

# Housing Strategy and Development Briefing Note 15/14

Private Housing (Tenancies) (Scotland) Bill

November 2015



# Introduction

Welcome to a series of regular briefings prepared by the Housing Strategy and Development team on the big issues concerning housing. These briefings will be shared with staff, tenants and elected members and keep everyone up to date with regards the ever changing policy context that we are operating within.

The Housing Strategy and Development section is responsible for:-

- Providing the statutory strategic housing authority role within the local authority area;
- Strategic Housing Asset Management delivery;
- The delivery of the Council House New Build Programme and the delivery of the affordable Housing supply programme;
- Supporting the development of a culture of continuous improvement in Housing services and to facilitate opportunities to excel;
- Developing and implementing effective strategies for Housing and Community Safety Services within West Dunbartonshire;
- Developing the Council's housing strategy to ensure that it supports the delivery of our strategic priorities;
- Service development within Housing and Community Safety services; and Promoting effective management and the involvement of tenants across all aspects of Housing Services.

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# Private Housing (Tenancies) (Scotland) Bill

## 1. Background:

There has been rapid growth in the private rented sector (PRS) since the millennium. The sector is meeting greater demands from households on low incomes and families with children. Demand from this group has also been promoted by government homelessness prevention strategies that have sought to divert these households from rehousing by the social sector to the PRS.

At present the expansion of the sector has been based on short leases that offer a maximum of six months security of tenure. This flexibility suits single households but the Scottish Government's 2013 Green Paper, *A Place to Stay, A Place to Call Home* recognised that families will be looking for more certainty and security.

The purpose of the Private Housing (Tenancies) (Scotland) Bill is to increase security of tenure for tenants while providing appropriate safeguards for landlords, lenders and investors. It achieves this by introducing a new private residential tenancy to replace the assured tenancy system (introduced in 1988). This new tenancy provides comprehensive and robust grounds for eviction; gives predictability of rents and protection for tenants against excessive rent increases that include the potential for the potential designation of rent pressure zones.

The Bill builds on the PRS Strategy published by the Scottish Government in May 2013. One of the ten key actions in the Strategy was to consult with all stakeholders to examine the suitability and effectiveness of the tenancy regime. In September 2013 an independent PRS Sector Tenancy Review Group was set up that reported in May 2014. It had one main recommendation that short assured and assured tenancies, be replaced by a new tenancy that covers all future PRS lets. Following two stages of detailed consultation this Bill implements that recommendation.

## 2. Key Points

- The short assured tenancy and assured tenancy will be replaced for all future PRS lets by the new, simplified and modernised statutory private residential tenancy.
- Removal of 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).
- 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) the landlord may only give notice under very specific circumstances. These are rent arrears, anti-social behaviour, breach of tenancy agreement, a relevant criminal conviction, and the lender intends to sell.

- 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, subject to required notice periods. A landlord could also give notice at any time provided they use one of the new repossession grounds and give the tenant the legally required notice.
- Landlords must provide tenants with a tenancy agreement. The Scottish Government will develop a model tenancy agreement which will contain mandatory and discretionary clauses and a statutory guidance note. This will be subject to consultation.
- The notice to quit and the notice of proceedings are being replaced by a single notice called the —notice to leave. The notice periods to be given by landlords are: tenant with six months or less occupancy in the property - 28 days' notice (four weeks) or more than six months in property - 84 days' notice (12 weeks). The notice periods by tenants are: six months or less in the property - 28 days' notice (four weeks) or more than six months in property = 56 days' notice (eight weeks).
- Where a 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.
- Where a tenant has failed to pay any rent lawfully due over two consecutive months it is permissible for the landlord, before taking any repossession action, to send the tenant a notice to leave. 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
- There are twelve grounds for repossession grounds that 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.
- The 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, anti-social behaviour, landlord has ceased to be registered, HMO licence has been revoked and overcrowding statutory notice.

- During the initial tenancy period 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. 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 and lender intends to sell.
- Rent increases will be regulated by rent increases taking 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.
- 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.
- Local authorities will have the power to cap the levels of rent increases for sitting tenants in their area or part of it 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 the government for an affected area to be designated a rent pressure zone. Local authorities will have to provide the necessary evidence to support this application. It would then be for the government to decide whether to cap the rate of increase in a designated zone for a time-limited period, not exceeding five years.
- To safeguard the interests of responsible landlords the government will be required 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).

### **3. What it means for WDC:**

#### **How can we improve?**

There requires to be greater co-ordination in terms of a response to the Private Rented Sector which would support both housing options and generic housing advice to our communities this should sit with Housing Services and be tackled through the development of the Local Housing Strategy.

Greater co-ordination would also support evidence as for the Council in looking to implement specific elements contained within the Bill such as the new power to introduce rent pressure zone(s)

In addition, the Council may need to reassure some local landlords who may feel they no longer wish to continue as private landlords as a result of the increased security of tenure for tenants.

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