The Assured Shorthold in a European context: Extremity of tenancy law on the fringes of Europe

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Tenlaw Budapest 2015
Classification of rental sectors in Europe

- Huge diversity across Europe
  1. Type of landlord or ownership (DK, SW, NE, IR)
  2. Tenancy type (ES, FR)
  3. Subsidy and ownership (FN)

Scanlon & Kochan (2011)

- Doesn’t capture modern English law
- Classification changed in England to take account of the purpose of the letting (2008)
Classification in England

Public/social rental sector

- Low cost/affordable housing (up to 80% market rent)
  1. Local authorities grant secure tenancies
  2. Private registered providers of housing (social) grant (fully) assured tenancies

Private rental sector

- Market rents
  1. Private individuals grant (mainly) assured shorthold tenancies
  2. Some housing associations (acting non socially) grant (mainly) assured shorthold tenancies
Tenure trends

Great Britain (2014)
- 19% of households live in PRS
- 17% of households live in SRS
- Growing PRS

EU-28 (2013)
- Wide variations
- 19% of households live in PRS
- 11% of households live in SRS
- Declining overall
Tenure trends: England and Wales, 1918-2014

Source: Communities and Local Government 2015
European tenancy law

Security of tenure

1. Facilitates rent regulation
2. Wide variation across EU-28
   e.g. Potentially indefinite to 6 months etc.
3. Dependent on termination rights, right to renew etc

Rent regulation

1. First generation:
   a) Rent freeze
   b) No mechanism for change
2. Second generation:
   a) Initial rent reflects market
   b) Increases regulated e.g. rate of inflation
Three phases of English tenancy law

1. Rent control 1915 – 1977
   a) Guaranteed security of tenure
   b) Rent control

   a) Guaranteed security of tenure
   b) Fair rents

3. Deregulation 1989 – present
   a) Limited security of tenure
   b) Market rents
Thatcher housing reforms

- Promote a property owning democracy
- Homeownership prioritised (right to buy)
- Private renting regarded as ‘lifestyle’ or ‘stage in life’ housing choice
  - Transitional households e.g. young professionals, students, mobile workers (Ball, 2010)
Security of tenure

1. Assured tenancy: security subject to termination rights
2. Assured shorthold tenancy: security limited to 6 months (default since 1996)

Rent regulation

1. Initial rent set by market
2. Increase takes place on renewal in accordance with market
Tenure trends: England and Wales, 1918-2014

Source: Communities and Local Government 2015
Promotion of the British model

• Promoting renting
  • Alleviate house price pressures
  • Smooth housing market dynamics
  • Facilitate labour mobility

• Assured shorthold influence?
  • 2011 CSRs in Spain
  • Economic Adjustment Programme in Portugal (2012)
  • Short term lease Slovakia (2014)
But trouble at home...

- Tenancy law splitting along national and political lines
- Political consensus is gone
  - Most expensive rents in Europe
  - Least amount of security in Europe
  - Why is this driving reform?
Dynamics of renting are changing

Figure 4.2  Housing Completions, UK, 1950-2010

Source: Housing Completions, 1950-2010, CLG.
We need to talk about shorthold...

• Greater flexibility and choice
• Facilitates labour mobility
• Most open PRS in all of Europe?

• Instability
  • Contributes to churn in PRS
  • Pre-emptive eviction
  • Undermines LL and T relationship e.g. dispute resolution

• At odds with *defacto* social function of PRS
  • Homelessness duty
  • Housing benefit caps
Wales

Tenancy regulation

• Housing Act 1988
• AST – limited security, two months notice

Impact of devolution?

• Housing (Wales) Act 2014
• Renting Homes Bill 2015
  • Consumerist approach
Scotland

Tenancy regulation

- Housing Act 1988
- SAT – limited security, two months notice

Impact of devolution?

- Reform of civil law
- Report of the Review of the PRS Tenancy Regime (May 2014)
- Better Dispute Resolution in Housing: Consultation (Jan 2013)
Republic of Ireland

Tenancy regulation
• RTA 2004
• Part 4 – rolling security, proportionate notice?

Effective?
• PRS grown considerably since introduction
• But endorsed as blueprint by Gov
Conclusion

• Low security model is promoted abroad yet increasingly divisive at home
• Nothing inherently contradictory in advancing a regulatory model which provides flexibility and choice while also ensuring adequate security
• Striking an appropriate balance is a matter of perspective about the nature and function of private renting