POLICY NOTE

The Private Housing (Tenancies) (Scotland) Act 2016 (Modification of Schedule 1) Regulations 2019

SSI 2019/XXX

1. The above instrument is made in exercise of the powers conferred by sections 6(1) and 76(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) and all other powers enabling them to do so. It is subject to the affirmative procedure because it modifies schedule 1 of the Act.

2. The proposed regulations modify schedule 1 of the Act to ensure that Private Residential Tenancies cannot be granted where a charity provides accommodation to veterans or temporary accommodation to care leavers as they transition to independent living.

3. This is a technical amendment to ensure that both the Private Residential Tenancy and charities can operate as originally intended in line with their charitable purpose

Policy Objectives

4. The Act came into force on 1st December 2017 and introduced a new Private Residential Tenancy, which replaced Short Assured and Assured Tenancies. New tenancies granted in the private rented sector on and after 1st December 2017 are Private Residential Tenancies.

5. The underlying principle of the Private Residential Tenancy is that when a landlord rents out their property to a tenant it becomes the tenant's home, over which they must have security. Its purpose is to improve security, stability and predictability for tenants, balanced with safeguards for landlords, lenders and investors.

6. The original policy intention was to ensure that houses let for a period during which the tenant would receive support would be exempt. Schedule 1 of the Act makes clear that a tenancy cannot be a Private Residential Tenancy if the landlord is a social landlord such as a local authority, a registered social landlord or a housing co-operative.

Private Residential Tenancy and potential conflict with Charitable Purpose

Accommodation for veterans

7. Housing and accommodation for disabled veterans and their spouses/families may be provided by charities throughout Scotland. This includes residential care, temporary accommodation for rehabilitation/training, supported accommodation and accommodation for disabled veterans with no specific support needs.

8. There is nothing in the Act which exempts this type of landlord from the requirement to grant a Private Residential Tenancy. This may have the unintended consequence of giving automatic rights to the tenant's spouse or adult children to succeed to the tenancy if the veteran should die. For example, if tenants who do not have support needs used succession rights to maintain the tenancy, this could contravene the organisation's charitable purpose and reduce the accommodation availability for veterans in need.

9. In addition, veterans may be reluctant to move on to other accommodation on completion of a training course or work placement when support is no longer needed. This could mean that accommodation is not available for other veterans waiting to commence similar training.

10. Prior to the introduction of the Private Residential Tenancy, these charities used Short Assured Tenancies or occupancy agreements in common law to provide supported accommodation tenancy arrangements for veterans.

11. Regulation 2(2) now provides an exemption from the Private Residential Tenancy for a charity providing accommodation to Veterans. This has the effect of retaining the status quo prior to the introduction of the Private Residential Tenancy. This means that such organisations can operate as originally intended within common law without conflict to their charitable purpose. These regulations will ensure that a veteran may be offered temporary accommodation for a period of rehabilitation and training, or permanent accommodation in line with the organisation's charitable purpose and the needs of the veterans.

Temporary supported accommodation for care leavers

12. Barnardos is a registered private landlord with charitable status that provides temporary accommodation to care leavers as they transition to independent living. This includes provision for shared accommodation.

13. There is nothing in the Act which exempts this type of service provider from the requirement to grant a Private Residential Tenancy.

14. Prior to the introduction of the Private Residential Tenancy, Barnardos relied on common law occupancy agreements or Short Assured Tenancies to maintain private rented temporary accommodation arrangements for care leavers enabling them to transition to independent living in the social rented sector.

15. Where tenancies may now become Private Residential Tenancies, this may have unintended consequences of blocking supported accommodation, for example, where support is no longer required but a care leaver wishes to remain in the accommodation.

16. Barnardos has 2 core business models for supported accommodation for care leavers.

(i) Barnardos may lease properties from the social rented sector, for example, local authorities. Where flats are leased by Barnardos from the social rented sector, and rented privately to care leavers on a temporary basis, the tenancy may later be converted to a permanent Scottish Secure Tenancy in partnership with a social landlord. Otherwise, there is nothing in the Act to enable Barnardos to require the carer to leave the property.

(ii) Barnardos UK own property which they rent to care leavers. With the requirement for a Private Residential Tenancy, if tenants who do not have support needs refuse to move on when support is no longer required, this could contravene the organisation's charitable objectives and reduce the accommodation availability for other vulnerable care leavers

Consultation

17. We have developed the regulations in close consultation with veterans organisations to ensure the regulations meet the needs of veterans and to accommodate arrangements for newly built bungalows due to become available for veterans in July.

18. We have also worked closely with Barnardos to ensure that the regulations enable them to operate as originally intended when providing temporary accommodation to care leavers as they transition to independent living.

19. We have consulted with interested parties including SHELTER, Scottish Association of Landlords and with the Coalition of Care and Support Providers in Scotland and their relevant members.

20. The proposed amendment regulations are welcomed with no known contentious issues.

Impact Assessments

21. An Equality Impact Assessment and a Children's Rights and Welfare Impact Assessment were undertaken in relation to the provisions in Private Housing (Tenancies) (Scotland) Bill prior to its introduction to the Scottish Parliament. No further assessment (EQIA) is required as the amendments enable certain charities offering accommodation to veterans and care leavers to operate as originally intended.

Financial Effects

22. A Business and Regulatory Impact Assessment (BRIA) was undertaken in relation to the provisions in Private Housing (Tenancies) (Scotland) Bill prior to its introduction to the Scottish Parliament.

23. The Scottish Government does not consider that these Regulations will impose additional costs on landlords or tenants.

Scottish Government

May 2019