

SPICe Briefing

Private Housing (Tenancies) (Scotland) Bill: Stage 3

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This briefing provides a summary of the parliamentary scrutiny of the Private Housing (Tenancies) (Scotland) Bill prior to the Stage 3 proceedings which are scheduled to take place on Thursday 17 March 2016.

It is designed to provide a summary of the main issues associated with the Bill during its passage through the Scottish Parliament so far and the amendments made at Stage 2. It does not a comprehensive discussion of all the issues raised in relation to the Bill.

SPICe Briefing 15/68 [Private Housing \(Tenancies\) \(Scotland\) Bill](#) provides information on the Bill as introduced.



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EXECUTIVE SUMMARY

In October 2015, the Scottish Government introduced the Private Housing (Tenancies) (Scotland) Bill with provisions seeking to introduce a new private residential tenancy to supersede the existing assured and short assured tenancies under the Housing (Scotland) Act 1988. The Scottish Government expects that the Bill will improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors.

In its Stage 1 report, the Infrastructure and Capital Investment Committee supported the general principles of the Bill but requested that the Scottish Government give further consideration to a number of areas. At Stage 2, 198 amendments were lodged. The main changes made at Stage 2 are summarised below:

- **Student Accommodation** – Purpose Built Student Accommodation (PBSA) built by private providers is now exempted from the Bill's provisions in the same way that student accommodation provided by further and higher education institutions already was.
- **Eviction Grounds** – There were a number of changes to the eviction grounds the landlord can use including:
 - **Two new eviction grounds** – there are now 17 grounds, compared to 16 in the Bill as introduced. A second eviction ground relating to anti-social behaviour has been added. This covers the situation where the tenant associates with someone who has a criminal conviction or who has engaged in anti-social behaviour (ground 13A). The other new eviction ground (ground 8A) can be used by providers of supported accommodation where the tenant is no longer in need of that accommodation.
 - **Mandatory and discretionary grounds¹** – the balance between mandatory and discretionary eviction grounds has shifted towards more discretionary grounds. The Bill as introduced had 12 mandatory grounds; three with both a discretionary and mandatory element (grounds 2, 10 and 11) and one which was entirely discretionary (ground 13). After Stage 2 seven grounds are entirely discretionary (grounds 8A, 10, 13, 13A, 14, 15 and 16); two grounds have mandatory and discretionary elements (ground 11) and the remaining eight grounds are mandatory.
 - **Rent arrears** – ground 11 relating to rent arrears (which attracted a lot of attention from stakeholders at Stage 1) is now mandatory in more limited circumstances than was the case previously. Specifically, it is mandatory only if the tenant is in arrears by one month's rent (or more) on the day the Tribunal considers the case.

¹ For the purposes of the Bill an eviction ground is described as 'discretionary' where the Tribunal has the discretion not to grant the eviction order in the situation where the circumstances associated with the ground are otherwise present. A ground is 'mandatory' where the Tribunal has no such discretion.

- **Anti-social behaviour** – The original ground relating to anti-social behaviour by the tenant (ground 13) also attracted a lot of attention from stakeholders at Stage 1. At Stage 2 the sort of anti-social behaviour that may give rise to eviction under this ground was extended. However, if the application for eviction was made more than 12 months from the date the anti-social behaviour occurred, the Tribunal must be satisfied that the landlord has a reasonable excuse for not making the application sooner.
- **Evidence that can demonstrate an eviction ground** – a number of the eviction grounds are based on the landlord intending to make an alternative use of the property (grounds 1, 3–5). At Stage 2, examples of the types of evidence that a landlord might use to demonstrate that intent were added to the grounds.
- **Wrongful Termination** - The Tribunal will be able to make a “wrongful termination order” against a landlord if it finds the landlord has misled the tenant or Tribunal about the grounds he or she was using to seek eviction. At Stage 2, an amendment was made to increase the level of compensation payable to the tenant for a wrongful termination from up to three months’ rent to up to six months’ rent.
- **Removal of the initial tenancy period** - The Bill as introduced had proposed that, unless otherwise agreed between the tenant and the landlord, there would be an initial tenancy period of six months. At Stage 1, some stakeholders were concerned that this would create difficulties for those in vulnerable positions who needed to leave the tenancy quickly without financial penalties. At Stage 2, the initial tenancy period was removed from the Bill.
- **Rent Pressure Zones** - The Bill as introduced proposed a formula for determining the limit that rents in a designated rent pressure zone could be increased by. At Stage 2, the formula was changed to enable an amount to be added in relation to improvements to the property carried out by the landlord, as determined by a Rent Officer.
- **Tenant Notice to End the Tenancy:** The Bill as introduced proposed two notice periods for a tenant to end the tenancy depending on the length of the tenancy. At Stage 2 an amendment was made to remove the longer notice period. Therefore, the notice period for a tenant to end the tenancy will be 28 days regardless of the length of the tenancy, unless the tenant proposes, and the landlord agrees, a shorter period.

Further consideration prior to Stage 3

The Minister for Housing and Welfare, Margaret Burgess, committed to reconsider a number of areas prior to Stage 3. These include:

- What happens to a tenancy if the tenant dies.
- Changes to one of the proposed statutory tenancy terms that would limit a tenant’s requirement to notify the landlord about a person residing in the property to only if it was that person’s only or principal home.
- The timescales for Scottish Ministers to lay draft regulations to designate a rent pressure zone or to lay a document to explain why this was not done.

INTRODUCTION

The Private Housing (Tenancies) (Scotland) Bill seeks to create a new private residential tenancy to supersede the assured and short assured tenancies provided for by the Housing (Scotland) Act 1988. The overall aim of the Bill is to improve security of tenure for tenants, while providing appropriate safeguards for landlords, lenders and investors.

One of the key differences with the proposed new tenancy, compared to the current short assured tenancy, is that to end a tenancy a landlord will have to give notice to the tenant specifying which eviction ground the landlord is using. Under the current short assured tenancy, landlords have the absolute right to recover possession at the end of the tenancy, providing the correct procedures are followed.

The Bill as introduced proposed that if the tenant does not leave the property after being given notice by the landlord, the landlord will have to refer the case to the First-tier Tribunal ('the Tribunal') to obtain an eviction order. A tenant will have recourse to the Tribunal if he or she believes the tenancy has been wrongfully terminated. If the Tribunal finds that a tenancy has been wrongfully terminated, it can order the landlord to pay the tenant compensation.

The Bill also seeks to provide tenants with protection from excessive rent rises. Landlords will only be able to increase rents once in every 12-month period and only with three months' notice. If a tenant considers that any proposed rent increase would take their rent beyond rents charged for comparable properties in the area, they will have the ability to refer the increase for adjudication to a Rent Officer at Rent Service Scotland.

Local authorities will also be given powers to apply to Scottish Ministers to approve a 'rent pressure zone' covering all or part of its area which would limit rent increases for sitting tenants in that area for up to five years. Within a rent pressure zone landlords would still be able to increase their rents by a minimum of CPI +1%.

STAGE 1

In its Stage 1 report on the Bill, the Infrastructure and Capital Investment Committee were supportive of the Bill's general principles. A key theme throughout the Committee's report was the question of whether the Bill had struck the correct balance between the rights of landlords and the rights of tenants.

Much of the evidence the Committee heard at Stage 1 concerned the proposed eviction grounds. For example, stakeholders raised questions about whether the range of grounds proposed was sufficient, what evidence would be needed to prove a ground had been met, the balance between mandatory and discretionary grounds and how the Tribunal would work in practice.

How the Bill dealt with student tenancies was another area of debate. The Committee heard some concerns that the Bill's proposals may be particularly disadvantageous to providers of Purpose Built Student Accommodation. One of the Committee's main recommendations was that the Scottish Government considers options for enabling tenancies to be set for agreed terms (in relation to time periods) in the Purpose Built Student Accommodation sector.

THE FIRST-TIER TRIBUNAL

The Minister for Housing and Welfare wrote to the Committee regarding this matter on 19 January 2016 (Burgess 2016). Initially, the Scottish Government had indicated that the First-tier Tribunal would start hearing private rented sector and letting agent cases² from December 2016. But in her letter the Minister indicated that, because of budget pressures, this has now been deferred by twelve months and the Tribunal is now expected to start hearing these cases from December 2017.

The revised timetable will also mean that the proposed consultation about the detail of how the private rented sector and letting agents cases will be heard, including proposals on legal representation, will be also be deferred until later this year (Burgess 2015) .

PARLIAMENTARY CONSIDERATION

Table 1 below summarised the various stages of parliamentary consideration at stages 1 and 2.

Table 1: Summary of Parliamentary Consideration Bill introduced

Bill Introduced	7 October 2015
Stage 1 General Principles	
Infrastructure and Capital Investment Committee – Stage 1 evidence	4, 11, 18 November, 2 and 9 December 2015
Delegated Powers and Law Reform Committee	3 November and 1 December 2015
Finance Committee evidence	11 November 2015
Stage 1 report published	14 January 2016
Stage 1 debate	21 January 2016
Scottish Government response to the Committee Stage 1 Report	4 February 2016
Stage 2 Consideration of amendments	10 February 2016
Stage 3 Final Consideration (Plenary Debate)	

STAGE 2

Stage 2 offers an opportunity for any MSP to propose amendments to a Bill, although only members of the lead committee can vote on any amendments that are lodged. Margaret Burgess MSP (Minister for Housing and Welfare) ('the Minister') took forward the Scottish Government amendments at Stage 2.

Table 2 provides an overview of the main areas of debate raised at Stage 1, what the Committee said in its Stage 1 report, the Scottish Government's response and how the issue was addressed at Stage 2. The Table does not cover every amendment lodged.

In total, 198 amendments were lodged. All Scottish Government amendments were agreed to.

² Those relating to the letting agent regulation provisions in the Housing (Scotland) Act 2014

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
Private Residential Tenancy		
Section 1 of the Bill provides the meaning of a private residential tenancy. Schedule 1 sets out the types of tenancies that are not private residential tenancies and are therefore exempt from the Bill’s provisions.		
Schedule 1 provides that where the landlord is resident from the outset and throughout the tenancy it is exempt from the private residential tenancy.	The Committee’s report did not make any specific comment on this part of the Bill.	<p>Scottish Government amendments 10 to 15 clarify what is meant by ‘resident’ landlord in schedule 1. The effect is that when a tenant moves into a shared flat with the landlord it cannot be a private residential tenancy.</p> <p>Other Scottish Government amendments add further exemptions to the new private residential tenancy. Amendment 16 exempts tenancies where the landlord is the Scottish Police Authority, while amendment 17 exempts tenancies where the landlord is the Ministry of Defence.</p>
<p>Schedule 1 exempts accommodation provided by higher and further education institutions for students.</p> <p>Private Purpose Built Student Accommodation (PBSA) is not exempt from the Bill, although there is a specific eviction ground that would allow providers of purpose built student accommodation to end a tenancy if the tenant was no longer a student.</p>	<p>The Committee heard concerns from providers of PBSA about the potential negative impact of the Bill’s proposals on their business models. It was argued this could lead to future investment being made outwith Scotland.</p> <p>The Committee recommended that the Scottish Government consider options for enabling tenancies to be set for agreed terms in the PBSA.</p> <p>In response, the Scottish Government recognised that PBSA has been developed for the specific purpose of providing bespoke accommodation that is similar in character to the accommodation Higher and Further Education Institutions provide, which is exempt from the provisions of the Bill. It concluded that such accommodation is not part of the mainstream private rented sector and committed to bring forward a Stage 2 amendment to exempt PBSA premises from the Bill.</p>	<p>Scottish Government amendment 9 exempts PBSA premises from the private residential tenancy. In response to questioning from Alex Johnstone MSP, the Minister replied “.. we have been clear that we are talking here about purpose-built student accommodation that has nomination rights with universities. We will define in regulations later exactly what we would include in purpose-built student accommodation.” (Col 6)</p> <p>Amendments 1 to 8 make some minor consequential changes to the existing exemption as a result of amendment 9. Consequential amendments 80 and 102 remove the existing eviction ground aimed at PBSA.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
Statutory Terms of the Tenancy		
Section 5 of the Bill provides Scottish Ministers with powers to make regulations that prescribe the statutory terms of every tenancy agreement. Regulations made under section 5 cannot be made unless they include the provisions outlined in schedule 2, which lists some of the terms of every private residential tenancy.		
Schedule 2 of the Bill provides that it is to be a statutory term of the tenancy that the tenant has to tell the landlord about anyone aged 16 or over who resides in the property.	The Committee did not make any detailed recommendations on the statutory terms of the tenancy.	Scottish Government amendment 18 provides that it will be a statutory term that a tenant must tell the landlord if a person residing in the property subsequently ceases to reside there. Adam Ingram's amendment 151 sought to limit the statutory term so that a tenant would only be required to notify the landlord about a person residing in the property if it is that person's only or principal home. The Minister accepted the amendment in principle but she considered the drafting to be defective and sought to lodge an amendment at Stage 3 with the same purpose and effect. The amendment was not moved.
Another statutory term in Schedule 2 relates to a landlord's access to a property to carry out repairs. Except where access is required urgently the landlord must provide the tenant with at least 48 hours' notice that the access is required.	The Committee did not make any detailed recommendations on the statutory terms of the tenancy.	Scottish Government amendments 19 and 20 provide that the tenant can waive the 48 hours' notice requirement to access the property for repairs if the tenant is content to do so.
Initial Tenancy Period		
The Bill provides for an initial tenancy period of six months, unless otherwise agreed by the tenant and landlord. The initial period will limit the grounds on which a landlord can seek eviction.		
	The Committee heard some concerns about the equalities implications of the initial tenancy period. In particular, it was suggested that the proposals might make it difficult for those fleeing domestic abuse to leave a tenancy quickly without still being liable to pay rent.	Scottish Government amendments (85, 87, 123, 128, 130 & 137) remove the initial tenancy period from the Bill. The effect is that a tenant may give notice to end the tenancy at any time and the landlord may recover possession on all of the grounds from the beginning of the tenancy.

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
	<p>The Committee recommended that the Scottish Government consider bringing forward amendments at Stage 2 which would enable those in abusive relationships to leave a tenancy without facing financial penalties from their landlords.</p> <p>The Scottish Government’s response accepted that the existence of an initial tenancy period could make it difficult for someone in an abusive relationship to leave a tenancy without incurring financial penalties and promised to bring forward an amendment at Stage 2 to remove the initial period from the new tenancy.</p>	
No-fault ground possession		
<p>The Bill does not provide for a “no-fault” possession ground as is currently available to landlords letting a property to a tenant on a short assured tenancy agreement.</p>	<p>The Committee recognised the strength of feeling with regard to the proposed removal of the no-fault ground. It also acknowledged that, as the no-fault ground is such an important tool for landlords in the current tenancy system, the proposed removal represents a significant change to the way in which landlords will manage their properties in future.</p> <p>However, the majority of the Committee (Alex Johnstone dissented) agreed that the no-fault ground should be removed, under the principle that no tenant should be removed from their home without good reason. The Committee called on the Scottish Government to continue to work with landlords and letting agents during the Bill’s passage through the Parliament to help ensure that the 17 new eviction grounds provide an appropriate and proportionate balance between tenants and landlords.</p> <p>In its response, the Scottish Government said that it “has had extensive and lengthy engagement with landlords and letting agents during the development of the Bill and considers that the repossession grounds are comprehensive and robust”.</p>	<p>Alex Jonstone’s proposed amendments (159, 160, 169 and 176) relate to “termination by tenant or end of tenancy”.</p> <p>The Minister was concerned that the amendments would have the effect of introducing a no-fault ground which had been deliberately excluded from the bill in order to create a more secure tenancy.</p> <p>The amendments were not agreed to, by division: For 1, Against 6.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
Eviction grounds		
<p>Section 40 of the Bill provides that a tenancy comes to an end if the tenant receives a ‘notice to leave’ from the landlord on the later of either the day specified in the notice or when the tenant ceases to occupy the property in question. Section 52 specifies what the notice to leave must contain, including the eviction ground which the landlord intends to use before the Tribunal (in the event the tenant does not vacate the property). Section 41 of the Bill addresses the situation where the tenant does not leave after receiving a notice under section 40. It empowers the First-tier Tribunal to issue an eviction order against the tenant if, on the application of the landlord, the Tribunal finds that one of the eviction grounds contained in schedule 3 applies. There are seventeen grounds for eviction contained in schedule 3 of the Bill.</p>		
Eviction grounds - balance between discretionary and mandatory eviction grounds		
<p>There are three mandatory grounds in the Bill which relate to a type of legal impediment to the tenancy continuing, namely: the landlord’s registration by the local authority has been removed or refused (ground 14); the landlord’s HMO license has been revoked (ground 15); and an overcrowding statutory notice has been served on the landlord (ground 16).</p> <p>There is also an eviction ground which relates to the situation where the tenant has breached a term of the tenancy agreement (ground 10). In the Bill as introduced where the breached term is a ‘statutory term’ (meaning a term</p>	<p>Some stakeholders suggested that the balance between mandatory and discretionary eviction grounds in the Bill was not right, for example, some stakeholders suggested that more grounds should be discretionary.</p> <p>In its report, the majority of the Committee (with Alex Johnstone dissenting) called on the Scottish Government to give further thought as to which of the grounds for repossession should be mandatory and which discretionary, as well as the degree of flexibility the first-tier Tribunal might have in its decision making process.</p> <p>The Scottish Government responded that it was giving this matter further thought and that it will bring forward amendments at stage 2 to change the ‘legal impediment to let continuing’ repossession ground (part 4 of schedule 3 to the Bill) from mandatory to discretionary.</p>	<p>At Stage 2, Scottish Government amendments 117–122 were agreed which change the eviction grounds 14, 15 and 16 from mandatory to discretionary. This means that even where the Tribunal establishes that the factual conditions for invoking the repossession ground exist, the Tribunal will have a discretion about whether or not to evict the tenant, and will only do so if it is considered reasonable.</p> <p>At Stage 2 Scottish Government amendments (amendments 107–110) were agreed which make ground 10 discretionary for all terms of the tenancy agreement.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
prescribed by regulations under section 5) the eviction ground was mandatory. For other terms of the agreement, the ground was discretionary.		
Eviction grounds – evidence that can demonstrate eviction grounds regarding the landlord’s intention to make another use of the property		
Schedule 3 of the Bill contains the following eviction grounds related to the landlord’s intention to make another use of the property: the landlord intends to sell the property (ground 1); the landlord intends to refurbish the property (ground 3); the landlord or a family member intends to live in the property (ground 4); and the landlord intends to use it for a non-residential purpose (ground 5).	<p>In the evidence received by the Committee at Stage 1 some stakeholders representing tenants’ interests expressed concern that the wording of some of the grounds was not sufficiently precise to avoid the potential for abuse of these grounds by the landlord.</p> <p>Stakeholders representing tenants’ interests also stressed that, for the grounds to work effectively in practice, the nature of evidence required to establish that the grounds are met is significant.</p> <p>In both respects, there was a particular focus in the evidence on the eviction grounds (contained in part 1 of schedule 3 of the Bill) based on the landlord’s intention to make another use of property.</p>	<p>At Stage 2 various Scottish Government amendments were agreed (amendments 91, 89, 94 and 95) which add to the eviction grounds examples of the types of evidence that a landlord might use to demonstrate his or her intent to use these grounds.</p> <p>For the ground covering the situation where the landlord intends to sell (ground 1) a Scottish Government amendment was agreed (amendment 88) which clarifies that the landlord can only use this ground if he or she intends to sell it on the open market, or at least put it up for sale, within three months of the tenant ceasing to occupy it.</p> <p>The effect of this amendment is that a landlord will be unable to evict the tenant by giving the property away, or sell the property for a nominal sum.</p>
Eviction ground 1 – landlord or family member intends to live in the property (property held in trust)		
Eviction Ground 1 relates to where the landlord or family member intends to live in the property.	The Stage 1 Report did not contain a recommendation on this topic.	At Stage 2, Scottish Government amendments were agreed (amendments 92 and 93) expanding the scope of the eviction ground relating to where the landlord or his or her family member intends to live in the property (ground 1).

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
		Specifically, the effect of amendments 92 and 93 is that where the property is held in trust, ³ the reference to a landlord in that eviction ground is to be read as a reference to those with certain rights under the trust—essentially the trust beneficiaries. The policy aim of the amendments is to recognise that a trust beneficiary is the one with the true interest in the property, so the idea of the landlord intending to occupy needed to be modified accordingly.
Eviction ground 11 – rent arrears		
<p>The Bill provides an eviction ground where a tenant has been in rent arrears for three or more consecutive months (ground 11).</p> <p>In the Bill as introduced the ground was mandatory if a) at any point during the three month period, the arrears were for one month’s rent or more; and b) there was no delay in the payment of certain benefits to the tenant. (Only delays which were not the tenant’s fault are covered by b)).</p> <p>In other circumstances the</p>	<p>This ground attracted a lot of attention from stakeholders representing both landlords’ and tenants’ interests at Stage 1.</p> <p>In its Stage 1 Report the Committee recommended that the Scottish Government give further consideration to lengthening the three month period allowed in ground 11 to pay off one-month rent arrears.</p> <p>In its response to the Stage 1 Report the Scottish Government said that it considered that the three month period associated with the ground struck the right balance between landlords’ and tenants’ interests. However, it acknowledged the difficulties faced by tenants suffering financial hardship. It committed to bringing forward an amendment at Stage 2 giving tenants more time to pay off arrears.</p>	<p>At Stage 2, a Scottish Government amendment was agreed (amendment 111) which would make ground 11 mandatory only if the tenant is still in arrears by one month’s rent (or more) on the day the Tribunal considers the application for an eviction order.</p> <p>If, by then, the tenant has paid off his or her rent arrears in full or the amount outstanding is less than one month’s full rent, the ground would be discretionary not mandatory.</p> <p>Alex Johnstone MSP lodged amendments (amendments 172, 173 and 187) aiming to strengthen the position of the landlord in the relation to ground 11. On the other hand, David Stewart MSP lodged amendments (amendments 183, 185 and 186) designed to narrow the scope of ground 11 to the tenant’s advantage. All these amendment were disagreed to, apart from amendment 187 which was not moved.</p>

³ A trust is a legal arrangement where one person passes ownership of assets to individuals known as ‘trustees’ with the idea that those assets will be used for the benefit of others (‘the beneficiaries’). The trustees run the trust for the beneficiaries.

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
ground was discretionary.		
Eviction ground 13 - anti-social behaviour (by tenant)		
<p>The Bill as introduced provided for one eviction ground related to anti-social behaviour (ground 13). This ground covered the tenant acting in an anti-social manner towards people who live in the let property and anti-social behaviour committed within, or near, the let property.</p>	<p>This ground attracted a high level of comment from stakeholders at Stage 1.</p> <p>A key concern of landlords was establishing the evidence that antisocial behaviour had occurred. Some stakeholders pointed out that many neighbours may feel uncomfortable in giving evidence of antisocial behaviour. They also highlighted that the ground for anti-social behaviour in the current law has rarely been tested in court. It was said that landlords currently use the no-fault ground of possession instead (which is to be abolished under the Bill).</p> <p>At Stage 1 the Committee recommended that the anti-social behaviour ground, as well all other grounds for eviction, are reviewed post-implementation so that they might be improved, with appropriate parliamentary oversight, should they prove ineffectual or impractical in practice, or have unintended consequences.</p> <p>The Scottish Government response agreed this was good practice and committed to undertake a post-implementation review within five years of commencement.</p>	<p>Scottish Government amendments (amendments 113–115) made two changes to this ground.</p> <p>Amendment 113 (together with amendment 115) extend the sort of anti-social behaviour that may give rise to eviction. The anti-social behaviour now has to be of a nature that the Tribunal thinks warrants eviction and it doesn't have to be behaviour which takes place near the property or is directed against someone living in it. For example, it would allow a tenant to be evicted of acting anti-socially towards his or her landlord well away from the let property.</p> <p>Secondly, the ground has been amended so that, if the eviction action is taken more than 12 months from the date the anti-social behaviour occurred, the Tribunal must be satisfied that the landlord has a reasonable excuse for not making the application earlier.</p>
Eviction ground 13A – anti-social behaviour (tenant associating with someone who was engaged in anti-social behaviour)		
<p>Ground 13A covers the situation where a tenant associates with someone who has a criminal conviction or has engaged in anti-social behaviour.</p>	<p>This topic was not covered by the Stage 1 Report. (However, there was a specific recommendation by the Committee on the ground relating to anti-social behaviour by the tenant – see above).</p>	<p>At Stage 2 a Scottish Government amendment (amendment 124) was agreed which adds a new discretionary eviction ground. The ground covers the situation where, after the tenancy starts, the tenant associates with a person who behaves anti-socially or who has certain types of criminal conviction.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
Eviction ground 7 - employees of the landlord		
<p>The Bill contains a mandatory eviction ground (ground 7) which covers the situation where the tenancy was entered into to provide an employee of the landlord with a home and the tenant is no longer an employee of the landlord.</p>	<p>At Stage 1, a number of landlord organisations, particularly those representing landlords with rural properties, suggested that an additional ground should be included (or the existing ground broadened) in relation to employees.</p> <p>The aim was to allow eviction in the situation where the property was required for an employee of the landlord but the existing tenants had no links with the landlord’s business.</p> <p>In its Stage 1 Report, the Committee recommended that the Scottish Government should work closely with representatives of those representing the interests of landlords in rural areas to ensure that the Bill takes into account their particular needs whilst keeping within the overall aims of the Bill in relation to security of tenure.</p> <p>In its response to the Stage 1 Report, the Scottish Government confirmed that it would do this and indicated that a meeting with Scottish Land and Estates had already taken place.</p>	<p>At Stage 2, Scottish Government amendments were agreed (amendments 100 and 101) which made the ground a mandatory one only for the first twelve months after the employment is terminated. After twelve months, the ground becomes a discretionary one.</p>
Eviction ground 6 – religious purpose		
<p>The Bill contains an eviction ground which enables a landlord to regain possession of a property if it is required for use in connection with the purposes of religion as a residence from which a religious worker’s duties are performed.</p>	<p>The Committee did not make a recommendation on this ground in the Stage 1 Report.</p>	<p>At Stage 2, Scottish Government amendments were agreed (amendments 96, 97 and 98) which narrow the scope of this eviction ground. Specifically, in the Bill as amended at Stage 2, the landlord can only use the eviction ground if the property has previously being used to house a religious worker.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
New eviction ground 8A – supported accommodation		
	This topic was not covered by the Stage 1 Report.	Scottish Government amendment (amendment 103) added a new discretionary eviction ground to schedule 3 of the Bill. This would enable the providers of supported accommodation to recover possession of a property where a) the tenancy was granted to meet an assessed need for community care (under 12A of the Social Work (Scotland) Act 1968); b) the tenant has since been assessed under the same legislation as no longer having that need; and c) the tenancy would not have been granted to the tenant on the basis of the latest assessment of their needs. The amendment was agreed.
Pre-tenancy notices		
<p>In the Bill as introduced there was a role for ‘pre-tenancy notices’ in relation to two eviction grounds (grounds 2 and 6).</p> <p>One of the requirements for ground 6 (property required for a religious purpose) to be used by the landlord was that a notice had been served on the tenant prior to the start of the tenancy saying that the tenancy might be brought to an end using that ground.</p> <p>In the Bill as introduced ground 2 (mortgage lender intends to sell) was</p>	The role of pre-tenancy notices in relation to the eviction grounds was not covered by the Stage 1 Report.	<p>At Stage 2, a Scottish Government amendment (amendment 90) was agreed which removed the role played by a pre-tenancy notice in relation to ground 2. In the Bill as amended at Stage 2 the ground is now a mandatory one only.</p> <p>At Stage 2, a Scottish Government amendment (amendment 98) was agreed which removed the requirement for a pre-tenancy notice to be served before ground 6 could be used.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
<p>mandatory if a notice was served on the tenant before the tenancy began saying the tenancy might be ended using ground 2. If the notice hadn't been served the ground was discretionary.</p>		
Wrongful Termination		
<p>Sections 47-49 of the Bill provide that a tenant will have recourse to the Tribunal if he or she believes the tenancy has been wrongfully terminated. There are two sets of circumstances where there could be a wrongful termination. Firstly, where the tenancy has been ended by eviction order and the tenant is not satisfied that the landlord genuinely wanted to recover possession of the property under one of the specified eviction grounds, so that the Tribunal has been misled into issuing an eviction order. Secondly, where the tenancy has been brought to an end as a result of the tenant leaving following receipt of a notice to leave and the tenant considers that they were misled into leaving the property by the landlord.</p>		
<p>The Bill provides that if the Tribunal makes a wrongful termination order the landlord would have to pay the tenant compensation of up to three months' rent.</p>	<p>The Committee heard from some stakeholders who argued that the sanctions for wrongful termination were not strong enough. The Committee called on the Scottish Government to reflect on whether penalty payment sufficiently reflects the financial burden that tenants may face, for example, the cost of paying a new deposit, and emotional distress.</p> <p>In its response, the Government considered that the full range of the sanctions that could apply to a landlord that wrongfully terminates a tenancy are sufficient.</p>	<p>Clare Adamson MSP's amendments 192 and 193 increase the compensation for a wrongful termination order from up to three months' rent to up to six months' rent. The amendments were endorsed by the Minister and were agreed to.</p>
	<p>Some witnesses questioned what evidence would be needed to prove a tenancy had been wrongfully terminated.</p> <p>The Committee called on the Scottish Government to provide further information and guidance on how it would expect determinations on wrongful termination to be evidenced.</p> <p>In response, the Scottish Government said that the</p>	<p>No amendments were lodged, although other amendments were agreed to (amendments 91, 89, 94 and 95) which add to the eviction grounds examples of the types of evidence that a landlord might use to demonstrate his or her intent to use these grounds (see above).</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
	<p>Tribunals (Scotland) Act 2014 places a duty on Scottish Ministers to uphold the independence of the members of tribunals and the Scottish Government cannot seek to influence the decisions of the Tribunal nor issue instructions or statutory guidance to Tribunal members on how they are to reach their decisions. This would be a matter for the Lord President or Tribunal President.</p>	
<p>The Bill provides that a tenant can apply to the Tribunal for a wrongful termination determination.</p>	<p>The Committee called on the Scottish Government to indicate whether appropriate third parties could be empowered to take forward to the Tribunal cases against landlords to the Tribunal on behalf of the tenant, with the full agreement and involvement of the tenant and, if so, how this could be done.</p> <p>The Scottish Government's response explained that there is nothing to stop third parties advising and assisting tenants in preparing an application for the Tribunal. They argued that the Tribunal will be a more accessible, less adversarial form of redress than currently exists through the Sherriff Courts and this should allow tenants to feel more confident in making a case to the Tribunal.</p>	<p>Patrick Harvie's amendments (189 to 191) sought to allow a person providing independent advocacy services on the tenant's, or the joint tenants', behalf to initiate an application for a wrongful termination.</p> <p>The amendment was disagreed to: For 0: Against 6.</p>
	<p>The Committee sought clarity as to whether the Scottish Government intends to ensure that if a landlord is persistently in receipt of wrongful termination orders this would result in the removal of their private landlord registration status.</p> <p>The Scottish Government committed to bring forward an amendment at Stage 2 to ensure that relevant local authorities receive a copy of any wrongful termination orders issued by the Tribunal.</p>	<p>Scottish Government amendments (126 and 127) place the Tribunal under a duty to issue a copy of any wrongful termination order to the local authorities with which the landlord is registered.</p> <p>Local authorities will be able to take wrongful termination orders into account when considering a landlord's fit-and-proper-person status under the private landlord registration scheme.</p>
Rent Increases		
<p>Sections 17-29 of the Bill make provisions regarding rent increases. The Bill proposes that landlords can increase the rent by giving the tenant a 'rent increase-notice' at least 12 weeks' in advance of a rent increase. Landlords cannot increase the rent for a tenancy more than once in any 12-month period. If a tenant considers that any proposed rent increase would take the rent beyond rents charged for comparable properties in the</p>		

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
<p>area, he or she can refer the increase for adjudication to a rent officer at Rent Service Scotland. The rent officer would have the power to determine, in an order, the “open market rent” for the property, which could mean the rent is varied upwards or downwards.</p>		
<p>Section 19 of the Bill provides that the three month notice period starts running from the date on which the tenant receives the notice, rather than the date on which it is sent.</p> <p>The Bill’s provisions allow a tenant to refer a rent to the rent officer on receipt of a rent increase notice.</p> <p>No provision exists for appeals against rent levels for tenants who have not been given a rent increase notice.</p>	<p>The Committee agreed with the principles behind the proposed rent increase measures. However, it noted that there is some uncertainty around how the proposed measures would work in practice. The Committee therefore sought clarity from the Scottish Government. In particular, it called on the Scottish Government to respond to comments made by the Association of Residential Landlords on the adequacy of the 3 months’ notice period for increasing rents.</p> <p>The Scottish Government said that it considered that three months’ notice of a rent increase is sensible and reasonable and gives tenants sufficient time to budget for any changes.</p> <p>The Committee called on the Scottish Government to indicate how it will address the issue of sitting tenants currently paying excessive rents who may not have recourse to the Rent Officer and Tribunal.</p> <p>In response, the Scottish Government said that section 25 of the Housing (Scotland) Act 1988 currently enables a tenant with a statutory assured tenancy, and who has received a rent increase notice from the landlord, to refer a case to the Private Rented Housing Committee for a ruling on the rent level.</p> <p>For those tenants with a Short Assured Tenancy, section 34 of the 1988 Act enables them to apply to the Private Rented Housing Committee for a ruling on the rent, which, in the Committee’s opinion the landlord might reasonably be expected to charge under the tenancy agreement.</p>	<p>Scottish Government amendment 33 reconfigures how a rent-increase notice takes effect. The effect of the change is that, if a tenant receives a rent increase notice and the effective date falls short of the required three months’ notice, the rent increase can still take effect – but not until the day after the three month notice period has elapsed.</p> <p>Various consequential amendments were also made (30, 32, 34, 40, 41, 43 – 52 and 55) while amendment 35 confirmed how the three month period is to be calculated.</p> <p>Scottish Government amendments 36 to 39 moved the existing provisions relating to such modifications into a separate section for ease of reference. The amendments also clarify that, where the rent is subsequently referred to a rent officer for adjudication, the modification will be void for both the rent officer’s and the tribunal’s purposes.</p> <p>David Stewart’s amendment (152) sought to allow a tenant to refer their rent to a rent officer where there was cause to believe that the level of rent payable under a private residential tenancy exceeds an open market rent. His amendment 153 also sought to allow tenants who live in a rent pressure zone to refer their rent to a rent officer.</p> <p>The Minister argued that amendment 152, “...would undermine the landlord’s ability to contract with the tenant because, in practice, a tenant could accept an initial rent when taking a tenancy and immediately seek to have it reviewed.” Furthermore, it would place an additional burden on Rent Service Scotland and the Tribunal.</p> <p>On amendment 153, the Minister argued, “...there would be little point in enabling sitting tenants in rent pressure zones to refer their rent to a rent officer because the amount by which</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
		<p>their rent could increase would be capped and therefore could not be assessed in terms of the open-market rate”.</p> <p>Both amendments were disagreed to by division: For 2, Against 5.</p>
Rent Pressure Zones		
<p>Section 30 of the Bill proposes that a local authority may make an application to Scottish Ministers requesting that all, or part of, the authority’s area be designated as a “rent pressure zone” (RPZ). This would mean that landlords in the rent pressure zone could not increase rents for sitting tenants by more than a specified percentage.</p>		
<p>Section 31 of the Bill provides that in RPZ a rent increase notice cannot increase the rent payable by more than the formula, CPI +1%+N (where N is the proposed percentage increase). In other words, rents must be allowed to increase by CPI+1%.</p>	<p>Some stakeholders questioned the suitability of CPI in the calculation of rent caps. For example, the Living Rent Campaign suggested that although CPI is low at the moment it has been as much as 8.5%, so the formula could lead to quite high rent rises.</p> <p>The Committee called on the Scottish Government to respond to these concerns and whether it would consider alternative methods for calculating the rent cap as provided for in section 34 of the Bill.</p> <p>In response the Scottish Government said that, “...CPI is the standard inflation measure that is reported by the Bank of England. It is also a widely used and recognised official statistic.” The response also explained that the Bill provides for Ministers, if they consider it necessary, to bring forward regulations to change the reference from CPI to another prices index. As the response said, “...at present, Ministers consider that CPI is the most suitable index”</p>	<p>Scottish Government amendments (58 to 63) changed the formula that must be used when calculating how much a rent can increase in a rent pressure zone to enable an amount to be added in relation to improvements. As the Minister explained, “...the process ensures that landlords will not be put off from making improvements to such properties.”</p> <p>The amount for property improvement costs would be determined by a Rent Officer. Amendments 70 and 71 provided that improvements that are paid for by the tenant, whether in whole or in part, will be disregarded, as will repairs, maintenance and decoration.</p>
<p>Section 33 of the Bill sets out the procedure for designating a RPZ.</p>	<p>The Committee did not comment in detail on the procedures for designating a PRZ.</p>	<p>Scottish Government amendments 64 – 69, 135 and 138 made various changes to the procedural requirements of designating or revoking a RPZ. In particular, amendments 66 & 67 and 69 expanded the consultation duty on Ministers when designating an RPZ by providing that Ministers must consult representatives of landlords and tenants within the local authority area within which the proposed zone is located, rather than only in the area of the proposed zone.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
		<p>Patrick Harvie’s amendments 154 (grouped with amendment 155) sought to give the Scottish Ministers three months from receiving a local authority’s application in which to designate a zone or lay before the Parliament a document that explained why they had not done so. The Minister agreed that with the principle of the amendments but sought to consider the amendments further. She committed to work with the member to lodge an acceptable amendment at Stage 3.</p> <p>The amendment was withdrawn.</p>
<p>Termination of Tenancy by Tenant - Sections 38 and 39 provides that a tenant can end the tenancy by writing to the landlord to advise them of the date the tenancy will end.</p>		
<p>The tenant must provide the landlord with 28 days’ notice if the tenant has occupied the property for six months or less and 56 days if the tenant has occupied the property for six months or more.</p>	<p>The Committee did not comment in detail on this aspect of the Bill.</p>	<p>Scottish Government amendment 84 provided that any notice given by the tenant must be given freely, without coercion and cannot be submitted before the tenant is occupying the let property. The aim of the amendment is to protect tenants against being coerced into giving notice thus reintroducing the no-fault eviction ground by the back door. For example, as the Minister explained, “a landlord might insist that notice be given as a condition of granting a tenancy, so that, six months after it begins the tenancy ends without the landlord having to get an eviction order.” (col 35) .</p> <p>The effect of Patrick Harvie’ s amendment 163 (suggested by Citizens Advice Scotland) was to provide that the notice period that tenants are required to give their landlord to end the tenancy is 28 days no matter how long they have been in the property. The Minister accepted that a longer notice period of 56 days may disadvantage tenants simply because they had had the tenancy longer than six months. The amendment was agreed to.</p>

Bill as Introduced – Topic	Stage 1 Report and Scottish Government Response	Action at Stage 2
Death of a Tenant		
<p>Section 54-56 of the Bill concerns the death of a tenant. It provides that a tenancy is not terminated by the death of a sole tenant. If the deceased tenant leaves behind a partner who has occupied the let property as his or her only or principal home, then the partner can inherit the tenancy, subject to certain criteria. Where the tenant has died and there is no bereaved partner to inherit, then the tenant's executor must seek to bring the tenancy to an end on the earliest possible date</p>	<p>The Committee agreed with stakeholders who suggested that the approach taken in the Bill with regard to the death of a tenant should mirror that already in place in the social rented sector.</p> <p>The Committee also supported the Scottish Government's intention to lodge an amendment at Stage 2 to ensure that if there is no one to succeed the tenant, the tenancy can be ended without the need to appoint an executor.</p> <p>The Scottish Government committed to bring forward an amendment at Stage 2 to ensure that if there is no one to succeed the tenant, the tenancy can be ended without the need to appoint an executor</p>	<p>Scottish Government amendments 142 and 143 sought to remove the need for an executor to bring the tenancy to an end. Thus if the tenant dies and nobody inherits the tenancy, the tenancy comes to an end on the day the tenant died. However, the Minister withdrew the amendment stating her intention was still to amend the bill but she wanted to "consider further the process by which succession will work."</p> <p>Clare Adamson lodged amendments 143A, 194, 195, 196, 197 and 198 which included proposals to change the inheritance provisions. But these amendments were not pressed given the Minister's commitment to look at the matter at Stage 3.</p>
Links to the Private Landlord Registration Scheme		
	<p>The Stage 1 Report made no specific recommendation on this topic.</p> <p>However, in the evidence received by the Committee at Stage 1 some stakeholders representing landlords' interests suggested that the current private landlord regulatory regime for landlords is not enforced properly. It was argued that this, rather than the Bill's proposals, would help tenants feel more secure in private rented accommodation. The Association of Local Authority Housing Officers (ALACHO) also suggested that more attention needed to be given to connecting the Bill with other elements of housing legislation.</p>	<p>All private landlords are required to register with the local authority in whose area the let property is situated, under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004, to ensure that they are "fit and proper" to be letting houses.</p> <p>Scottish Government amendment 132 provides that where it comes to the Tribunal's attention as a result of proceedings before it, that a landlord is not registered with the relevant local authority, the Tribunal will be under a duty to notify the authority. The Tribunal must tell the authority the landlord's name and address and the address of the property for which he or she is the landlord.</p>

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