assert their rights without feeling that doing so may lead to them being asked to leave their home.

Initial tenancy period

35. During the initial period of the private residential tenancy (which will be for a minimum of 6 months unless a tenant requests a shorter period and the landlord agrees to this, as will be provided for in regulations) the landlord may only give notice under very specific circumstances. These are:

- rent arrears
- anti-social behaviour
- breach of tenancy agreement
- relevant criminal conviction
- lender intends to sell.

36. In order to provide flexibility in the new private residential tenancy, if a tenant and landlord are content they can agree a longer initial tenancy period, e.g. one year. Alternatively, where the tenant has requested it and the landlord agrees, they can agree a shorter initial period, e.g. three months (as will be provided for in regulations). In all of these cases, during the initial tenancy period, a tenant would be unable to give notice and a landlord would be unable to regain possession of the property unless one of the above specified circumstances arose.

Consultation

37. This proposal did not feature in the first consultation. In the second consultation, with the exception of the Living Rent Campaign, the majority of other respondents were supportive of this proposal as it provides both the tenant and the landlord with the certainty that the tenancy should last for at least the initial period.

38. A large number of campaign respondents who disagreed with the proposal stated that tenants should have the ability to serve notice to leave at any time during the initial period. However, the Scottish Government considers that the initial period offers certainty for both tenants and landlords and therefore could not support this view.
Continuation of tenancy

39. After the initial tenancy period has expired, the private residential tenancy would continue indefinitely. A tenant can give notice to end the tenancy at any time, with the required notice periods that are discussed below in paragraph 53. A landlord could also give notice at any time provided they use one of the new repossession grounds and give the tenant the required notice discussed below in paragraph 49.

Consultation

40. This proposal did not feature in the first consultation. In the second consultation, there was overwhelming support for it.

Model tenancy agreement

41. Landlords must provide tenants with a tenancy agreement. In order to assist with this, the Scottish Government will develop a model tenancy agreement which will contain mandatory and discretionary clauses and a statutory guidance note that would summarise the meaning of the clauses in plain language. The mandatory content of the model tenancy agreement will be set out in forthcoming subordinate legislation. This is to allow stakeholders to be consulted about the content of the model agreement during the legislation’s development to help ensure it would be fit for purpose.

42. If a landlord fails to give a tenant a tenancy agreement which contains all of the terms of the tenancy including the specified mandatory clauses, the tenant will be able to refer the matter to the First-tier Tribunal. The Tribunal will be able to draw up a tenancy agreement that complies with the model agreement’s mandatory requirements.

43. Under the Housing (Scotland) Act 2014 existing private rented sector civil cases, including those relating to tenancy agreements and repossessions, will be transferred from the sheriff court to the First-tier Tribunal. The Tribunal is also granted powers under the Bill in relation to private residential tenancies. The Tribunal’s main benefits will be specialism, consistency and accessibility, improving access to justice for both tenants and landlords in the sector. The Tribunal will be a judicial decision maker and will have to follow a process when deciding cases, including cases where there is a mandatory ground for repossession.

Consultation

44. A clear majority of respondents to the first consultation agreed that a model tenancy agreement should be introduced. The Scottish Government did not seek further views on this proposal during the second consultation.

Notice to leave

45. To help achieve our aim of modernising and simplifying the tenancy, the notice to quit and the notice of proceedings are being replaced by a single notice called the “notice to leave”. It will give tenants and landlords a more streamlined and less complex approach to the notice process than under the assured tenancies.
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46. The new notice to leave will cover every eventuality currently covered by the notice to quit and notice of proceedings, such as a landlord wanting to repossess the property to live in it, or wanting to sell it. It will also notify the tenant that a case can be referred to the First-tier Tribunal for eviction proceedings if they do not leave the property.

47. The Scottish Government will set out in secondary legislation the content of the notice to leave. This will allow stakeholders to be consulted during its development.

Consultation

48. This proposal did not feature in the first consultation. In the second consultation there was overwhelming support for it and respondents’ comments tended to focus on the proposal offering a simpler and easier to understand alternative to the current arrangements.

Notice to leave – amount of notice a landlord is required to give a tenant

49. Where a landlord is looking to recover possession of their property, they will be required to issue the tenant with a notice to leave which gives the appropriate amount of notice linked to how long the tenant has lived in the property. The notice periods are:
   • six months or less in the property = 28 days’ notice (four weeks)
   • more than six months in property = 84 days’ notice (12 weeks).

Consultation

50. Those who responded to the first consultation broadly agreed that the period of notice should reflect the length of time the tenant had spent in the property. The first consultation proposed four different notice periods linked to how long the tenant had lived in the property; they were 4 weeks, 8 weeks, 12 weeks and 16 weeks. The majority of respondents disagreed with the four proposed notice periods and with the maximum notice period with many saying four different periods were overly complex and unfair.

51. In response to stakeholders’ comments, in the second consultation the Scottish Government reduced the proposed notice periods from four to two and reduced the maximum notice period from 16 weeks to 12 weeks.

52. The clear majority of respondents to the second consultation disagreed with the revised notice periods. Views were many and varied and the most frequently made suggestions were: a minimum of 12 weeks’ notice for tenants in all circumstances, three notice periods with eight weeks’ notice required where a tenant has lived in the property over six months up to two years; and reducing the maximum notice period to eight weeks. The Scottish Government considers that the notice periods outlined in the second consultation strike an appropriate balance between landlords and tenants and have retained these.

Notice to leave – amount of notice a tenant is required to give a landlord

53. If a tenant wishes to end their tenancy, they will be required to issue the landlord with notice to leave which gives the appropriate amount of notice linked to how long the tenant has
lived in the property (or a different notice period agreed by the landlord and tenant under section 39). The notice periods are:

- six months or less in the property = 28 days’ notice (four weeks)
- more than six months in property = 56 days’ notice (eight weeks).

**Consultation**

54. In the first consultation, the majority of respondents supported this proposal considering the notice periods reasonable, fair and striking a good balance between the interests of landlords and tenants. The Scottish Government did not seek further views on this proposal during the second consultation.

**Notice to leave – shorter notice period in certain circumstances**

**Anti-social behaviour, relevant conviction, abandonment and breach of tenancy agreement**

55. Where the tenant has engaged in anti-social behaviour, has a relevant conviction, breached their tenancy agreement or is not occupying the property as their home, the landlord can regain possession by giving the tenant 28 days’ notice, irrespective of how long the tenant has lived in the property.

56. If the landlord provides the tenant with 28 days’ notice and the tenant still remains in the property once the 28 days has lapsed, decisions on whether the above grounds exist would be a matter for the First-tier Tribunal.

**Consultation**

57. In the first consultation the majority of respondents agreed with the proposal for a shorter notice period where anti-social behaviour or breach of the tenancy agreement apply. The Scottish Government did not seek further views on this proposal during the second consultation. In the second consultation, the “criminal behaviour” repossession ground formed the mandatory element of anti-social behaviour repossession ground. The Scottish Government therefore considers that it is reasonable that it would attract the same notice period when set out as a separate ground for eviction.

58. As part of the second consultation, the Scottish Government set out an abandonment repossession ground which would enable a landlord to give a tenant 4 weeks’ notice if they believed that the tenant had abandoned the property. At the end of this notice period, if it still appeared to the landlord that the tenant did not intend to occupy the property, they could immediately refer a case to the First-tier Tribunal. The majority of respondents (87%) agreed that this ground would work effectively. A landlord is therefore required to give a tenant 28 days’ notice to leave where they believe the property may have been abandoned.

**Rent arrears over three months**

59. Where a tenant has failed to pay any amount of rent lawfully due over a period of two consecutive months, it is permissible for the landlord, before taking any repossession action, to send the tenant a notice to leave telling them that they have fallen into rent arrears and that if
they fail to pay the rent lawfully due by the end of the third consecutive month, a referral could be sent to the First-tier Tribunal on the day following the expiry of the three month period. If on reaching the end of three consecutive months, the tenant is still in rent arrears, further notice will not be required and a landlord can refer the case immediately to the First-tier Tribunal.

Consultation

60. The first consultation proposed that, where a tenant had failed to pay full rent over three months, a landlord would be able to apply to the First-tier Tribunal to regain repossession of their property by giving the tenant 28 days’ notice. While respondents were generally supportive of this proposal, the Scottish Government recognised that landlords must have confidence that they can remove a tenant swiftly in cases of non-payment of rent in order to protect their investment and provide them with reassurance when letting their property in the PRS. The Scottish Government also recognised that more could be done to direct tenants towards sources of financial information and advice and in light of this, the second consultation contained the proposal outlined in paragraph 59. With the exception of the Living Rent Campaign, the majority of respondents agreed with the proposal.

Grounds for repossession

61. The Scottish Government recognises that landlords must be able to recover their property in all reasonable circumstances and has developed comprehensive and robust repossession grounds in order to achieve this. Twelve of the repossession grounds are mandatory which means that if the First-tier Tribunal is satisfied that the ground exists they must order possession of the property. The repossession ground in respect of anti-social behaviour is discretionary. The remaining three grounds (breach of tenancy agreement, rent arrears and property to be sold by mortgage lender) have both a mandatory and a discretionary strand. For the discretionary strand, if the Tribunal is satisfied that the ground exists, it will still have discretion on whether to issue an eviction order.

62. The comprehensive and accessible list of repossession grounds are:

- landlord intends to sell
- property to be sold by lender
- landlord intends to refurbish
- landlord or family member intends to live in property
- landlord intends to use for non-residential purpose
- property required for religious purpose
- no longer an employee
- no longer a student
- not occupying let property
- breach of tenancy agreement
- rent arrears
- criminal behaviour
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- anti-social behaviour
- landlord has ceased to be registered
- HMO licence has been revoked
- overcrowding statutory notice.

63. During the “initial tenancy period” (or shorter/longer agreed period), as outlined in paragraphs 35 and 36, a landlord will be able to recover possession of their property if the tenant is at fault and the mortgage lender may gain possession if the landlord has defaulted on the mortgage. Therefore, the following grounds will be available for use by the landlord and the lender during the “initial period”:

- rent arrears
- anti-social behaviour
- breach of tenancy agreement
- criminal behaviour
- lender intends to sell.

64. All of the repossession grounds are available for use by the landlord after the initial period has ended.

65. Subject to giving their landlord the relevant notice, a tenant can leave the property at the end of the initial tenancy period or at any time thereafter.

Consultation

66. The first consultation proposed eight repossession grounds. A number of stakeholders responded that further grounds were required to achieve a list of reasonable grounds. The Scottish Government therefore increased the number of grounds to 11 in the second consultation, adding abandonment, employment ended and property required to house a full-time worker of any religious denomination.

67. Revocation of an HMO licence and/or landlord registration was also raised as an issue by landlords as they have no means of removing tenants from their property if their license and/or landlord registration is revoked. Similarly, if an overcrowding statutory notice was served on a landlord there is no course of action available for removing the tenants in the property. In order to provide landlords with a suitable means in these circumstances, the Scottish Government added further grounds for repossession to address these particular issues.

68. Some respondents to the second consultation raised concerns that the proposals will impact negatively on the supply of properties let in the student market or holiday lets. The Scottish Government recognises that the new tenancy could affect these. However, it considers that all tenants, including students, should have the same security of tenure and that practices

11 Local authorities can issue overcrowding statutory notices to landlords in cases where there is overcrowding in the private rented housing sector and this impacts on the wellbeing of anyone in the property, or of the surrounding area.
could be adapted in order to mitigate the impacts of the new tenancy, such as engaging effectively with tenants to establish their plans to remain in or give up the tenancy and marketing properties to a shorter time-frame.

69. An additional repossession ground has been added for purpose-built student accommodation where the tenant is no longer a student, as it is accepted that it may not be appropriate for a tenant who is no longer a student to stay in such accommodation indefinitely.

Rent levels

70. The Scottish Government recognises that increasing the supply of homes is the sustainable, long-term solution to addressing housing affordability. The Scottish Government is not proposing the introduction of national rent controls which, while seeking to tackle high rents in the short term, could jeopardise efforts to improve affordability through increasing supply by discouraging much-needed investment.

71. The rent provisions outlined below are intended to give tenants safeguards against unjustified and excessive rent increases and predictability on when their rents will increase; and to give landlords’ confidence that they can recover their legitimate costs, including for improving their property.

Rent predictability

72. Rent increases will take place no more than once in any 12 month period. Further, landlords will give tenants at least 12 weeks’ notice of a change in the rent. This will provide tenants with sufficient notice to help them plan their finances.

Protection against rent hikes

73. If a tenant considers that any proposed rent increase would take their rent beyond rents charged for comparable properties in the area, they will have the ability to refer the increase for adjudication to a rent officer at Rent Service Scotland. This will protect tenants against the possibility of unscrupulous landlords using large and unjustified rent increases to force tenants from their homes where they are otherwise complying with their tenancy agreement.

Capping rent increases for sitting tenants in areas where rents are rising excessively

74. Scottish Ministers will have the power to cap the levels of rent increases for sitting tenants in areas where rents are rising excessively. This is intended to be a means of responding to a problem affecting tenants in a defined area. Use of this power would be triggered by a local authority applying to Ministers for an affected area to be designated a “rent pressure zone”. Local authorities may apply to Ministers to have an area designated as such, including providing the necessary evidence to support this application. It would then be for Ministers to decide whether to cap the rate of increase in a designated zone for a time-limited period, not exceeding five years. Ministers would be required to lay regulations before Parliament, subject to affirmative procedure, including providing the supporting evidence for designating the zone. This measure aims to protect tenants from large rent increases.
75. To safeguard the interests of responsible landlords, Ministers would be under duties to ensure that any cap took account of inflation and other reasonable costs and to consult tenants, landlords and other relevant stakeholders before designation. Any cap would be at least the Consumer Price Index (CPI) plus 1%. As an additional safeguard, landlords would be able to increase the rent reasonably to recover their legitimate property improvement costs (for example, if they had recently replaced the boiler in their property).

Consultation

76. The first consultation asked a number of open questions on rents including: what action, if any, should the Scottish Government take on rent levels in the PRS in Scotland? Views were divided with some respondents calling for the Scottish Government to bring rents under control and others strongly opposed to the Scottish Government intervening in the market.

77. The second consultation outlined proposals for rent predictability i.e. rent increases no more than once per year with 12 weeks’ notice, and protection against excessive rent increases i.e. providing tenants with the ability to refer rent increases for adjudication. There was very strong stakeholder support for both these proposals.

78. The second consultation also asked whether further specific measures may be justified to protect tenants from excessive rent increases in areas showing higher-than-average increases. The majority of respondents did not see a role for additional regulation with many stating that the sector should remain market-led.

79. The Scottish Government considered carefully the consultation responses and decided that there should be discretionary measures available to local authorities should they wish to cap the amount by which rents for sitting tenants could increase. In making their application to Ministers to have an area designated as a “rent pressure zone”, a local authority will be required to satisfy Ministers that rent increases for sitting tenants in the area to be designated were: rising excessively; causing hardship to sitting tenants in the area (e.g. measures of affordability, poverty etc.); and having a detrimental effect on the broader housing system (e.g. through increased demand on social housing, or an increase in homelessness). As stated above, any cap would be at least CPI+1% and would be limited to a maximum of five years per application.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

80. The Bill’s provisions do not discriminate on the basis of age, gender, race, disability, marital status, religion or sexual orientation. It is envisaged that provisions on security of tenure will be particularly beneficial to some vulnerable groups who may have previously found it difficult to gain secure, longer-term housing in the PRS, or who felt unable to assert their rights for fear of eviction. An Equality Impact Assessment has been published for the Bill.
Human rights

81. The Scottish Government has considered the impact of the new private residential tenancy on human rights and has concluded the Bill does not give rise to any issues under the European Convention on Human Rights (ECHR). The new private residential tenancy would have an impact on the rights of landlords and tenants under Article 1 Protocol 1 (which protects the right to peaceful enjoyment of property). The current private tenancy regimes under the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988 already affect rights under Article 1 Protocol 1. The Scottish Government considers that the new private residential tenancy regime could increase the potential interference with Article 1 Protocol 1, given the grounds for termination and restrictions on rent increases but that this interference is justified in the public interest. Article 6 rights to a fair trial were considered when making provision for appeals to the First-tier Tribunal in relation to rent adjudications determined by a rent officer and to the First-tier Tribunal and Upper Tribunal in relation to failure of the landlord’s duty to provide tenancy information to the tenant. Article 6 was also considered in relation to actions for eviction. The Scottish Government is confident that the Tribunals can comply with the ECHR when handling such cases.

82. A Children’s Rights and Wellbeing Impact Assessment has been published for the Bill. The results of this demonstrate that there are no potentially negative impacts of the proposals. This is because they not only comply with the UN Convention of the Rights of the Child but have the potential to advance the realisation of children’s rights and wellbeing.

Island communities

83. The Bill will have no specific implications for island communities.

Local government

84. The Bill has no direct effect on local government in Scotland, save for giving local authorities an ability to apply for part or all of the local authority area to be designated as a rent pressure zone. Sixteen local authorities and the Association of Local Authority Chief Housing Officers responded to the second consultation and were broadly supportive of the new tenancy.

Sustainable development

85. The effect of the provisions of the Bill on the environmental, social and economic aspects of sustainable development are described below:

Environmental effects

86. The new private residential tenancy is unlikely to have any significant environmental effects because its primary impact will be upon the agreement between a landlord and a tenant.

Social effects

87. Landlords and tenants will be fully aware of their respective rights and responsibilities. Landlords will have the confidence that they can recover their property in reasonable
circumstances and if a property’s condition is below standard, tenants can challenge their landlord without fear of eviction. Tenants will be more secure in their homes, which could lead to tenants becoming more actively engaged in the life of their community. There is also evidence to suggest that unstable housing, particularly when it arises from moves which are not consciously chosen such as housing problems or instability, result in very negative outcomes for children and young people. Provisions which improve security have the potential to address this.

Economic effects

88. A new simplified and modernised private residential tenancy is likely to contribute to a well-functioning private rented sector in Scotland.

89. It has been suggested by some stakeholders that landlords may withdraw their properties from the private rented sector and market them for sale. Others have suggested that the provisions of the Bill may deter investment in housing and reduce the supply of new rented housing, or investment in improving the quality of existing housing.

90. While the change in the tenancy may result in some reduction in the flexibility that a landlord currently has in return for strengthening the security of tenure for the tenant, the new private residential tenancy will not significantly affect the most important driver for investment in the private rented sector, the rate of return on investment. Landlords will still be able to charge market rents, they will be able to recover possession if the tenant fails to pay rent or if they wish to realise their capital investment by selling the property (or in the case of individual landlords, if they require the house for themselves or their families). Lenders will still be able to recover possession in the event of the landlord defaulting on the mortgage, so the availability of finance should continue with the introduction of the new private residential tenancy.


13 Except where locally a rent pressure zone has been designated, where rents for sitting tenants will have a set cap of increase. This may result in rents for some sitting tenants falling below the market rate for a limited period of time. But initial rents would continue to be market led.
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