

Agenda item	6.
Report no	HLC/069/17

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 5 December 2017

Report title: Private Housing (Tenancies) (Scotland) Act 2016 – consequential changes to the Council’s Standards for Houses in Multiple Occupation

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive Summary

1.1 This report explains the changes to the law relating to tenancy agreements introduced by the Private Housing (Tenancies) (Scotland) Act 2016. These changes have effect in relation to certain tenancies created on or after 1 December 2017 and have necessitated consequential changes to the Council’s Standards for Houses in Multiple Occupation (HMO).

2. Recommendation

2.1 The Committee is invited to note the introduction of the new private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 and to note the consequential amendments to the Council’s Standards for HMO to include the statutory terms of these types of tenancy.

3. Background

3.1 Most residential tenancies in HMO properties are currently assured or short assured tenancies under existing housing legislation. Certain accommodation in HMO (eg temporary lets to homeless people) may also be let under either short assured tenancies or common law tenancies.

3.2 The [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) ("the 2016 Act) introduces the "private residential tenancy" ("PRT") with effect from 1 December 2017. With the exception of certain types of tenancy which the 2016 Act provides cannot be PRTs, all tenancies of private residential accommodation created on or after 1 December 2017 are PRTs under the 2016 Act and require to comply with its terms. The purpose is to improve security for tenants and provide safeguards for landlords, lenders and investors.

3.3 The new tenancy will be open-ended and will last until a tenant wishes to leave the let property or a landlord uses one (or more) of new 18 grounds for eviction.

3.4 Improvements for tenants include:

- more security – it is an open-ended tenancy so the landlord cannot just ask a tenant to leave simply because they have been in the property for a set length of time
- protection from frequent rent increases – the rent cannot go up more than once a year and the tenant must get at least three months' notice of any increase
- any rent increase can be referred to a rent officer, who can decide if the increase is fair
- if the tenant has lived in a property for more than six months, landlords have to give 84 days' (as opposed to 28 days') notice to leave (unless it is because the tenant has done something wrong)
- if a tenant thinks they were misled into moving out, they can now apply to the [First-tier Tribunal](#) for a 'wrongful termination order. If the Tribunal gives the order it can award up to six months' rent in compensation
- local authorities can apply to Scottish Ministers to cap the levels of rent increases in areas where rents are rising too much.

Improvements for landlords include:

- no more confusing pre-tenancy notices, such as the [AT5](#)
- where a tenant is in rent arrears, a landlord can refer a case for repossession more quickly
- a Scottish Government recommended 'model tenancy agreement', which will include standardised tenancy terms
- a digital version of the Scottish Government 'model tenancy agreement', which will include discretionary terms that can be edited, allowing landlords to easily put together and send out a tenancy agreement suitable for their specific property
- one simple notice when regaining possession of a property called a 'notice to leave' – this will replace the current 'notice to quit' and 'notice of proceedings'

- eighteen modernised grounds for repossession, which include new grounds where the property has been abandoned or the landlord intends to sell.

3.5 From 1 December 2017 any new residential tenancy grant will be a private residential tenancy as long as:

- The property is let to a person as a separate dwelling. A property can still be considered a separate dwelling even if some of the core facilities are shared with other tenants. For example, if a tenant rents only a bedroom in a flat, but has a right to use a shared bathroom and kitchen, the property will be treated as a separate dwelling because the tenant has access to the range of facilities required for it to be regarded as a separate dwelling.
- The tenant lives in it as their only or main home.
- The tenancy is not excluded from the definition of “private residential tenancy” under [schedule 1 of the Act](#) (these exclusions include student lets and temporary lets to homeless people in fulfillment of the local authority’s duties under homelessness legislation).

Landlords must give their tenants a written copy of all the terms of their tenancy, although, if agreed, this may be in the form of an electronic document.

3.6 With regard to tenancies already in existence before 1 December 2017, any existing short assured or assured tenancy will continue until either the tenant or the landlord brings it to an end by serving notice to quit the let property. Short assured tenancy which renew on a contractual basis can continue to renew under the Housing (Scotland) Act 1988 until either the landlord or the tenant brings it to an end by serving notice to quit the let property.

4. Council standards for HMO

4.1 The Council’s current standards for HMO include a list of elements to be included in the provisions of tenancy agreements in respect of HMO accommodation. It is a condition of the HMO licence itself that the licence holder will comply with the contractual obligations contained within the tenancy agreements he/she has with the HMO tenants and that the tenancy agreements are approved by the Council in terms of the Council’s standards for HMO. To assist HMO licence applicants, a sample tenancy agreement, based on a short assured tenancy under the Housing (Scotland) Act 1988, is currently issued to licence applicants as a model agreement for this type of tenancy and one which meets the Council’s current standards. These will continue to apply to tenancies in existence before 1 December 2017 and will still be provided to applicants whose tenants will not have PRTs.

4.2 In order to allow for the introduction of private residential tenancies, however, an additional section to the standards document has now been added setting out the new statutory terms to be included in this new type of tenancy where created on or after 1 December 2017.

4.3 These statutory terms are reflected in the “mandatory clauses” contained within the “Model Private Residential Tenancy Agreement” (the “Model PRT Agreement”) which Scottish Government has produced. These mandatory clauses also cover other elements such as the repairing standard and tenancy deposits which are set by existing housing legislation. All of the mandatory clauses from the Model PRT Agreement have accordingly been included in the new section added to the Council’s standards for HMO.

- 4.4 Landlords using the Model PRTA may also add discretionary clauses. They may pick and choose from the discretionary clauses already suggested in the Model PRTA and may add to them. Alternatively, they may produce their own style of tenancy agreement but if doing so must incorporate all of the statutory terms from the 2016 Act and associated regulations, as well as other relevant housing legislation.
- 4.5 In order to simplify this for HMO licence applicants, the new section added to the Council's standards for HMO provides that any style of tenancy agreement (to be used to create a PRT) submitted for approval must contain all of the mandatory clauses. Other clauses (the "discretionary clauses" from the Model PRTA, or further additional clauses the landlord wishes included) may be added, but these may not conflict with the mandatory clauses or any other provision of housing legislation. To assist applicants, they will be directed to (and encouraged to use) the Model PRT Agreement which will shortly be available on line on the Scottish Government website but which will also be available to download from the Council's website. This will henceforth be supplied as a sample tenancy agreement which meets the Council's standards for the new PRT agreements.

5. Implications

- 5.1 Not applicable.

Date: November 2017

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