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23 November 2015

Dear Ms Cook

Private Housing (Tenancies) (Scotland) Bill

I thank the Delegated Powers and Legislative Reform Committee for its letter of 3 November 2015.

The Committee asked three questions to which I provide the following responses.

The Committee asks the Scottish Government whether consideration has been given to including, on the face of the Bill, the proposed specified information under section 9(1) of the Bill which a landlord will be under a duty to provide to a tenant?

We considered including, on the face of the Bill, the information which a landlord will be under a duty to provide to a tenant. However, this is an administrative requirement and we are of the view that it is therefore best addressed by the use of subordinate legislation. This is in line with how provision on such requirements has been dealt with previously (for example, the Tenant Information Packs (Assured Tenancies) (Scotland) Order 2013 (S.S.I. 2013/20)).

In addition to the subject matter being of an administrative nature, the information which will be specified under this power has not yet been identified. The key information that tenants will always need and want is of course their written tenancy terms. The requirement for landlords to provide that information is stated on the face of the Bill, in the form of section 8.

What further information landlords should be required to provide to tenants is something on which the Government plans to consult landlords, tenants, and groups representing their interests. As that consultation has not yet taken place, the Government considers it would be premature to put any further information requirements on the face of the Bill. But of course the Government will be happy to consider any suggestions members may have that in regard.

At this stage though, as the Government intends to consult on further information requirements, and as the requirements may need to change in light of future developments, the Government considers it most appropriate to leave their specification to regulations. As



the power to make the regulations is subject to affirmative procedure, Parliament will have the opportunity to consider the provisions fully if and when any regulations are laid in draft.

The Committee asks the Scottish Government whether they would consider it appropriate to include such information on the face of the Bill in a similar manner to the approach taken with the statutory terms in schedule 2?

The approach taken with the statutory terms in schedule 2 is that the terms of every private residential tenancy are to be set out in regulations and the terms that are so set out must usually include those terms in schedule 2 (though there is provision to create exceptions). In effect, the terms in schedule 2 are read into the tenancy agreement to be agreed between the parties which will also include other prescribed terms, and further terms that the parties themselves create which are specific to the individual tenancy. We have set out statutory terms in schedule 2 but there are almost certainly more to be added during implementation and in the future.

The ability to make regulations prescribing the statutory terms ensures that the private residential tenancy can evolve with new statutory terms applying to tenancies entered into after the new terms are in force as any new terms will not have retrospective effect. When the prescribed terms are altered new regulations can be made which set out afresh in full what terms are required. The fact that regulations are being used will make it simpler for the parties to know which set of terms apply to their tenancy by being able to identify which regulations were in force when the tenancy began.

As the Government does not consider it appropriate to include the specified information on the face of the Bill (for the reasons set out above), it follows that the Government does not consider it appropriate to include the information on the face of the Bill in a similar manner to the approach taken for statutory terms.

The Committee asks the Scottish Government whether consideration has been given to including the proposed provisions about how a duty arising under section 8 or section 9 of the Bill is to be performed on the face of the Bill rather than in regulations under section 10?

We considered including, on the face of the Bill, provisions about how the duty to provide written terms of the tenancy and specified information is to be performed. However, we think this level of administrative detail is best left to regulations.

It will be necessary to consult landlords, tenants, and groups representing their interests to ensure that all appropriate methods of communication are explored. It is possible that the regulations may end up making relatively detailed provision covering a number of different eventualities. Some landlords and tenants may prefer to use traditional paper documents; others may prefer to use electronic documents, emails or even text messages.

Of course as technology moves on, so the ways in which it is appropriate to provide this information may change. For this reason, flexibility in the form of a regulation-making power is essential. It would not be a good use of parliamentary time to require primary legislation every time there is a desire to allow information to be given by some new means. Use of subordinate legislation for this sort of thing is, for that reason, commonplace. As the power to make the regulations is subject to affirmative procedure, Parliament will have the opportunity to consider the provisions fully when regulations are laid in draft.

Kind regards

Barry Stalker

Team Leader

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