

Tenure Reform - the Scottish experience

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Introduction

1. This working paper is the fourth in our series and considers the experience of Scotland and its Private Housing (Tenancies) (Scotland) Act 2016, which commenced on 1st December 2017. The paper draws on some early evaluation projects of the changes in Scotland, and the experiences of BPF members which operate there.

Key features of the Scottish reforms

- Private Residential Tenancy (PRT) is 'open-ended', so has no fixed-term period.
- Eviction proceedings simplified to 18 statutory grounds.
- There is no 'no-fault' ground.
- Tenants' notice periods are standardised to 28 days.
- Landlords must provide 84 days' notice to leave for tenants who have lived in the property for six-months or longer.
- Rent increases - once every 12 months, with three months' notice.
- Tenants can challenge 'unfair' rent increases to a Rent Officer.
- Where rent increases are deemed 'excessive' local authorities have been given powers to implement local rent caps in designated Rent Pressure Zones.

Evaluation of the Scottish reforms

2. There is an ['official evaluation'](#) of the reforms taking place from 2019 to 2022. This is being conducted by a research organisation, Indigo House, and is funded by the Nationwide Foundation. Its baseline findings suggest the following:
 - Both landlords & letting agents generally suggested 'no impact' of tenancy changes, though many are still using SATs.
 - Early days, so some opinions based on perception, rather than on actual experience.
 - Those negative impacts voiced by landlords include: 'open-ended' aspect and reduced 28-day notice period.
 - Combination encouraging 'churn' - increased turnover & voids.
 - Ground 12, relating to rent arrears, concerns about the length of time taken to achieve an eviction.
 - Concern about how joint tenancies work in practice in respect of new PRT.
 - Loss of 'no fault' ground not raised as major issue.

The market

3. The official evaluation indicated it is too early to read too much into market reactions and many of the initial trends seen would need testing throughout the evaluation. Reflecting the Covid pandemic, the ban on evictions has been extended until 30 September 2021 in Scotland and tenant hardship funds and landlord loan schemes will all have skewed any data that might otherwise have shown how the reforms might reshape the market.

4. One of the surprises to the researchers was the time it was taking to switch to the new regime with tenancies under the former assured tenancy regime turning over far slower than had been expected. Many long-term tenants and landlords just do not revisit their agreements until there is an issue between them. The prompt for changing to the new regime of private rented tenancies is therefore often an issue between landlord and tenant rather than any of the publicity surrounding the roll out of the legislation.
5. There were also indications that tenant turnover was higher, perhaps reflecting the 28-day notice period.
6. Also, some indications that rents were rising more rapidly, perhaps reflecting that landlords were more aware of the procedure for raising rents in the new tenancy arrangements, whereas under the assured tenancy landlords would often only raise rents at the beginning of a new tenancy.
7. There have also been difficulties for employers. Where the private rented tenancy is linked to employment, employers may wish to evict immediately on termination of employment, but the legislation does not contain specific notice periods or bespoke processes for that purpose.

The courts

8. An important aspect of the tenure reforms in Scotland is the establishment of a new Housing and Property Chamber Tribunal. It is an integral part of the reforms, which was welcomed by landlord and tenant representatives as part of the new framework. Their hopes were that having a more specialist court would provide the requisite access to justice that a system without 'no faults' relies on. It would lead to better decision-making and a more efficient process. There was also a hope that it would be more inquisitorial, or investigative in contrast to the traditional adversarial approach practiced in Sheriff Courts.
9. It has not yet lived up to those hopes. Just prior to the pandemic, Scottish landlords were facing a 10-month timeframe to evict tenants who fail to pay rent, a longer period than under the previous assured tenancy regime.
10. Landlords and their agents have also continued to seek legal representation at hearings and not really embraced the more informal inquisitorial, or investigative approach envisaged.
11. It is difficult to know whether the processing of cases is reflective of teething problems that will settle down. With the backlog of cases built up during the pandemic that is unlikely in the short-term. Research also shows that almost 20% of applications were rejected on technical grounds, forcing landlords to start the process again.
12. All this helps underline the messages in our working paper on court processes. Simply creating a separate organisation (a dedicated Housing Court) is insufficient to support any new tenancy regime. It also requires significant reform of the process, simplifying forms and digitalisation of the processes. If a more informal process is wanted, it also means the sitting Justices must have the powers to direct proceedings.

Questions

1. From members' experiences, what can you add to our knowledge of the impacts of the Scottish Private Rented Tenancy?
2. Do you agree with the 'official evaluation', and if not what is it missing?