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Private Rented Housing (Scotland) Bill: Stage 3

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The Stage 3 debate on the Private Rented Housing (Scotland) Bill is scheduled to take place on 17 March 2011. This briefing is intended to provide a summary of the main amendments to the Bill agreed during Stage 2. It does not set out to describe every change that has been made to the Bill. This briefing should be read alongside [SPICe briefing 10/ 71 *The Private Rented Housing \(Scotland\) Bill*](#), which provides further information on the Bill, as introduced.



The Scottish Parliament
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EXECUTIVE SUMMARY

The Private Rented Housing (Scotland) Bill proposes:

- amendments to the private landlord registration scheme to offer additional support to local authorities to help them deal with landlords that are not complying with the scheme
- amendments to the houses in multiple occupation (HMO) licensing system, including the power for local authorities to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control.
- the introduction of an overcrowding statutory notice that local authorities can use to reduce overcrowding in privately rented properties
- amendments to legislation relating to the private sector tenancy regime including a requirement for landlords to produce a pre-tenancy information pack.

The Local Government and Communities Committee's Stage 1 Report supported the general principles of the Bill but expressed some concern about the practical application of the proposed overcrowding statutory notice. The Committee was concerned that it is difficult to predict the likely consequences arising from the provisions in relation to levels of homelessness and the impact on housing stock.

Stage 2

Thirty-three amendments were lodged at Stage 2, of which eighteen were agreed. Most of the amendments agreed were lodged by the Scottish Government and the majority of those related to the provisions on overcrowding statutory notices (OSNs) (with a smaller number relating to landlord registration and landlord applications to the Private Rented Housing Panel). The OSN amendments sought to: clarify when the notice should be used and matters relating to the statutory guidance on OSNs; place a requirement on Scottish Ministers to consult stakeholders before prescribing the form and content of an OSN; increase the maximum fine for a landlord's non-compliance of an OSN, and ensure tenants in properties affected by an OSN receive appropriate assistance by changing the power for a local authority to provide information and advice to occupants of a house, where a notice is served, to a duty to do so.

A number of non-Government amendments relating to HMOs were lodged. Some of these sought to address the perceived negative impact of large concentrations of HMOs in certain localities. None of the amendments in relation to HMOs were agreed.

The two non-Government amendments that were agreed (lodged by David McLetchie MSP) sought to facilitate increased institutional investment in the private rented sector through amending the Land Tenure Reform (Scotland) Act 1974.

Further Consideration Prior to Stage 3

Mary Mulligan MSP lodged an amendment with the effect of giving Ministers a duty to prepare and publish a triennial report on the number and effects of overcrowding statutory notices. The Minister for Housing and Communities accepted the principle behind the amendment but suggested that its drafting could be improved and a revised version lodged at Stage 3. On that basis, Mary Mulligan withdrew the amendment

INTRODUCTION

The principal policy objectives of the Bill are “...to improve standards of service for consumers in private rented housing and enable continued sustainable growth in the sector”. The key provisions contained in the Bill are:

Part 1: seeks to amend the private landlord registration scheme as introduced by the Antisocial Behaviour etc. (Scotland) Act 2004. It will expand the criteria of the fit and proper person test that landlords need to pass to become registered and introduce other measures to allow local authorities to enforce the scheme more effectively.

Part 2: proposes to amend the houses in multiple occupation (HMO) licensing scheme in Part 5 of the Housing (Scotland) Act 2006 (and which is due to come into force on 31 August 2011). Amongst other provisions, the Bill would give local authorities a power to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control.

Part 3: will introduce a new power for local authorities to serve an overcrowding statutory notice on the landlord of a privately rented house where overcrowding is linked to an adverse effect on the health or wellbeing of any person, or on the amenity of the house or its locality. The notice must specify the steps which are required to be carried out to ensure that the house is no longer overcrowded. Local authorities would have a duty (this was originally a power in the Bill as introduced until amended by the Scottish Government at Stage 2 to be a duty) to provide any occupier of a house served with a notice with information and advice.

Part 4: proposes a number of miscellaneous amendments relating to the private sector tenancy regime and would:

- clarify the right to make pre-tenancy charges and the level of these charges
- introduce a requirement on private landlords to provide new tenants with specified documents (a tenant information pack)
- clarify what notices are required to be issued to allow a landlord to gain possession of a house at the end of a short assured tenancy
- enable a private landlord to apply to the Private Rented Housing Panel for assistance in exercising rights to access a property in order to comply with the Repairing Standard.

[SPICe Briefing 10/71](#) (Berry 2010) provides more detailed information on the Bill as introduced.

PARLIAMENTARY CONSIDERATION

The Local Government and Communities Committee was appointed lead Committee on the Bill at Stages 1 and 2, and Table 1 below lists the key dates for its parliamentary consideration.

Table 1: Summary of Parliamentary Consideration

Bill Introduced	4 October 2010
Stage 1 Local Government and Communities Committee Evidence	10, 17 November, 1 December 2010
Stage 1 Subordinate Legislation Committee	9, 23 November 2010
Stage 1 Report published	18 January 2011
Stage 1 Plenary Debate	27 January 2011
Subordinate Legislation Committee after Stage 1	8 February 2011
Stage 2 Local Government and Communities Committee	23 February 2011
Stage 3 Plenary Debate	Scheduled 17 March 2011

STAGE 1 REPORT

The lead Committee's Stage 1 report (Local Government and Communities Committee 2011) was generally supportive of the aims of the Bill. While the provisions in relation to landlord registration were welcomed, the Committee recognised that legislative change would need to be accompanied by an improvement in local authorities' enforcement of the scheme in practice.

Although the Committee's report recognised that overcrowding is a "significant and serious issue that needs to be addressed", it expressed some concerns about the practical application of the Bill's proposals regarding overcrowding. A key concern was that it is difficult to predict the likely consequences arising from the provisions in relation to levels of homelessness and the impact on housing stock. It therefore recommended:

"... that the Scottish Government consults widely on the guidance to be issued in relation to overcrowding; that it monitors the number of overcrowding notices that are issued by local authorities and the circumstances leading to their issue and that it reviews the provisions to assess how effective they are in dealing with overcrowding and to assess their impact on levels of homelessness and on housing stock" (Para 189 Scottish Parliament Local Government and Communities Committee 2011).

Other proposals in relation to the HMO provisions and the tenancy regime were supported by the Committee.

STAGE 2 PROCEEDINGS

Thirty-three amendments were lodged at Stage 2, of which eighteen were agreed. All Government amendments, lodged by Alex Neil MSP, the Minister for Housing and Communities ('the Minister'), were agreed.

Amendments Passed

Table 2 summarises the main amendments agreed and one amendment where further consideration will take place prior to Stage 3. Most of the amendments that were agreed relate to the overcrowding statutory notice.

Table 2: Summary of Amendments Passed

Amendment number	Lodged by	Issue	Effect
9,10	Alex Neil MSP (the Minister)	Duty to include landlord registration numbers in advertisements	Where there are multiple owners, the advert will require only the inclusion of either the landlord registration number of any one of the landlords, or the phrase "landlord registration pending" if the application has not yet been determined.
12, 16	Alex Neil MSP	Overcrowding Statutory Notice (OSN) – factors to consider	Requires a local authority to consider whether it is reasonable and proportionate to serve an OSN, having regard to specified factors such as the likely effects of serving the OSN and whether there are alternative methods of dealing with the overcrowding. Additionally, local authorities would also need to examine the circumstances and views of the people living in the house and those of the landlord (if known), and the likely effects of service on the people living in the house, particularly in relation to homelessness. The Government's initial intention was that statutory guidance would outline expectations on this, but given concerns from the Committee, the Government decided to put this on the face of the Bill.
14	Alex Neil MSP	Overcrowding Statutory Notice - consultation	Requires Ministers to consult stakeholders before using the order-making power relating to OSNs.
17	Alex Neil MSP	Overcrowding Statutory Notice - information and advice	Replaces s18 with a new section which changes the power for a local authority to provide information and advice to occupants of a house (where an OSN is served) to a duty to do so. This will require the local authority to serve a notice containing information and advice, at the same time as an OSN. The content of the notice will be prescribed by an order made by Scottish Ministers following consultation with local authorities, representatives of landlords and occupiers, and any other appropriate stakeholders.

18	Alex Neil MSP	Overcrowding Statutory Notice - Fines	Increases the maximum fine for a landlord's non-compliance with an overcrowding statutory notice from level 3 (£1,000) to level 5 (£5,000).
19	Alex Neil MSP	Overcrowding Statutory Notice (OSN) - information	<p>Inserts a new section to give a local authority the power to obtain information from the landlord, occupants and any other person with an interest in the house, about people associated with the house and also the house itself when considering whether to serve an overcrowding statutory notice.</p> <p>Failure to comply with a requirement or the provision of false or misleading information would be an offence subject to a maximum fine of level 2 (£500).</p> <p>The aim of this amendment is to assist local authorities to determine whether or not a house is overcrowded.</p>
15,20	Alex Neil MSP	Overcrowding Statutory Notice (OSN) - Guidance	Clarifies that a provision on statutory guidance relates to the whole of Part 3, not just to overcrowding statutory notices. Requires Ministers to consult on the content of the guidance.
32,33	David McLetchie MSP	20 year rules	<p>Amends the Land Tenure Reform (Scotland) Act 1974 provisions in relation to the 20 year rules – that is residential restrictions on leases for more than 20 years, and the right to redeem heritable securities after 20 years. Allows Ministers, by order, to prescribe bodies, for whom the rules are relaxed.</p> <p>The aim of this is to facilitate increased investment in the provision of housing for rent by private sector bodies.</p>
Further consideration prior to Stage 3			
24	Mary Mulligan MSP	Overcrowding Statutory Notices - Reports	Would require Ministers to prepare and publish a report triennially on the number and effects of OSNs. The Minister agreed in principle but suggested that minor drafting amendments could be made and that Scottish Government officials would be prepared to work with Mary Mulligan with a view to lodging a revised amendment at Stage 3.

Amendments Not Passed

The following provides a summary of the main areas of debate where amendments were either not moved, withdrawn or not agreed. It does not cover every such amendment.

HMOs

Section 13 of the Bill proposes to give local authorities a discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the living accommodation concerned would constitute a breach of planning control (for the purposes of the Town and Country Planning (Scotland) Act 1997). The intention behind this provision is that local authorities will be able to decide whether to use this approach if they consider there is a problem with HMOs operating without planning permission in their area.

Amendment 29, by Jim Tolson MSP, sought to remove this provision suggesting that it may adversely impact on the supply of HMOs. Patricia Ferguson MSP spoke against the amendment arguing that the original rationale behind the scheme was to protect occupants' health and safety. The Minister said that he expected the power in Section 13 to improve enforcement where there are excessive numbers of HMOs in an area and will allow local authorities discretion to take account of local circumstances (Col 4191). The amendment was disagreed to (1:7).

A number of amendments in relation to HMOs gave rise to a debate about the problems experienced within certain communities as a result of a perceived high concentration of HMO properties and the extent to which the Bill could, or should, address these issues.

Amendment 28, by Alex Johnstone MSP, would have required all HMOs to have planning permission. The Member said that the intention of this amendment was to put the matter on the agenda for discussion. Ted Brocklebank MSP spoke in favour of the amendment highlighting issues that have arisen from high concentrations of HMOs in the centre of St. Andrews. The Minister empathised with the amendment but suggested that this would not be the best way to deal with the issue and that the amendment would have "hugely negative repercussions" for HMOs through increasing costs to local authorities and landlords and reducing supply ([Col 4183](#)). The amendment was withdrawn.

Pauline McNeill MSP proposed a number of amendments in relation to HMOs, again to raise the debate about the impact of high concentrations of HMOs in particular communities, such as the west end of Glasgow. Amendments 4 and 30 were moved. These amendments would have required a local authority to refuse to grant an HMO licence if it considered that the living accommodation was unsuitable as a result of subdivision or adaptation of rooms which resulted in an alteration to the situation of the water and drainage supplies in the HMO, or if it considered use of the accommodation as an HMO would have an adverse effect on the communal open space associated with the accommodation. The Minister argued that these amendments were unnecessary as existing legislation enabled local authorities to take these factors into account (Col 4193). Both these amendments were disagreed to (3:5).

Mary Mulligan MSP expressed a general view that, "... we still have not arrived at a satisfactory situation for all those who are involved in HMOs... apart from the complaints about levels of HMO concentration, the main problem seems to be with management. I am not sure that the bill puts the right measures in place..." ([Col 4190](#)). The Minister responded that there were already powers available to local authorities deal with management of HMOs.

Tenant Information Pack

Section 29 of the Bill would require landlords to provide specified documents and information to tenants at the start of their tenancy – this would be known as a tenant information pack. Amendment 27, by Mary Mulligan MSP, proposed that documents confirming whether a carbon monoxide detector had been installed in the house should be provided.

Amendment 31, by Bob Doris MSP proposed that documents confirming installation of a residual current device along with assessment of the safety of energy utilities should be provided. The Minister indicated that the Bill provides for Ministers to specify by order what should be included in the pack, and that Ministers must consult on the contents of the order. He undertook to ensure that these issues were included in the consultation (Col 4207). Amendments 31 and 27 were disagreed to (3:5).

SOURCES

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RELATED BRIEFINGS

[SB 10-19 Housing \(Scotland\) Bill \(667KB pdf\)](#)

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