Infrastructure and Capital Investment Committee

Stage 1 Report on the Private Housing (Tenancies) (Scotland) Bill
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Infrastructure and Capital Investment Committee

To consider and report on infrastructure, capital investment, transport, Scottish Water and other matters falling within the responsibility of the Cabinet Secretary for Infrastructure, Investment and Cities, and matters relating to housing and digital infrastructure.

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### Committee Membership

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**Note:** The membership of the Committee changed during the period covered by this report, as follows:

Clare Adamson joined the Committee on 11 November 2016, replacing James Dornan, Scottish National Party, Glasgow Cathcart, Glasgow.
Introduction

Purpose of the Bill

1. The aim of the Private Housing (Tenancies) (Scotland) Bill\(^1\) ("the Bill") is to replace the current system of private tenancies in Scotland. This would see the existing short assured tenancy and assured tenancy replaced with a single new tenancy, known as the private residential tenancy. The Scottish Government believes that this will improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors.

2. The Bill also aims to provide tenants with protection against excessive rent increases and provide rent predictability, including the ability for Scottish Ministers to introduce caps on rent increases for sitting tenants in Rent-Pressure Zones.

Parliamentary scrutiny

3. The Bill was introduced on Wednesday 7 October 2015 by Alex Neil, Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights.

4. The Parliamentary Bureau designated the Infrastructure and Capital Investment Committee ("the Committee") as the lead committee for the Bill. The lead committee is required, under Rule 9.4.1 of the Parliament’s Standing Orders, to report to the Parliament on the general principles of the Bill.

Scottish Government consultations

5. The Scottish Government’s development of legislation began with its Private Rented Sector (PRS) Strategy\(^2\), published in May 2013, setting out its vision for improving the private rented sector. In order to take its vision forward the Scottish Government set up the Private Rented Sector Tenancy Review Group in September 2013.

6. The Group’s report to Ministers, published on 9 May 2014\(^3\), made one main recommendation, “that the current tenancy for the Private Rented Sector, the Short Assured Tenancy and the Assured Tenancy, be replaced by a new private tenancy that covers all future PRS lets.”

7. Prior to introducing the Bill, the Scottish Government carried out two consultations on its draft proposals. After analysing the responses\(^4\), the Scottish Government considered that there was general support for modernising and simplifying the tenancy. However, many landlords, letting agents and investors disagreed with a number of proposals, including removing the ‘no-fault’ ground for repossession and the possibility of introducing rent controls, contending that these could discourage investment in the sector.
Infrastructure and Capital Investment Committee consideration

8. The Committee issued a call for written evidence on 9 October 2015. This resulted in 82 responses. Links to all the submissions received are available in Annexe A.

9. In order to make it easier to contribute to its scrutiny of the Bill, the Committee also issued a short online survey. The Committee hoped this might allow those who perhaps would not normally respond to a more formal call for evidence to have their views heard, particularly those most affected by the Bill such as private tenants and individual landlords. This survey resulted in 497 responses and a summary of its findings is available in Annexe B.

10. The Committee also took oral evidence from key stakeholders at a series of meetings in November and December 2015. Links to the Official Reports of those meetings are available at Annexe B.

11. The Committee wishes to thank everyone who provided written and oral evidence as well as those who responded to the online survey.

Consideration of the Policy Memorandum and scrutiny by other committees

Policy and Financial memorandum

12. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The Committee considers that the level of detail provided in the Policy Memorandum on the policy intention behind the provisions in the Bill was helpful in assisting it in its scrutiny of the Bill.

13. The same rule requires the lead committee to report on the Financial Memorandum. Scrutiny of the Financial Memorandum for the Bill was undertaken by the Finance Committee. The Finance Committee’s findings are set out in its report published on 26 November 2015, which is also available on the Infrastructure and Capital Investment Committee’s website (see Annexe C).

14. The Committee draws the Scottish Government’s attention to recommendations made by the Finance Committee in its report. The Committee also comments on specific recommendations made by the Finance Committee in its report in paragraphs 195-199 of this report. Other issues raised by the Finance Committee are also discussed in this report, including a request for clarity around fees for accessing the First-tier Tribunal (“the Tribunal”) and the availability of legal aid, the effect of interest rates on rent caps, the impact of the removal of the no fault ground and the impact of the Bill’s measures on student lets.
Delegated powers

15. The Delegated Powers and Law Reform Committee reported on its scrutiny of the delegated powers provisions of the Bill on 2 December 2015, which is also available on the Infrastructure and Capital Investment Committee’s website (see Annexe C). The Committee comments on observations made by the Delegated Powers and Law Reform Committee in its report in paragraphs 152–154.

Creation of a private residential tenancy

16. Part 1 of the Bill provides for the creation of a private residential tenancy to replace assured tenancies and short assured tenancies for all future lets. It also defines what conditions need to be met in order for the tenancy to be considered as a private residential tenancy.

17. In bringing forward the Bill proposals, the Scottish Government considered that the current tenancy regime, as set out in the Housing (Scotland) Act 1988, was “developed in a different age” and that the short assured tenancy, which is now the most common form of tenancy, “was not intended to be used that often.” It therefore believes that the proposed tenancy regime will be “clearer and simpler so that everybody would understand their rights and obligations”, rather than the current “cumbersome, complex, ambiguous and difficult for many people to understand” system. The Scottish Government also considers that the proposed new system will rebalance the relationship between tenants and landlords, citing the current availability of a ‘no fault’ ground which allows a landlord to end a tenancy without having to give the tenant any reason, as weighted too much in the landlords favour.

18. Whilst the Committee received and heard a great deal of evidence questioning whether the Scottish Government had got the balance right with regard to the relationship between tenants and landlords (either having gone too far or not having gone far enough) as well as how the proposed private residential tenancy might work in practice, the majority of evidence recognised that there was a need to reform the current tenancy regime.

19. For example, Savills welcomed reform to the private rented sector and “appreciates the Scottish Government’s efforts to increase stability in the sector.” Crisis considered that proposed simplification of the system would be particularly useful for those “who are less able to advocate for themselves or understand complex legal terms.” This view was echoed by Scottish Land and Estates, which said that “we support the new tenancy and a simpler system in which both landlord and tenant understand their responsibilities.” The Property Store believed that the new single tenancy would “provide clarity for all concerned.”
20. The Scottish Association of Landlords, while concerned with a number of measures contained within the Bill, summed up a common sentiment towards the reforms—

> We agree that it is time for the private rented sector tenancy regime to be modernised as part of a drive to increase standards and protect tenants

### Committee recommendations

21. It is clear that the current tenancy regime, which has been in place for over 25 years, does not accurately reflect requirements of the private rented sector in 2015. In particular, the short assured tenancy, which was not intended to be the most commonly used element of the regime, has in effect become the de facto tenancy system.

22. The Committee therefore supports the Scottish Government’s intention of creating a clearer and simpler tenancy regime for the modern private rented sector which is fit for purpose.

23. However, the Committee recognises that there are a number of concerns from those involved in the sector regarding certain aspects of the proposed new private residential tenancy and these will be covered in more detail in this report.

### Ending or terminating a tenancy

#### Grounds for repossession

24. Under the existing short assured tenancy as set out in the 1988 Housing (Scotland) Act, landlords can reclaim possession of their property when the initial fixed term has ended. This is known as the ‘no-fault’ ground for repossession. However, under the Bill, the no-fault ground will not be included in the proposed private residential tenancy. A landlord will therefore no longer have the ability to ask a tenant to leave a property because their tenancy agreement has reached its end date.

25. Instead, the Bill proposes 16 grounds – 12 of which are mandatory—which will allow landlords to recover their properties. 3 of the remaining 4 grounds have both mandatory and discretionary strands while the remainder is wholly discretionary. These are listed in the Bill as:

- landlord intends to sell (mandatory)
- property to be sold by lender (discretionary)
- landlord intends to refurbish (mandatory)
• landlord or family member intends to live in property (mandatory)
• landlord intends to use for non-residential purpose (mandatory)
• property required for religious purpose (mandatory)
• no longer an employee (mandatory)
• no longer a student (mandatory)
• not occupying let property (mandatory)
• breach of tenancy agreement (discretionary)
• rent arrears (discretionary)
• criminal behaviour (mandatory)
• anti-social behaviour (entirely discretionary)
• landlord has ceased to be registered (mandatory)
• HMO licence has been revoked (mandatory)
• overcrowding statutory notice \(^\text{10}\) (mandatory)

26. The Scottish Government considers that this list of 16 “new, modernised grounds” cover “all reasonable circumstances” \(^\text{11}\) that a landlord would need to recover possession of their property. The Scottish Government therefore believes that the removal of the no-fault ground will mean that tenants—

...can no longer be evicted without a reason that is specified in legislation. That will enable tenants to assert their rights where that is necessary, such as with regard to property condition, without the concern of possible arbitrary eviction. It will also help tenants to feel more settled in their homes. \(^\text{12}\)

Removal of no-fault ground for repossession

27. The evidence the Committee received on the removal of the no-fault ground was polarised between different groups of organisations.

28. Many agreed with the approach proposed in the Bill. For example, Shelter Scotland said the removal of the no-fault ground would mean that tenants could speak to their landlord about a fault with the property without being “subject to a retaliatory eviction.” \(^\text{13}\)

29. Citizens Advice Scotland said that the age and demographics of tenants has seen a “huge shift” in the past 20 years with many more families in private lets rather than students and young professionals. It added that—
...families want a settled life and security, and they want the certainty of knowing that they will not be given a very short notice period when they come to the end of their tenancy.\(^{14}\)

30. Shelter Scotland acknowledged that landlords were generally against the removal of the no-fault ground but believed that this was because, under the current tenancy regime, they had little confidence in using the court system. However, as the proposed new tenancy regime will give recourse through a new tribunal system, it said that the 16 new grounds for repossession and the overall simplification of the process should give them renewed confidence. Shelter Scotland added—

\[
\text{Professional, reputable landlords who are actively managing their businesses should not have anything to fear from the new tenancy regime.}^{15}
\]

31. Homeless Action Scotland said that were the no-fault ground to be maintained in the new proposals, it would be the only ground used for repossession—

\[
\text{...we might as well rip up all the other ones, because it is easy to use and it does not require any management by the private landlord.}^{16}
\]

32. However, many landlords and letting agents were against the removal of the no-fault ground for a number of reasons.

33. Some were concerned that the desired outcomes of the Bill – namely security of tenure for tenants – would not be met by the removal of the no-fault ground. Rather, the Council of Letting Agents believed that landlords would be “more selective in the tenants they choose, discourage future investment and ultimately lead to a shortage of properties in the sector.”\(^{17}\) The National Landlords Association concurred with this view, adding that its members will look to be more discerning “about the tenant profiles they are prepared to work with and the margins they are willing to accept relative to the risk of being unable to efficiently end a failed tenancy.”\(^{18}\)

34. Another area of unease expressed by some in evidence was whether the 16 grounds for repossession contained in the Bill would make up for the loss of the no fault ground. Scottish Land and Estates did not consider the grounds to be “robust and comprehensive enough to make up for the lack of ability to end a tenancy at the end of the contracted period.”\(^{19}\) The Scottish Association of Landlords summed up his organisation’s concerns—

\[
\text{The current grounds are not sufficient and they do not deal with the problems.}^{20}
\]

35. Whilst acknowledging the concerns raised by landlords and believing that they must be addressed for the proposed new tenancy to work, the Chartered Institute of Housing also supported the removal of the ‘no-fault’ ground, stating that—
There should be no circumstances where a person or family can lose their home without reason.\textsuperscript{21}

36. The potential for a reduction in private rented sector investment because of the removal of the no-fault ground was also highlighted in evidence. RICS Scotland believed that levels of investment had already been affected.\textsuperscript{22} This view was supported by the Association of Residential Letting Agents who said that institutional investors are now looking at England, Wales and Northern Ireland rather than Scotland “simply on the basis of the idea of the Bill’s provisions coming into force.”\textsuperscript{23} The Association of Residential Letting Agents also highlighted recent tenancy reform in Wales, the Renting Homes (Wales) Bill, which he said has kept the no-fault repossession ground.

37. Nevertheless, the Minister for Housing and Welfare (“the Minister”) advised the Committee that she considered the removal of the no-fault ground as central to the creation of a modern tenancy regime. In defending its removal, the Minister also said that the Bill would make the sector better and be a more attractive market for landlords, before adding—

Removing the no-fault ground simply means that landlords cannot ask tenants to leave for any arbitrary reason simply because a tenancy has come to an end. We have included in the Bill 16 grounds on which landlords can reasonably get their property back. That is sufficient.

Committee recommendations

38. The Committee recognises the strength of feeling with regard to the proposed removal of the no-fault ground. It also acknowledges 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.

39. However, the majority of the Committee\textsuperscript{24} agrees that the no-fault ground should be removed, under the principle that no tenant should be removed from their home without good reason.

40. With the removal of the no-fault ground, the Committee also considers that the new grounds to allow landlords to recover their properties must be robust enough to give confidence to those already in the sector and those considering investment that landlords can regain possession of their properties if there is a good reason.

41. While the majority of the Committee\textsuperscript{25} agrees that the no-fault ground should be removed, it calls 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 16 new grounds provide an appropriate and proportionate balance between tenants and landlords.
Balance of mandatory and discretionary grounds

42. Of the 16 grounds for removal following the initial six month period, as stated earlier 12 are mandatory, 3 have both mandatory and discretionary strands while 1 is wholly discretionary.

43. The Scottish Government Bill Team explained the Scottish Government’s thinking behind having a mix of discretionary and mandatory grounds—

Landlords need to feel confident that they will be able to recover possession of their property. We also need to be fair to tenants and make sure that the ground for their leaving their home is reasonable, which is why some grounds are not totally mandatory. It comes down to seeking an appropriate balance.\(^2^6\)

44. Questions were raised about the reasoning behind why individual grounds were either mandatory or discretionary, while others also questioned the overall balance of 12 mandatory with only 4 having a discretionary element.

45. Homeless Action Scotland questioned the need to have any mandatory grounds. He argued that instead, if all grounds were discretionary, it would be for the Tribunal to have the final say over whether the eviction should be granted. Homeless Action Scotland added that if grounds were mandatory, the Tribunal may have to uphold an eviction even if believes it to be unreasonable.\(^2^7\)

46. The National Union of Students Scotland agreed that all grounds should be discretionary. It believed that “the Tribunals will provide an opportunity to work on the issues without any need for mandatory grounds.” It cited the example of the mandatory ground that the landlord intends to refurbish the property which he said did not provide sufficient detail: “it could just mean a lick of paint.”\(^2^8\)

47. Living Rent Campaign also argued for grounds to be discretionary—

Landlords and tenants agree that life requires discretion, and the grounds need to be discretionary because there are many varied circumstances.\(^2^9\)

48. Other evidence suggested that more of the grounds should be mandatory. The Association of Residential Letting Agents considered that the anti-social behaviour ground would not offer a reasonable opportunity to evict anti-social tenants because it was a discretionary rather than mandatory ground.\(^3^0\) The Council of Letting Agents agreed, stating that a mandatory ground for possession of “serious cases of anti-social behaviour” was essential for the safety and wellbeing of communities.\(^3^1\)

49. The Association of Local Authority Chief Housing Officers (ALACHO) considered the balance of mandatory versus discretionary grounds to be weighted in favour of the landlord and said that he would prefer this to be “adjusted”. In particular ALACHO believed that four of the grounds that are currently proposed as
mandatory should be made discretionary, namely: landlord intends to sell; property to be sold by lender; landlord has ceased to be registered; and the HMO licence has been revoked. ALACHO considered these grounds to be “aspects of business change and business failure” which transfers the cost and burden to tenants rather than the landlord.\(^{32}\)

50. This view was countered somewhat by the City of Edinburgh Council who considered that the balance of the grounds was right. It gave the example of a landlord whose HMO licence had been revoked or has ceased to be registered and said there “have to be consequences for landlords that fail.” It added that while he did not wish to see people be made homeless, the HMO licencing and landlord registration schemes would “lose their impetus” if there were no penalties.\(^{33}\)

51. Govan Law Centre, gave an alternate view, believing that, in effect, all the grounds were mandatory given the way the discretionary grounds have been worded. He added—

> In some respects, we could say that they are so powerful and so mandatory that they are the equivalent of giving a tenant a zero-hours contract on their home—and I do not say that lightly.

52. The Govan Law Centre compared this with the “fantastic reasonableness test” in legislation passed in the Scottish Parliament for the social rented sector.\(^{34}\)

53. In evidence, the Minister reiterated the Government’s view that the reasoning behind the way in which the grounds were set out in the Bill as either mandatory and discretionary came back to the need to strike the correct balance between the rights of tenants and landlords. Responding to some of the concerns raised, the Minister said that even with mandatory grounds, the Tribunal will have to “look at the evidence and be sure that the ground is established.”\(^{35}\) The Minister added that the Government is looking at ways to make it clearer in either the Bill or in secondary legislation that—

> …this is not a tick box exercise and that grounds—even mandatory ones—must be established. The Tribunal must be satisfied that such grounds have been met.\(^{36}\)

Committee recommendations

54. The Committee acknowledges the depth of opinion over the balance between mandatory and discretionary grounds. It also has some sympathy with those who feel that all grounds should be discretionary and that it will ultimately be for the Tribunal to decide whether the basis of the landlords request to recover the property is reasonable.

55. The Committee welcomes the Minister’s assurance that the legislation will be made clearer to ensure that the grounds – whether discretionary or mandatory –
must be met. However, the Committee is still uncertain as to the flexibility given to Tribunals in decision making when a ground is deemed mandatory. Given the nature of some of the grounds for repossession being based on the failures of landlords in the management of their properties, the Committee is also drawn to the Tribunal being able to show some degree of reasonableness in its decisions.

56. The majority of the Committee\(^\text{37}\) calls 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.

Grounds for removal

Student and holiday lets

57. One of the primary issues which arose in evidence was the impact on the student sector. The concerns raised covered both individual lets and properties owned and operated by the purpose-built student accommodation (PBSA) sector.

58. One of the Scottish Government’s stated core principles behind the Bill is that all tenants, including students, should have the same security of tenure. In relation to university and college students in the private rented sector, the Scottish Government acknowledged that landlords may need to adapt their practices to mitigate the impacts of the Bill, such as how they engage with student tenants. However, the Scottish Government believed that such a change “should not be insurmountable”\(^\text{38}\).

59. This view was echoed by the National Union of Students Scotland—

> We know that other stakeholders have recommended that there should be different categories for students, but we would not agree with that. Once you start introducing different categories, it becomes hard to govern the system. How would you determine who was studying what, and what kind of tenancy a person would require? In our view, the needs of students are broadly in line with the needs of other tenants.\(^\text{39}\)

60. The Bill does include a mandatory ground for repossession where the property is purpose-built student accommodation and the tenant is no longer a student. Accommodation provided by a university or college is also exempt from the legislation.

Individual student Lets

61. A number of landlords and letting agents highlighted concerns that the Bill’s approach, which treats students in the same way as all other tenants, would result in a large part of the PRS market not being “adequately catered for in the
proposals”.

Newlyn Property Developers provided in written evidence one such example of why the Bill might cause the student sector difficulties—

Students look for new properties from January onwards. They view and then usually sign up from January – May, for their new property, entry being September… Most of my students continue to renew their leases but the ones who are leaving at the end of their lease in June, welcome viewings and work with me regarding all the paper work, notices to quit etc. Your proposals will mean that I cannot sign up new student tenants during the time that they are at University.

In related evidence, the University of Aberdeen highlighted that for its students who are not local to Aberdeen, “it is important to them to have accommodation confirmed for when they return in September.” The Scottish Association of Landlords meanwhile described the student sector as “unique” and that this should be recognised in the Bill.

On the Scottish Government’s belief that landlords will adapt their practices with students in order to mitigate the impact of the Bill, RICS Scotland’s PRS Forum, said that it was already difficult to engage with students. It added—

If students realise that they do not have to do any planning until they decide to leave, I do not think that the sector will be able to survive in its current form.

NUS Scotland, believed that better communication with the tenant could help alleviate some of the problems highlighted by landlords as—

It is not in the student’s interests to not say that they will be leaving because they do not want to get lumbered with loads of debt for rent that they cannot afford to pay.

The Committee also heard evidence pointing to a decrease in the stock of student housing. For example, PRS 4 Scotland said that if landlords cannot set a defined tenancy period, they might regard student lets as “more risky”, thereby “reducing supply to a key tenant group.”

Ken Layhe, an owner of two flats in Aberdeen and who responded to the Committee’s call for evidence on the Bill, provided anecdotal evidence from his experience of renting to students for 14 years. He believed that if students left after the “student flat hunting season” rather than in the spring, he may have to subsequently let to non-students or even sell the properties. This, Mr Layhe believes, would—

…at a stroke remove two good quality students flats in Aberdeen where I perceive there is an acute shortage.
67. Edinburgh University Students’ Association (EUSA) countered these and similar views. EUSA believed that the current student cycle “does not reflect the true nature of student requirements”, given that some students are part-time, mature or require long-term rental accommodation. It added that while there should not be a separate repossession ground for student lets, he recognised that “education would be important to ensure that tenants knew it was their responsibility to serve notice.”

68. Shelter Scotland believed that landlords “can adapt their communication and management practices to fit the student market.” Shelter Scotland also suggested landlords could work with educational institutions to help highlight to students the importance of serving notice on their properties in good time if they only wish to reside during term time.

69. In giving evidence to the Committee, the Minister said—

| Image 10 |

We wanted to have a tenancy that was the same across the private rented sector, whether or not the tenant was a student. We consulted widely on that and spoke to student groups.

70. The Minister also acknowledged that she was “thinking very carefully about what stakeholders have said” and that she would be interested to see what the Committee’s report recommends. However, the Minister was “not minded to make being a student a ground for eviction in itself.”

Purpose-built student accommodation

71. The Committee received a number of submissions from purpose-built student accommodation (PBSA) operators on the Bill’s proposals. One such operator, Unite Scotland, welcomed the policy objective behind the Bill of creating more secure tenancies but was concerned that the “one size fits all” approach might have unintended consequences on the PBSA. These unintended consequences might ultimately lead to future investment being made outwith Scotland and therefore reducing the availability of student accommodation.

72. Other PBSA providers, such as Collegiate AC, Fresh Student Living, Gatehouse Bank Plc, Greystar, Sanctuary Students and the Watkin Jones Group also highlighted the prospect of reduced investment in student accommodation as well as an increased uncertainty for both the operator and potential tenants as to the number of beds available at the beginning of the academic year. Suggestions to combat these concerns included adding an exemption to the Bill for purpose built student accommodation like that already provided to educational establishments or having an additional eviction ground for PBSA operators allowing them to recover possession of the accommodation at the end of an agreed lease term.

73. The views of operators were echoed by Gerry More, Scotland’s Private Rented Sector “Champion”. Mr More said that in the context of PBSA accommodation—
There is a clear risk that introducing a single tenancy for all tenants – except those exempted under existing legislation – and shaking up a model that is seen to work will have a significant negative effect on both students and investors in the sector.\textsuperscript{52}

74. The Minister responded to the concerns over future investment by saying that the Scottish Government is “doing a lot to encourage the private sector”,\textsuperscript{53} including working to attract further investment.

75. The Committee also received evidence questioning whether lease or nomination agreements between universities or colleges with private PBSA operators will be dealt with under the Bill. One such example, which the Committee received via its online survey on the Bill, asked—

If a university leases 100 beds from a 200 bed scheme, and sub-leases, to students (thus 100 beds being university-provided), you could end up having students living in the same block with different rights. If the other 100 beds are nominated by the university, does the lease come from the university or the private provider?

76. Many PBSA operators said that if current agreements between educational institutions and private accommodation providers came under threat because of the proposed legislation, it may reduce the availability of rooms which can be guaranteed to universities and colleges.

77. The Law Society of Scotland considered that the exemption of educational providers from the legislation might create a “two-tier market”, with universities being in a “stronger position than private owners”. The Law Society of Scotland added that—

We do not consider that it will be good for the market to have a restriction on what is a private residential tenancy based on the nature of the landlord rather than on the nature of the tenant.\textsuperscript{54}

78. On why universities and colleges were exempt from the proposals but not purpose built student accommodation, the Minister said that it was because further and higher education is non-profit making. However, she went on to say that—

I am considering what to do on purpose-built student accommodation. I understand that it provides the same type of accommodation for the same purposes. That is why I am willing to reconsider all the evidence that we have received on it.\textsuperscript{55}

Holiday lets

79. One area that the Committee heard evidence on and which was closely linked with student accommodation was holiday lets. Under the current short assured tenancy introduced by the 1988 Housing (Scotland) Act, there is a mandatory
ground for repossession which covers holiday lets. Even if this ground was not met, a landlord could regain possession of the property either at the end of the initial lease or by using the no-fault ground for repossession.

80. The Bill Team explained the Scottish Government’s thinking behind having no exemption for holiday lets—

…it would be quite difficult to have a ground that looked like a no-fault ground that would enable a landlord to bring a tenancy to an end for the purpose of the property being a holiday let or because it is the end of term for a student. The Government’s overall position is that there might be some adaptation of what has been set out but it will still be able to work in those markets.  

81. The Scottish Association of Landlords commented on some of the problems he believed landlords would have under the new tenancy if they had previously provided student lets—

People are looking to plan holidays months and months in advance. It is not just festival accommodation but any sporting activity or whatever anywhere in Scotland. Again, landlords would not be in a position to offer the accommodation in advance—for tourists during the summer, for instance—because they would not know that it would be available.

82. The Scottish Association of Landlords added that this uncertainty for landlords would also have an “adverse effect on tourism”. This was mirrored by RICS, who said that the summer tourism industry relied heavily on properties which had been rented out to students during the rest of the year. It believed that this way of working suited both the students and the tourist industry well. RICS also said that there was a huge shortage of accommodation in Edinburgh during the Festival and asked whether tourism bodies had been consulted on the potential impact of the proposed legislation.

Committee recommendations

83. The Committee appreciates the Scottish Government’s intention for all tenants in the private rented sector to have the same security of tenure. At the same time, it has some sympathy for the views expressed in evidence that student and holiday lets operate in a unique way and should be treated as such. In particular, the Committee believes it is beneficial for many students to have accommodation arranged prior to the commencement of their studies while at the same time providing some assurance to landlords that their property will be rented for the forthcoming academic year.

84. On the issues raised by representatives of the PBSA sector, the Committee is also mindful of the particular needs of operators involved in that business and their close relationship with educational institutions. At the same time, the Committee recognises that the business model of PBSA accommodation differs from the not-
for-profit approach of universities and colleges. The Committee nevertheless considers it appropriate to adopt a specific approach for the PBSA sector, such as exempting it from the Bill.

85. The Committee appreciates that the Minister has been listening to the concerns raised in evidence in relation to the student and holiday let sectors, will look at the recommendations in this report and will consider how best to respond.

86. The Committee recommends that the Scottish Government consider options for enabling tenancies to be set for agreed terms in the Purpose Built Student Accommodation sector.

87. The Committee recommends that the Scottish Government give further thought to whether having a uniform private residential tenancy for all tenants suitably takes into account the needs of students and the requirement of appropriate accommodation for that sector.

88. The Committee further recommends that the Scottish Government give further investigation to the particular needs of the tourism sector in areas such as Edinburgh and whether the proposed changes in the Bill might have unintended consequences in reducing the availability of accommodation during peak periods, such as the Edinburgh International Festival.

**Anti-social behaviour**

89. The wholly discretionary anti-social behaviour ground received a high level of comment in evidence.

90. Under the current short assured tenancy, the Committee heard that when landlords wanted to remove an anti-social tenant, they would often use the no-fault ground. However, the Scottish Government Bill Team said that there should be a "fair and due process" when dealing with anti-social behaviour, particularly when there is the potential for someone to be evicted from their home. It said that the Bill therefore provides a mechanism for a landlord to use to evict a tenant if initial engagement with the tenant and their neighbours is not effective. The Bill Team added that anti-social behaviour can be a subjective issue and can be challenging for landlords to deal with, giving the example of a young family living next door to an elderly couple.

91. This approach was welcomed by Homeless Action Scotland who said that if a tenant is behaving in an anti-social manner "the landlord needs to be able to establish that that is what is happening and to manage that property well." The Living Rent Campaign suggested that a hardship provision should also be built into the Bill to allow the Tribunal to delay repossession of a property to allow an anti-social behaviour situation to be resolved.
92. The Association of Local Authority Chief Housing Officers also supported the measure, believing that the ground would result in greater engagement between the landlord and tenant and that it would put the private sector on a par with the social sector in dealing with cases of anti-social behaviour. While acknowledging that persuading neighbours to give evidence would be a challenge, the Association of Local Authority Chief Housing Officers added that if someone is to be evicted from their home, it should not be done “without evidence or grounds.”

The City of Edinburgh Council also supported the ground, particularly as it took the cases away from the sheriff court and instead assigned it to the new Tribunal. The Council said that this would be a “streamlined housing chamber that will be able to deal with the cases very effectively.”

93. However, landlord representatives were particularly concerned as to whether the anti-social behaviour ground would work in practice. The Council of Letting Agents highlighted these concerns—

“We have instances in which tenants are creating an unhappy environment for their neighbours, and the quickest route by which to sort out that problem is to give notice on a no-fault ground. It is a difficult and long process to persuade neighbours and people living in the community to give evidence of antisocial behaviour. Things can drag on and people can sometimes be afraid to give evidence.”

94. The Scottish Association of Landlords said that there was an anti-social behaviour ground in the current system but that “nobody in the land would take a case to court under the anti-social behaviour ground because it is so difficult to prove in evidence to the court.” This view mirrored the Council of Letting Agents point that neighbours can feel intimidated by the tenant and therefore frightened to give evidence. The Scottish Association of Landlords added that the ground will be exactly the same under the new system and added “It is fine to grant greater security to the tenant, but what effect will this have on the wider community?”

95. To mitigate against having to use this ground, some landlords said that it would likely make them more selective in who they take on as tenants. The Association of Residential Letting Agents said that the result of this would be that “people whom the Bill is designed to help will be hurt the most. They are the people who will, unfortunately, be pushed into the hands of the rogue and criminal operators at the very bottom of the sector.”

96. The Minister emphasised the Scottish Government’s view that it was not right that under the current system a landlord can make an “arbitrary decisions, without evidence, that a tenant has committed anti-social behaviour.” Instead, the Minister said that the ground was “about fairness and establishing whether the behaviour is actually anti-social.” While recognising that some people might be reluctant to give evidence, she believed that the new Tribunal would not be as adversarial as a court and that it may not even call neighbours as witnesses.
Committee recommendations

97. The Committee recognises that the current ground for regaining a property due to anti-social behaviour has rarely been tested in court as landlords have often used the no-fault ground for repossession to remove tenants when such concerns have arisen. The Committee therefore understands landlords being reticent over the feasibility of the proposed ground.

98. The Committee also acknowledges some of the concerns raised over the possible difficulties in removing anti-social tenants if such behaviour is difficult to prove, particularly if witnesses are fearful of giving evidence to the Tribunal for fear of possible reprisals. The Committee nevertheless appreciates the Scottish Government’s view that wherever there is the possibility of someone losing their home there should be a fair and due process.

99. While the Committee agrees that there is a need for a fair and proper process to be put in place for all grounds for repossession, including for anti-social behaviour, it wants to ensure that these work in practice.

100. The Committee therefore calls on the Scottish Government to ensure that the anti-social behaviour and all other grounds for repossession 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.

Death of a tenant

101. Part 6 of the Bill provides that a private residential tenancy is not simply terminated by the death of the sole tenant. Instead, the Bill gives the tenant’s partner the right to succeed the tenancy which would consequently bring private sector tenancies in line with the social sector.

102. While there was no evidence to suggest that the overall objective of this provision was inappropriate, landlord representatives raised concerns over the requirement in the Bill to appoint an executor if the tenant dies intestate. This, said witnesses from groups such as the Scottish Association of Landlords, the Association of Residential Letting Agents and Scottish Land and Estates, could cause an unnecessary delay and cost to both the estate and landlord.

103. Commenting on these concerns, the Minister stated—

We have considered the stakeholder evidence and representations on the issue and agree that that provision is not advantageous to a family, who might have to spend money from the estate to appoint an executor in order to bring a tenancy to an end. We do not think that it is fair to landlords, either. We therefore intend to lodge an amendment at stage 2 that will
ensure that the tenancy ends on the person’s death if there is no one to succeed to the tenancy.

Committee recommendations

104. The Committee agrees 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. The Committee also supports 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.

Rent arrears

105. Another of the 16 grounds for repossession covers situations where the tenant has been in rent arrears for three or more consecutive months.

106. In commenting on this ground, Shelter Scotland considered this ground to be “disproportionate and needs to be looked at again.” Homeless Action Scotland meanwhile called it “vague and confusing” and it should mirror the tried and tested grounds in the Housing (Scotland) Act 1988. Meanwhile, the Housing and Social Welfare Law Campaign Group consider that the ground should be fully discretionary in that it should be “subject to the Tribunal’s power to consider reasonableness.” The Living Rent Campaign also believed the ground should be fully discretionary and that it should only be granted if rent arrears exceeded three months rather than one.

107. In evidence from landlords, the Committee heard concerns that even if a tenant has been in a month’s rent arrears for a period three months, only then can a notice to leave be issued. The Scottish Association of Landlords, while not against the rights of the ground, was concerned that it could result in a protracted process of perhaps over six months before the Tribunal could make a decision. It therefore called for a more expedited process. Scottish Land and Estates called for the Tribunal to be sufficiently resourced so that it can “deal with cases quickly” while the Council of Letting Agents said that the inability to use a no-fault ground on rent arrears will “force landlords to be more and more selective about who they put in their properties.”

108. The Association of Local Authority Chief Housing Officers described the payment of rent as the primary transaction in any tenancy agreement and that when there is a consistent non-payment of rent there “needs to be a sanction.” It nevertheless considered that “complicating factors” should be considered as part of any process for evicting a tenant.

109. In evidence, the Minister said that rent arrears is a key issue for the “viability” of a landlords business and the right balance must be struck to ensure that they “can recover their property and effectively manage it.” However, the Minister
recognised that it is also a problem for tenants and wished to ensure that they are provided with financial advice “as soon as they fall into arrears”. The Minister added that the landlord does not automatically have to take a case to the Tribunal after three months and that “many landlords in the private sector currently work on arrangements with their tenants to ensure that rent arrears are reducing and that tenants can remain in the property.”

Committee recommendations

110. The Committee recognises the difficulties in ensuring that this ground is both fair to the tenant, who may experience short-term financial difficulties, and the landlord, who will wish to effectively manage the property.

111. The Committee nevertheless has some sympathy for a hardship provision to be considered by the Tribunal to allow a tenant to sort out a particular issue, such as getting financial advice. However, the Committee also has sympathy for the landlord in relation to how long any tribunal process might take.

112. In relation to the three month period to pay a one month’s rent arrears, the Committee believes this period is too short and that a longer period, such as six months, might be more appropriate.

113. The Committee recommends that the Scottish Government give further consideration to lengthening the three month period allowed in the Bill to pay off a one-month rent arrears.

114. The Committee nevertheless asks the Scottish Government to ensure that the tribunal process is as efficient and transparent as possible to help provide clarity and certainty for both the tenant and the landlord.

Proposed additional grounds

Property required for an employee

115. A number of landlord organisations, particularly those representing landlords with rural properties, suggested that an additional ground should be included to allow a business to regain possession of a property if it is required for an employee. While the Bill does include a ground to regain possession of a property if a tenant is no longer an employee of the landlord, this does not provide for situations where tenants have no links to the landlord’s business.

116. The concern was summarised by Scottish Land and Estates—

In order for a rural business to grow and develop, it is often necessary to expand the workforce. A lot of that workforce needs to be accommodated on site. We would therefore like to see a ground included that would allow a
117. Scottish Land and Estates suggested that such a ground would look similar to the ground for possession of a property where it is required for religious purposes. Kincardine Estates considered that without such a ground, the Bill proposals will “impede rural development.” The Committee also heard that good quality rental accommodation might instead lie empty if a landlord believes he might need to use it at some point in the future to house a new employee.

118. The Minister was not however persuaded by such views. She believed that the right for a family to have security of tenure, wherever that might be, supersedes that of landlords looking to house a new employee. The Minister added that there are other ways for people to house employees, such as using short term holiday lets.

Committee recommendations

119. The Committee appreciates that private rented accommodation is used to house employees and their families and that this practice is particularly common in more rural communities. On the other hand, the Committee recognises that the primary purpose of the Bill is to provide a greater security of tenure for tenants and that having a different provision in rural areas might undermine that aim.

120. While appreciating that housing issues can significantly differ between urban, semi-rural and rural communities, the Committee is not convinced that the Bill should impact on a tenant’s security of tenure because of the possibility that it might at some point be required for an employee. At the same time, the Committee does not wish to see homes in rural communities lying empty when they might provide suitable accommodation for even a relatively short time.

121. The Committee recommends 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.

Any other reasonable circumstance

122. The Committee heard evidence for the creation of a further ground, which would be at the discretion of the Tribunal, to allow for a case to be made for any other reasonable circumstance not currently provided for in the Bill.

123. While the Committee appreciates that such a ground might allow additional flexibility where an issue arises that has not been foreseen by the Scottish Government, it is concerned that such a ground might be used to circumvent processes set out by other grounds in the Bill. While the final decision would be
made by the Tribunal, the Committee is not minded to propose such a ground in the Bill.

**Initial tenancy period**

**Overview**

124. The Bill provides for an initial tenancy period of six months (unless the tenant and landlord agree either a shorter or longer period). During this period, the tenant would be unable to give notice to leave the property and there would be only five grounds available to landlords to recover their properties compared to the 16 grounds available at the end of the initial tenancy period). These are:

- rent arrears
- anti-social behaviour
- breach of tenancy agreement
- relevant criminal conviction
- lender intends to sell

125. The amount of notice the landlord is required to give a tenant during the initial tenancy period is 28 days (four weeks) compared with 84 days' notice (12 weeks) after the initial period has ended. Likewise, the notice period for tenants also differs – 28 days for six months or less and 56 days (eight weeks) for more than six months in the property.

**Length of initial period**

126. The Bill Team said that the initial tenancy period was suggested by the review group and is based on the six monthly blocks which are commonplace in the current system of short assured tenancies. It summarised the intention of the initial period—

> The period is intended to provide tenants and landlords with assurance. For the tenant, the initial period will limit the grounds on which a landlord can seek repossession... From the landlord’s perspective, it will mean that the tenant is tied into staying in the property and paying rent for the specified period.

127. However, the Bill Team added that the reason the initial tenancy period can be altered to suit the tenant and landlord is to provide both “stability and flexibility” within the private rented sector.

128. There were varying views expressed in evidence on the initial tenancy period. Some evidence questioned the requirement for such a period, given it would not
impact on the overall security of the tenancy (unlike with short assured tenancies where the landlord can end a tenancy when the initial period comes to an end). Others were in favour of the initial tenancy period as it would show commitment from the tenant while also protecting them from certain grounds of repossession.

129. The Committee also heard evidence that tying in a tenant for a six-month period may have “serious equalities issues”. The Living Rent Campaign said this was due to the possibility of someone being in an abusive relationship and who might need to leave the property quickly. Still being required to pay rent on a property you would no longer be living in “adds another barrier” for people in such situations.

130. The Scottish Association of Landlords said that under the current short assured tenancy, tenants and landlords can bring tenancies to an end by “mutual agreement”. It added that this current approach is “an important part of the tenancy regime” and should be maintained in the proposed legislation.

131. These difficulties were acknowledged by the Association of Local Authority Chief Housing Officers, who hoped that “a responsible private landlord would meet with a sympathetic and appropriate response.” However, it believed including a provision in the Bill to provide for instances of domestic abuse “would be difficult to evidence and to draft.”

132. However the Govan Law Centre said that many of its clients were “incredibly vulnerable” and that they are powerless when dealing with their landlords. However, it believed that the Bill could be altered, with appropriate safeguards, to deal with tenants who might be facing domestic violence. The Legal Services Agency added:

> …the Bill could incorporate a provision in which an application to the Tribunal could be made to allow an early termination where certain matters were established.

133. The Convention of Scottish Local Authorities believed that a solution should be found; otherwise it would be “an absolute affront” that domestic abuse “can take place and be tolerated.”

134. In response to questions about the initial tenancy period and tenants facing domestic abuse, the Minister said:

> I am open to looking at the initial tenancy period, the grounds for eviction in that period and the flexibility that is available. I am interested in the evidence that has been received on the issue and in what the committee might suggest. I am willing to look at that.
Committee recommendations

135. The Committee welcomes the Minister’s commitment to look again at the initial tenancy period based on the evidence received by the Committee, including the grounds for eviction within this period and the flexibility available. In particular, the Committee considers that in relation to instances of domestic abuse, the proposals in the Bill must not act as an obstacle to individuals wishing to leave abusive relationships.

136. The Committee therefore calls on the Scottish Government to consider bringing forward suitable amendments at Stage 2 which would enable those in abusive relationships to leave a tenancy without facing financial penalties from their landlords.

The First-tier Tribunal

137. Under sections 8-10 of the Bill, landlords will be required to provide tenants with a tenancy agreement and some specified information which a landlord will be under a duty to provide to a tenant under section 9(1). Should the landlord fail to do so, sections 12-15 of the Bill provides the tenant with discourse to refer the issue to the Tribunal which will have power to draw up a tenancy agreement which adheres to the mandatory requirements laid out in sections 8-9. The Scottish Government will develop a model tenancy agreement containing all clauses and statutory guidance in forthcoming subordinate legislation.

138. Should the Tribunal find that the landlord has failed to provide the tenant with necessary tenancy documentation, it will also have the power to impose sanctions courtesy of an order against a landlord instructing them to pay the tenant up to a maximum of three months’ rent. Such an order can only be made where, at the time the Tribunal considers the application, the landlord has still not provided the information and there is no reasonable excuse for failing to provide that information.

139. The Scottish Government Bill Team confirmed that the legislation from which the new Tribunal system is being created, the Tribunals (Scotland) Act 2014, has been implemented and that the housing and property chamber will begin in late 2016. Existing private rented sector civil cases, including those relating to tenancy agreements and reposessions will also be transferred from the sheriff court to the Tribunal under the Housing (Scotland) Act 2014.90

140. The Committee notes and is content with the proposed powers which will allow the Tribunal to take action where a landlord fails to provide the required tenancy information.
141. In its scrutiny of the Bill, the Delegated Powers and Law Reform Committee asked the Scottish Government to confirm whether it considered providing the proposed specified information which a landlord will be under a duty to provide to a tenant under section 9(1); and 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.

142. The Scottish Government confirmed that it had considered options to include this information on the face of the Bill but that, given that these were administrative in detail, it felt it was more appropriate to include this information in subordinate legislation. The Delegated Powers and Law Reform Committee determined that it was satisfied with the Scottish Government’s approach.  

144. Under sections 47–49 of the Bill, a tenant will also have recourse to the Tribunal if they believe their tenancy has been wrongfully terminated by a landlord using an inappropriate ground for eviction. Section 49 of the Bill proposes that a wrongful termination order made by the Tribunal would require the landlord to pay the tenant up to three months’ rent. The Bill Team also confirmed that the policy intention of this approach was as follows—

> We want to provide something that is effective and has teeth, and we think that one of the most effective ways of ensuring that is to give tenants the ability to seek compensation from landlords if they feel that they have not been treated genuinely. Again, it comes down to the issue of balance, but that is the basic policy intention behind the provisions.

145. The Committee sought clarity from the Scottish Government Bill Team on the circumstances under which a tenant could take a case for wrongful termination to the Tribunal. The Bill Team provided an example based on a termination under the first ground, where the landlord intends to sell the property, stating—

> On the first ground, if, for example, a landlord issued a notice to quit and evicted a tenant on the basis that they intended to sell the property but three weeks later the tenant discovered that the place where they had been living had been rented to someone else, it would seem that they should have some recourse.

146. Many of the witnesses providing evidence felt that the penalty to landlords of three months’ rent for wrongful termination was insufficient. For example, Homeless
Action Scotland and Crisis both agreed that the penalty, as proposed, was too weak and not sufficiently high to act as a deterrent to landlords who may seek to wrongfully evict tenants. Both organisations agreed that deliberately using false information to achieve an eviction should be regarded as an illegal eviction and subject to the criminal law and potential imprisonment. Homeless Action stated that there was a possibility that a common law offence of fraud and uttering that could be used, or contempt of court proceedings in relation to Tribunals.  

147. Crisis highlighted that there could be far more significant related costs to a local authority where someone’s tenancy has been cancelled, including the potential for the tenant to make a statutory homeless application to their local authority. They suggested that the maximum award needed to be sufficiently high to deter landlords from wrongfully terminating a tenancy and where it has occurred, fines should sufficiently reflect the financial burden elsewhere, stating that—

There are models elsewhere in which penalties are much more significant. The system is different, but in Ireland there are penalties of up to €20,000 for certain breaches. In Scotland, three months’ rent in an average two-bedroom property would be about £1,800. Considering that the person will have to pay another deposit when they do not necessarily have their current deposit back, and given all the costs that are associated with moving—setting aside all the emotional costs—the amount of money for penalties is not huge in some cases.  

148. Crisis also suggested that, in such situations, it should be considered whether the landlord should be liable to contribute to local authorities costs.

149. ALACHO, whilst stating that it would prefer to see some of the grounds for repossession removed, acknowledged that should they remain as they are, the sanctions needed to go further—

...the penalties need to be far stronger and more punitive than the ones in the Bill. A penalty of up to three months’ rent—I stress that the Bill says “up to”—at the discretion of the Tribunal does not send a sufficiently strong message about potential abuse.  

150. Govan Law Centre felt that to deliver the Scottish Government’s aims, it was important to get the grounds for eviction right and then the other parts would fall into place. It also confirmed that under the current system, if a landlord was to evict someone without due process, then it would be classed as an unlawful eviction and they could be fined thousands of pounds. It therefore felt that the new proposals were not enough to deter unlawful evictions and explained that the fine would not be enough to deter landlords from unlawful eviction, as evidenced previously with HMO licenses—

Some people who were running HMOs in Scotland were happy not to have a licence because the fine was such that they considered it worth paying,
given the money they were making. Setting the penalty at three months’ rent is completely wrong; in fact, I would go further—I cannot see that the idea would work in real life. 98

151. The Legal Services Agency also agreed that the sanction was not high enough, stating that currently there is a sanction against landlords whereby the courts can award up to three times the deposit if a landlord does not comply with tenancy deposit regulations. It felt that a similar sanction could apply to wrongful termination, given the costs involved with finding a new property and the cost of the deposit. It confirmed—

It would be a real deterrent to a bad landlord if utilising the grounds incorrectly meant that they faced a penalty of three months’ rent if a tenant followed up, made the inquiries and application, and so on. If the grounds for eviction are properly addressed and the court or Tribunal has discretion to weigh up the balance, that will avoid having to look at the issue at the end of the process.99

152. Citizens Advice Scotland welcomed the provisions, however it added that it should be considered how wrongful-termination orders be made part of the fit and proper person test for landlord registration. They suggest that where a landlord is consistently found to be engaged in misleading the Tribunal there could be a possibility of removing their registration status as a landlord.100101

153. ALACHO agreed that the sanctions should be more punitive, stating—

Part of the issue is about connecting the Bill to other pieces of housing law. There needs to be a connection between what the Bill says and what the legislation on landlord registration and HMO licensing says so that landlords who can be proved to have used the grounds disingenuously are at risk of losing their registration or their licence.102

154. Those representing landlords and letting agents were largely in support of the Bill’s provisions with respect to the three month penalty payment. For example, the Scottish Association of Landlords and Scottish Land and Estates expressed that the three months’ rent payment strikes the right balance in terms of a penalty for wrongful termination. Scottish Land and Estates felt that there was a risk that a landlord registration could be revoked where wrongful termination had been used repeatedly and, therefore, the fear of losing their business would discourage landlords from the practice of wrongful termination. They added—

If the grounds [for eviction] are watertight, the landlord will use the grounds. They will not need to think, “I’ve got a real reason to get rid of this tenant, but what ground can I fit it into, even though it does not fit well?” They will just use the appropriate ground, and there will be no reason to wrongfully evict someone.103
155. The Minister confirmed that the Scottish Government’s view was that the three months’ rent was sufficient to allow the tenant to find other accommodation and pay the deposit on that accommodation. She confirmed that it was based on what had been lost and one that could be reasonably recovered from the landlord.104 The Minister confirmed that as well as the sanctions in the Bill, criminal sanctions, such as illegal eviction, will also continue to apply and that tenants will be made aware of their rights and “where to seek advice in the notices prescribed under the new tenancy.” The Minister added—

I reassure the committee that we will continue to work with local authorities to improve the enforcement of existing regulations in the sector. Shortly, we will consult on new statutory guidance for local authorities on landlord registration to deliver tougher, more targeted enforcement.105

Committee recommendations

156. The Committee understands the requirement to strike the right balance between security of tenure for the tenant in their home and the ability of a landlord to regain possession of their property where this is necessary. It notes that there are a substantial number of grounds to allow a landlord to do so in appropriate circumstances.

157. The Committee therefore agrees that in order to maintain security of tenure, a landlord should have to evidence proper grounds to evict a tenant, follow due process and any policy to prevent wrongful termination should be sufficient to act as an effective deterrent against doing so.

158. The Committee welcomes the Scottish Government’s clarification that the measures are based on a calculation of the money that is lost and that which can reasonably be recovered from the landlord, as well as the confirmation that existing criminal sanctions will still also apply.

159. The Committee notes, however, that there were strong views expressed in evidence that the sanctions for wrongful termination were not strong enough. It therefore calls on the Scottish Government to reflect on whether the level of the three months’ rental penalty payment sufficiently reflects the financial burden elsewhere, including the costs to local authorities for homeless applications, the cost of paying a new deposit (particularly where the original deposit has yet to be recovered) and emotional distress.

160. The Committee welcomed the Minister’s clarification that existing criminal sanctions will apply, however it notes that for the system to work, the proposals in the Bill must complement existing legislation and tenants must be made aware of their right to take their case to the Tribunal.
161. The Committee would welcome clarity on how the Scottish Government will ensure that the provisions in the Bill are drafted to complement existing legislation and how it will ensure that in cases handled by the Tribunal where criminal activity has been identified, these are passed to the Procurator Fiscal to ensure they are punishable under the law.

162. The Committee would also welcome 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 landlord registration status.

Evidencing wrongful termination

163. The Scottish Association of Landlords also had some concerns around how wrongful termination would be evidenced, querying whether a landlord would be penalised if they intended to sell the property, but were unable to sell because, for example, the market has changed. It added—

> Similar concerns arise when someone wants to repossess a property for their use or the use of family members. Someone might want to put an elderly relative into the property if it is near to their home, so that they can provide care and support to them. Sadly, it might be that, in the process of them giving the required notice—which takes a considerable number of months—the relative might have to go into residential care accommodation or might pass away. That would mean that the intention for which the notice was raised no longer applies, even though it was genuine at the time.106

164. The City of Edinburgh Council confirmed that it welcomed the penalties for abuse of the grounds. However, the Council also, had some uncertainties around how wrongful termination could be evidenced, given that the current grounds for eviction, which in their view are broadly the same as the proposed grounds, are relatively untested due to the current existence of the no-fault ground. It also noted that—

> To see how effective the Bill will be, we will need to see how easy it is for a tenant to go to a first-tier Tribunal and get that compensation. We find that, under the similar scheme for tenancy deposits, going to the sheriff court is quite a burdensome process and a lot of tenants choose not to access justice in that way. We hope that the barrier to justice will be significantly reduced under the first-tier Tribunal.107

Committee recommendations

165. The Committee notes that the Scottish Government still has to develop how the Tribunal will operate. However, it is of the view that it is important that guidance on such cases can be taken forward is put in place at an early stage.
166. Given the concerns raised by witnesses, the Committee calls on the Scottish Government to provide further information and guidance on how it would expect determinations on how wrongful termination to be evidenced. For example, how can the correct balance be struck between applying sanctions to those landlords with ill-intentions, but not to those who intended to evict for a specific purpose, and where that purpose could not be fulfilled due to a genuine and reasonable change in circumstances.

167. The Committee would also welcome an indicative timeline for when any such guidance on this matter will be available.

Issues related to the set-up and operation of the First-tier Tribunal

168. The Scottish Government envisages that the Tribunal’s main benefits will be specialism, consistency and accessibility, therefore with a result of improving access to justice for both tenants and landlords in the PRS. It will be a judicial decision maker and will be required to follow a process when deciding on cases referred to it.

169. Many of the witnesses welcomed the move to the transfer of powers from the court to the Tribunal. For example, the Scottish Association of Landlords felt it would be a more appropriate way of “doing justice” and “less adversarial”. It confirmed it would have a seat on the Tribunal and that all those on it would be specialists in housing law and their field, which is different to the current system. It added—

> The idea is for people to sit round the table, discuss the issues and come up with solutions, which might not be eviction. The idea is to look at situations from a much more holistic perspective. Tribunals are also less expensive to the public purse. They can happen locally, wherever they need to be convened.  

170. Some commented, however, that there were a few uncertainties around how the Tribunal would operate. It was argued that, in order to know whether the grounds for eviction would work effectively in practice, one would need to know how long a case based on one of those grounds would take to go through the Tribunal. LetScotland stated that the Tribunal “will need to be robust in how quickly it can resolve issues and be provided with the funding and other resources to cope with the cases referred to it”.

171. Given that the Tribunal is being created under existing legislation and forthcoming subordinate legislation, it is important that the related legislative components are compatible and developed to complement each other. In this regard, Shelter stated—
We have already heard from the Government that the implementation timetable for the new tenancy will fall in line with the implementation of the new Tribunal system. Understanding the relationship between the two is absolutely crucial.  

172. The Scottish Association of Landlords were particularly concerned that an application by the landlord to the Tribunal for unpaid rent could not be made until after three months, given that by that point, the landlord would be serving their notice to leave and there could be at least four months of rent arrears. They suggested that proceedings in these circumstances be raised at an earlier stage, adding—

Even with the best will in the world, it could be another month or two after the landlord applied to the Tribunal before a local meeting could be arranged. That landlord could easily be without rent for five or six months. That is not the intention of the initial ground...The tenant’s interests would still be protected, because ultimately the Tribunal would decide whether the ground was warranted.

173. The Minister confirmed that “current private rented sector cases will be transferred to the Tribunal from the end of 2016.” The Minister added that the Scottish Government would consult very soon on its operation. She confirmed—

I am clear that the tribunal system will be less formal than the court system, that the Tribunal members will be experts and will build up further expertise in the subject.

Committee recommendations

174. The Committee notes that much of the operational detail of the Tribunal is still to be developed and welcomes the Minister’s clarification that the Scottish Government will consult on its development soon. The Committee notes, however, that much of the uncertainty around the Tribunal’s functions could cause concerns around its robustness and efficiency of operation.

175. The Committee would welcome clarity on when the Scottish Government expects to consult on the functions and operation of the Tribunal, together with an anticipated timeline for developing and putting in place the Tribunal system up to the point when it becomes operational.

176. The Committee also calls on the Scottish Government to provide it with a response to the specific concerns raised by the Scottish Association of Landlords with respect to the timings associated with rent arrears and an application to the Tribunal.
Availability of legal aid and assistance for tenant representation

177. Many of the witnesses queried what advice and assistance would be available to tenants wishing to take their case to the Tribunal and whether legal aid would be made available to them.

178. The Scottish Government Bill Team stated that the Tribunal procedures were designed to be accessible and understandable and would therefore not usually require legal representation. It added, however, that some cases that the Tribunal would handle, such as repossession, could be serious and that it was considering the requirements for support in these circumstances. It confirmed that such support could involve funding for legal representation and/or a form of lay representation and, if so, it would be outlined in the operational detail of the Tribunal, put in place by secondary legislation which would be scrutinised by the Parliament. It added that in other Tribunal jurisdictions, funding for legal representation is generally provided through assistance by way of representation (ABWOR) and administered by the Scottish Legal Aid Board.¹¹³

179. The Scottish Government Bill Team added that help and assistance to take cases to the Tribunal could also be provided in different ways, including assistance from advice agencies.¹¹⁴

180. Shelter confirmed it “would like more certainty from the Government on what sorts of advice, assistance and legal representation will be available to vulnerable or low-income tenants to ensure that they can access justice. Crisis agreed, stating that the “other thing to factor in is the level of fees involved in accessing the Tribunal and ensuring that it is accessible.”¹¹⁵

181. The Legal Services Agency agreed, stating—

Some of the grounds will be disputed, either in the facts or if there is an aspect of reasonableness, and tenants who are at risk of losing their homes, which is an extreme form of interference with their right to have their home respected, should have the opportunity to have appropriate representation. On the face of it, an expeditious process of resolving disputes such as a Tribunal is a positive aspect, but that must go hand in hand with the fundamental principles of the right to a fair hearing and access to support.¹¹⁶

182. The NUS felt that students might need support to take their case to the Tribunal as it could potentially be a daunting process, particularly for a young person who has just moved away from home for the first time, is in a new town and does not know many people. The NUS suggested that students may “feel that there is not an equal relationship between them and the landlord and that the balance of power is tipped against them.”¹¹⁷
183. The Minister indicated that she had no views on whether legal aid will be available, given that the Scottish Government was, at the time of providing evidence, consulting on the measures. However, she did confirm—

I am very keen that people can have representation at a Tribunal if they wish it, whether that is a legal representative or a specialist lay representative from the voluntary sector. There are many experts out there, and expertise will build up.\textsuperscript{118}

184. The Finance Committee, in its consideration of the Financial Memorandum, also commented on uncertainties around whether there would be a charge to access the Tribunal and what financial assistance, including legal fees, would be available to those accessing the Tribunal. The Finance Committee recommended that indicative figures setting out different scenarios depending on future ministerial decisions in respect of Tribunal fees and legal aid should have been provided in the FM.

185. The Bill Team confirmed that under the current system, landlords are charged £70 when cases go to court. They confirmed, however, that Ministers were yet to reach a position on whether to charge a fee to take cases to the Tribunal.\textsuperscript{119}

Committee recommendations

186. The Committee notes concerns expressed with regard to the lack of clarity around the costs of the Tribunal, particularly with reference to the availability of assistance and legal aid for those requiring to take a case to it.

187. The Committee would welcome clarification of support which will be available to those wishing to access the Tribunal and specifically whether legal aid will be available.

188. The Committee also notes the Finance Committee’s recommendations that indicative figures, setting out different scenarios depending on future ministerial decisions in respect of Tribunal fees and legal aid, should have been provided in the Financial Memorandum. The Committee calls on the Scottish Government to provide a more accurate reflection of the costs involved.

189. COSLA noted that local authorities may be called upon to assist tenants and this could result in a resource issue. It stated—

You should remember that the local authority will be the organisation that is called upon to assist the tenant in a situation such as going to the Tribunal. Once again, there will be a demand on local authorities to step up to the challenge, but the resources to do that do not always accompany it.\textsuperscript{120}
191. Living Rent Campaign and Homeless Action Scotland agreed that very few tenants would bring a case against a landlord to the Tribunal and that one means of bringing landlords to account would be to consider enabling and empowering third parties, such as local authorities, law centres or advice agencies, to bring cases against landlords and raise actions at the Tribunal on behalf of tenants, particularly where there has been a pattern of abuse.  

192. Homeless Action agreed that third parties, such as local authorities or other bodies, should be empowered to take cases forward to the Tribunal as many tenants who have been evicted under such circumstances will be focussed on finding a new property, rather than taking their landlord to the Tribunal for wrongful termination.  

193. Citizens Advice Scotland agreed that third parties should be able to take cases to the Tribunal where there has been a pattern of abuse. It added—

> Local authorities have the ability to make third-party referrals to the PRHP [Private Rented Housing Panel] under the Housing (Scotland) Act 2014, which is just about to come into force. The proposal builds on the powers that already exist. They already have that ability; it is just another string to their bow and another reason to take action.  

194. ALACHO also agreed that there should be third party representation given that “the tenant might well have moved out before evidence that the landlord had been disingenuous was available.”  

195. Govan Law Centre agreed, stating that on eviction, a tenant’s number one priority will be trying to find somewhere to live and that finding evidence to evidence wrong-doing will be lower in their priorities. It added—

> Six months down the line, the person may think about it and wish that they had done something. I cannot see in practical terms that evidence coming to light in the Tribunal.  

196. The Minister confirmed that the Scottish Government had not considered whether third parties should be able to take forward cases against landlords, but confirmed that—

> …in any case that goes to a Tribunal, it is the tenant who has been wronged and—although this does not mean that the tenant cannot get
assistance to take their case to Tribunal—the tenant must be involved in the process. We cannot have a local authority or an organisation going to the Tribunal without the tenant’s knowledge or involvement.

Committee recommendations

197. The Committee notes concerns raised that there is a risk that tenants with a reason to suspect wrongful termination of their tenancy, may not have a chance to take their case to Tribunal, given that their focus will be on finding replacement accommodation.

198. The Committee also notes suggestions that giving third parties, such as local authorities, housing charities, third-sector advocates and advisory bodies the ability to bring forward cases in such circumstances, particularly where landlords are found to be persistently in breach of wrongful termination orders.

199. The Committee also notes and agrees with the Minister’s comments that it is the tenant who has been wronged and therefore must be involved in the process.

200. The Committee calls on the Scottish Government to indicate whether appropriate third parties could be empowered to take forward 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.

Ability to adjourn cases

201. Another issue raised by witnesses was to question whether the Tribunal would have the ability to adjourn cases. For example, Shelter Scotland suggested that the Tribunal should have discretion to adjourn Tribunal proceedings, for example, to monitor payments relating to rent arrears or a tenant’s behaviour in anti-social behaviour cases and consider more complex cases.127128

202. The Living Rent Campaign, agreed with this position, stating—

In cases of rent arrears or antisocial behaviour, the tenant might need time to sort out a particular issue. We believe that a provision should be built in whereby the court can postpone or delay a decision to repossess a property to give the tenant time to get financial advice or resolve an antisocial behaviour situation.

203. Scottish Land and Estates welcomed the creation of the Tribunal system, but had some hesitations regarding the inclusion of an ability to adjourn. It stated—

We have concerns about the discretion to adjourn. It adds an additional risk to a risky system. We do not know how long that could go on for. ... If it has got to the stage at which a landlord is taking them to a Tribunal, there is obviously a problem, and it needs to be dealt with robustly.129
204. The Scottish Association of Landlords felt that the Tribunal service would have the ability to adjourn cases if panel members deemed it to be appropriate.\(^{130}\)

205. The Scottish Government Bill Team confirmed that guidelines on the ability of the Tribunal to adjourn cases was not featured in the Bill at the moment and may be included in the rules of the Tribunal. It added—

> The Tribunal will have the ability to adjourn in all types of cases. If we are not sure what is going to be in the regulations governing the Tribunal’s procedures, we may seek to put something on that in the Bill at stage 2. However, we are waiting to see what the regulations say so that we do not duplicate provisions about procedure in different pieces of legislation.\(^{131}\)

Committee recommendation

206. The Committee notes the various comments made on the potential for the Tribunal to adjourn of cases. It would welcome an update from the Scottish Government on how it will assess whether the Tribunal will have the ability to do so.

Restrictions in relation to rent and other charges

Provisions regarding rent increases

207. Sections 17-19 of the Bill make provisions regarding rent increases in the private rented sector. These are summarised as follows—

- Section 17 states that the rent for a tenancy cannot be increased more than once in any 12 month period.

- Section 19(1) allows landlords to increase the rent by giving the tenant a rent increase notice. Section 19(2) states that the notice must set out the new rent, the day on which the increase is to take effect and any other requirements prescribed by Scottish Ministers in regulations.

- Section 19(4) states that landlords must give tenants at least 12 weeks’ notice of a change in the rent or whatever longer period has been agreed between the landlord and the tenant.

- Section 19(5) sets out that a landlord and tenant can, by agreement, change what is in the rent increase notice provided that this does not make the date that the increase will be payable fall less than three months after the date the
tenant was given the notice. For example, this would allow the parties to agree to a lower rent than in the notice.\textsuperscript{132}

**Challenging rent increases**

208. Sections 20-29 of the Bill make provisions regarding challenging rent increases. These are summarised as follows—

- Section 20 states that if a tenant considers that any proposed rent increase would take their rent beyond rents charged for comparable properties in the area, they can refer the increase for adjudication to a rent officer at Rent Service Scotland. The application to the rent officer must be made within 21 days of receiving a rent increase notice.

- Section 22 states that 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. A provisional order which specified the amount of rent to be paid (including any services costs) would be issued by the rent officer. The landlord or tenant could ask the rent officer to reconsider the proposed amount within 14 days after the provisional order is issued.

- Section 23 states that where a rent officer has made an order, a landlord or tenant can appeal to the Tribunal within 14 days of the rent officer’s decision. The Tribunal would have the power to vary the rent upwards or downwards. Section 25 of the Bill provides that the Tribunal’s decision is final and there is no further course of appeal to the Upper-tier Tribunal, although the Tribunal can review its order and correct any minor errors.

- Section 27 sets out how a rent officer and the Tribunal should determine the open market rent of a property. In making the determination any improvements made by the tenant which they were not obliged to make will be disregarded.

- Section 29 states that rent officers and the Tribunal must make information available on the rents they have taken into account in setting open market rents and the rents they have determined. Scottish Ministers have the power to specify in regulations the information to be made available, the manner in which it is to be provided and set fees which may be charged for supplying that information.\textsuperscript{133}

**Objectives of rent increase provisions**

209. The Scottish Government Bill Team confirmed that a key objective of only allowing rent increases to take place once in a 12-month period, with three months’ notice was ensuring predictability. The Scottish Government’s intention is that the proposed measures should also help tenants plan their finances to deal with any future rent increases and further enhance security of tenure by giving the tenant “the ability to seek adjudication on an unreasonable rent increase that takes the rent beyond the market rate.”\textsuperscript{134}
210. Rent Service Scotland would be responsible for determining suitable rent levels and would do so using a combination of its experience, data that it holds and its property inspections. Section 29 of the Bill places a duty on rent officers and the Tribunal collectively to publish information on rents taken into account when making adjudications, determinations and final determinations after individual applications. It is expected that this information will be available online.

211. An individual, in assessing whether a rent increase is too high and whether to take their case to Rent Service Scotland would be able to use this information, along with other online letting portals advertising rents and comparing rent levels with people they know with similar properties. The Scottish Government also confirmed that it currently provides statistics on rent levels across Scotland.  

212. Most of those representing the tenant sector, who gave evidence to the Committee, agreed measures were required to control rents. Shelter Scotland felt that the mechanisms struck the correct balance between allowing landlords to increase rent levels as appropriate, and not allowing excessive rent increases to be used to evict tenants. Living Rent campaign agreed that measures were necessary and stated that there was a “crisis of affordability” in the private rented sector in some areas, citing reports from Aberdeen and Edinburgh that it was causing tenants to illegally overcrowd flats to live in these areas.

213. Crisis also welcomed the measures. They welcomed in particular the proposal of “one rise in 12 months with 12 weeks’ notice” and the ability “to challenge through the rent officer and the Tribunal any rent rises that seem to be higher than would be expected.” Crisis did query, however, whether 21 days would be an acceptable amount of time to challenge a rent increase, particularly if people need to obtain advice, stating—

There is also a point about the liability for rent. If it takes a long time for the Tribunal to come to a decision, at the end of that someone could be liable for a very big rent increase over the period, which they would have to pay off in full in 28 days. That could lead to there being grounds for eviction because of rent arrears. Therefore, rent officers and the Tribunal should have discretion to allow the period to pay the money back to be longer than 28 days.

214. Witnesses representing landlords and letting agents on the Bill were mainly supportive of the provisions as drafted, although one witness, representing the Association of Residential Letting Agents, felt that the three month notice period required to be given to a tenant when increasing their rent was too long and that it should be reduced to two months. He explained—

…the markets change quite regularly, and three months is a long time. A landlord could say, “Your rent will go up by £X in three months’ time”, but if the market suddenly changes for one reason or another during that time, or it does not move as fast as the agent or landlord expects it to, that would
open up the landlord—through no fault of their own, and merely because they tried to predict what the market would do at a point in the future—to complaints to the rent officers and the first-tier Tribunal. \(^{139}\)

215. Those representing local authorities were generally accepting of the provisions when they provided oral evidence to the Committee. ALACHO and the City of Edinburgh Council agreed that the measures provided further security in the removal of the no fault ground, particularly in that increasing rent could not be used to drive out tenants. They also both highlighted that the measures were broadly similar to the current system for increasing rents and it was therefore sensible to keep them in the Bill. The City of Edinburgh Council stated that the measures provide “a good balance between making the tenant aware of what the proposed rent rise is and the need for the landlord to plan ahead.” \(^{140}\)

216. Witnesses representing the interests of bodies with legal expertise and those providing legal advice were generally in favour of measures to manage rent increases. Govan Law Centre felt providing sitting tenants with the ability to take large rent increases to Rent Service Scotland would be of benefit. However, as drafted, these would not allow for sitting tenants currently with overly high rents to escalate their case and they suggest that the Bill should allow those paying more than market rents to take their case to the rent officer.

217. Govan Law Centre also highlighted concerns that in circumstances where the Bank of England base rate increases, given that the Bill provides for a market test, landlords with buy-to-let mortgages will pay more, with the costs being passed on to tenants in the form of increased rents. \(^{141}\)

Committee recommendations

218. The Committee agrees with the principles behind the proposed rent increase measures and welcomes the predictability that one increase per annum with three months’ notice would afford the tenant in helping plan finances to deal with future rent increases.

219. The Committee also believes that, if used effectively, the measures should strike the right balance between allowing appropriate rent increases and security of tenure for the tenant, by not allowing excessive rent increases to be used as a lever to evict a tenant.

220. The Committee notes the role that Rent Service Scotland would play in setting rent levels and the role that the Tribunal will play in adjudicating rent increases, however it notes that there is some uncertainty around how the proposed measures would work in practice.

221. The Committee would welcome clarity from the Scottish Government on how the rent increase mechanism will work in practice. In particular, it calls on the Scottish Government to respond to comments made by the
222. The Committee would also welcome the Scottish Government’s response to comments made by Crisis regarding the liability for the payment of rent increases and whether it would consider if the Tribunal should have discretion to allow the period to pay unpaid rent increases to be longer than 28 days on receipt of appeal and how this could be achieved, given that this time period is prescribed in Section 26 of the Bill.

223. The Committee also calls 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.

Rent-Pressure zones

224. 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”. Landlords in the rent-pressure zone could not increase rents for sitting tenants by more than a specified percentage.

225. Paragraph 79 of the Policy Memorandum states that a local authority would have to satisfy Ministers that, “…rent increases for sitting tenants in the area to be designated were: rising excessively; causing hardship to sitting tenants in the area (e.g. measures of affordability poverty etc.) and having a detrimental effect on the broader housing system (e.g. through increased demand on social housing, or an increase in homelessness.

226. Section 33 of the Bill states that in order to designate a rent-pressure zone, Ministers would be required to lay regulations before the Parliament, subject to affirmative procedure, along with supporting evidence for designating the zone. Before laying such regulations, Ministers would have to consult with those representing the interests of tenants and landlords within the proposed rent-pressure zone.

227. Sections 30 and 31 provide for regulations which would set out the maximum percentage by which rents could be increased in the designated area. For each rent-pressure zone Scottish Ministers would decide how much more than this rent increases would be limited by. A rent-pressure zone would not affect the landlord’s rights to charge the tenant for improvements reasonably made to the let property.

228. If the landlord tried to increase the rent above the specified percentage then the tenant would not have to pay the rent above the specified increase.142

229. The Scottish Government Bill Team confirmed that the legislation would not determine the size of the zone, it would be for the local authority (at its discretion)
to set out in its application the area it determines is appropriate for the rent-pressure zone.

230. The Bill Team also confirmed that the caps in rent-pressure zones would apply only to sitting tenants. The intention of this provision is to strike the right balance between resolving issues for sitting tenants in areas where rents had been rising steeply, and the Scottish Government’s longer term aim of increasing overall housing supply, to be achieved through both public and private sector investment. The Bill Team explained—

We need to be able to attract additional investment in order to build more houses, and we have sought to strike a balance so that investors understand what we are doing and why we are doing it while still being able to make investment commitments with regard to building more housing and increasing housing supply.

231. The Bill Team confirmed that the zone could last up to five years per application and, where circumstance change, Ministers would have powers to vary the rent cap and also revoke the instrument which designated the zone if it transpired that it was no longer required.¹⁴³

**Increasing housing supply**

232. Many of the witnesses expressed the view that rent-pressure zones would not address the main underlying reason for rent increases, which they considered to be a lack of housing supply. Homeless Action Scotland and Crisis said that although rent-pressure zones could serve as an interim measure, they highlighted a requirement to ensure that associated wider measures are addressed, such as the provision of new homes in pressurised areas, otherwise sitting tenants would face increases when rent-pressure zones ended.¹⁴⁴ LetScotland also agreed that the solution was to get supply into the marketplace.¹⁴⁵

233. Shelter asserted that the value in determining an area as a rent-pressure zone would not just be the effect it would have on sitting tenants’ rent increases, but also that it would allow a local authority to focus on and act on rental market problems in its area. It also recognised that the rental market was a complex area and it would be for the Scottish Government to consider the impacts of rent across Scotland, to understand affordability and to think about what additional mechanisms or measures might be put in place to deal with the issue.¹⁴⁶

234. ARLA agreed that the measures might dissuade investors and stated that this would compound the situation whereby there was already not enough house building in Scotland. Their concern was that where there are supply issues, demand will increase and landlords may become more selective about whom they take on as a tenant. This could affect those on a low income or who have previously had homelessness, anti-social behaviour or rent arrears issues and who may, as a consequence, find it very difficult to secure a good-quality tenancy.¹⁴⁷
235. ALACHO did not think that the proposed rent-pressure zone measures would work and agreed with the view that the most effective solution to the issue of excessive rent rises was to deal with the shortage of provision in the housing sector. They felt that the measures would only be likely to affect sitting tenants in two specific local authority areas and that controlling rents in a market-driven sector is not the best approach to dealing with affordability.\textsuperscript{148}

236. The City of Edinburgh Council welcomed some of the measures. However, it had concerns that they may not have the intended effect because of the need to evidence the increasing rents in an area before rent-pressure zone status is applied for, with the effect that “the “damage may already be done before the zone can be put in place,”. The Council also agreed with the view that a more targeted approach to addressing rising rents would involve ensuring that there is a sufficient supply of new housing.\textsuperscript{149}

237. The Minister confirmed that the measures would be entirely discretionary. It would be up to individual local authorities to decide whether they wished to use the powers if rent increases in their area were above market levels and causing pressure in their local housing system. She agreed with the views expressed by several witnesses that increasing housing supply across all tenures was the sustainable long-term solution to addressing the affordability of housing. She confirmed—

\begin{quote}
...that is something that the Scottish Government has already announced that it will do through affordable housing. What we are currently doing to attract investment in the private sector and get more properties in the sector will make the rents more affordable. That is what we are consulting on, and that is what we are doing.\textsuperscript{150}
\end{quote}

Committee recommendations

238. The Committee notes that the rent-pressure zone measures are intended to be a discretionary tool for local authorities to target issues of rent affordability in their area. However it would welcome more information on why the Scottish Government considers the measures are necessary given that it is looking to increase supply.

239. The Committee, however, welcomes the Ministers commitment to increasing housing supply across all tenures and would welcome an update on the Scottish Governments action plan for increasing supply.

Issues around investment

240. Many of those representing letting agents and landlords did not agree with the rent control zone measures and had concerns that the measures would have an impact on investment by landlords, or that investors would pull out of a particular
area and invest elsewhere. Some of those representing local authorities also queried the measures.

241. RICS stated that the rental market was market driven and based on landlords getting a return on their investment and that rent is usually set to give a yield between 4 and 6 per cent, even in areas where rents had increased. RICS felt that where rents have risen, property prices are high and that the Scottish Government should tackle this. It also felt that tackling the rental market skews the housing market given that surveyors will take market rents and yield into account when valuing properties. 151

242. RICS added that rent control measures were too simplistic and that it was important to tackle the source of the problem rather than the outcome, which is rising rents. It stated that in considering rents, the capital value and the cost of running the property must be taken into account and there could be issues in rent-controlled zones if the Bank of England puts interest rates up and landlords with buy-to-let mortgages were not able to increase rents to reflect the increased rates, there was a risk the landlords could “go bust”. 152

243. The Scottish Association of Landlords also agreed that the private rental market was market driven. It stated that ONS statistics which showed a 1.6 per cent increase in average rents in Scotland was less than the rest of the UK, although it acknowledged that there were regional variations. It was also concerned about scaring off investors. 153

244. PRS 4 Scotland suggested that in cities where rent controls had been brought in, such as Stockholm and San Francisco, supply had decreased and there are long waits for private rental properties. It felt that there was a risk that rent controls could make Scotland less attractive to investors than the rest of the UK, affecting build to rent and therefore supply. It also highlighted the Private Residential Tenancies Board which tracks rent nationally in the Republic of Ireland. Their rents had increased by 10 per cent on average, but their Government pulled back on introducing rent controls at the last minute, due to concerns regarding supply. 154

245. PRS 4 Scotland also cited international evidence from Germany, the Netherlands and other countries that have had rent controls in their housing market systems in place for some time, allowing investors, landlords and tenants to get used to them. These countries also have incentive packages for landlords such as in Germany, where rent losses can be offset against other income in tax returns. They also have planning and legislative systems that promote housing supply. For example, in Munich, about five units are built for every 100,000, compared to two and a half in most of the main Scottish cities. He also cited evidence from Kath Scanlon of the London School of Economics who expressed the “danger of cherry picking an aspect of another country’s housing market policy, assuming that it can be dropped into your own housing market and expecting it to have a benign or even positive impact.” 155
246. ALACHO confirmed that where rent-pressure zones were applied, there could be a flight of investment away from the zone to adjoining areas. It cited evidence from where local authorities have attempted to control the number of houses in multiple occupation in a particular area, there has been spillover of investment of those types into adjoining areas.  

247. The City of Edinburgh Council confirmed that the bulk of its 57,000 rented properties were not build-to-let properties, but individual properties that may be backed by buy-to-let mortgages. They stated that if initial rents were capped, there was a risk that the economics would not work out and that the private sector tenancy would possibly collapse.  

248. Govan Law Centre did not think that the measures would drive investors from one local authority designated as a rent-pressure zone to another. It stated—

> I think that it is clear that we have not regained the position that we were at before the bubble burst in 2007-08. The people who have bought those properties are investors—the property is an investment. The idea that they will suddenly sell their properties en masse and flood the market, which would then respond by saying, “If there is such a supply, we will pay you less,” is unrealistic. We need to be realistic and not allow ourselves to take on board the assertions that the whole sector will somehow pull out its investment. That is nonsense, and it is not going to happen.  

249. The Minister acknowledged some investors’ concerns, however, she stated that other investors have confirmed that they did not see the rent-control zone measures as a disincentive to invest in the private sector as they were looking to the other measures they are introducing to promote private sector investment. She confirmed—

> We are clear that what the Bill proposes is proportionate. The rent capping proposal responds to spikes in particular areas, where rents are undergoing a huge increase. We do not think that that will deter investment. On balance, we feel that it is a proportionate measure and should be included in the Bill.  

Committee recommendations

250. The Committee notes that the measures are only being considered where areas have seen large increases, however it also notes that rents are largely market driven and notes concerns that measures to introduce rent controls could skew the market.  

251. The Committee calls on the Scottish Government to provide further information on whether it has evidence to show that local authorities are likely to use the rent-pressure zone measures.
252. The Committee also notes the concerns raised by witnesses that the rent-pressure zone measures could dissuade investors, however it also notes the Minister’s commitment to introducing other measures to encourage private sector investment.

253. The Committee would welcome further information on proposals to encourage private sector investment. The Committee also notes concerns that investors may choose not to invest in rent control zones, or potential zones and calls on the Scottish Government to provide information on how this will be monitored and prevented.

Data on private rents

254. Many of the witnesses felt that an important issue was that Scotland did not have accurate data on the private rented sector which was required to understand the market better.

255. For example, ALACHO stated that if the Scottish Government has objectives for the private rented sector, the sector needs to be better understood than it is currently. It acknowledged that there have been improvements in data on rents, but this has largely come from the sector and is therefore not necessarily fully independent. It identified gaps in data concerning property journeys in the private rented sector, particularly with the churn of houses moving in and out of the sector. The City of Edinburgh Council agreed, stating that whilst there was data on initial rents for private rented sector properties coming on to the market, it was difficult to account for those properties that are still being tenanted. It added—

There may be no rent rises for people who are continuing their tenancies, or there may be modest rent rises that are tied either to inflation or to a fixed percentage—perhaps 2 or 3 per cent—in the lease. Identifying rent rises for properties with sitting tenants is difficult.\textsuperscript{160}

256. RICS agreed, highlighting that the emphasis on advertised rents, using sites such as Zoopla and Rightmove would only highlight new rents and there would be no clear picture of what is happening with regard to existing tenants in existing stock. RICS confirmed that in a recent assessment of 30 per cent of their landlords, only a limited number said that they would wish to increase rents where they had good tenants in place, however introducing such measures could change the market and affect such tenants.\textsuperscript{161}

257. LetScotland and PRS 4 Scotland indicated that they did not support the introduction of the rent-pressure zone measures and both highlighted the situation in Aberdeen where, in the past few years, increases matched rising oil costs, recent market forces have corrected that more effectively than a rent-pressure zone could. They both felt that there was a lack of data on what was happening in
the market place and LetScotland highlighted a system they use to track rents in their portfolio which could possibly be applied nationally.\textsuperscript{162}

258. The Law Society highlighted the difficulties of tracking data on the rental market stating—

\begin{quote}
...if we track the market in any given area, we see that market areas can be incredibly sensitive, right down to individual streets and even different sides of the same street. It will never be an easy thing to get right, but that does not mean that it will not be necessary.\textsuperscript{163}
\end{quote}

259. The Minister confirmed she was not in a position to say how data could be improved, however, she confirmed that there were robust annual statistics on 18 broad rental market areas, some of which spanned more than one local authority area. She confirmed—

\begin{quote}
Rent Service Scotland and the Tribunal will publish information on how they set rents as well. It is in the Bill that they will publish the data on how they set the rents, make their determinations and adjudicate on rents. That will also help a local authority to determine whether it requires to invoke the discretionary power in its area.\textsuperscript{164}
\end{quote}

\section*{Committee recommendations}

260. The Committee notes concerns regarding the data available on the rental market and feels it is important that in order to enact changes to the market, good quality and robust data has to be readily available to local authorities and Ministers when proposals for a rent-pressure zone are being considered.

261. The Committee also notes concerns that whilst information appears to be available on new rents in the market, there appears to be a deficit of information on rents for sitting tenants and properties being rented.

262. The Committee calls on the Scottish Government to provide an update on how it will improve the collection of data on the rental market and how it will make this information available.

\section*{Calculating rent caps in Rent-pressure zones}

263. Sections 30 and 31 of the Bill provide for regulations which would set out the maximum percentage by which rents could be increased in designated rent-pressure zones. The formula Consumer Price Index (CPI) +1\%+N will be used for calculating rent cap percentages and therefore in those areas, a rent increase notice cannot increase the rent payable by more than that percentage.
264. The Living Rent campaign took issue with the formula proposed in the Bill to determine rent caps. It suggested that in some circumstances, it could be helpful if \( N \) could be a negative number in extreme cases.\(^\text{165}\) It stated—

> The formula in the Bill is CPI plus 1 percentage point plus \( N \), where \( N \) has to be a positive number. In the past, CPI has been as much as 8.5 cent—although it is low at the moment—so the formula could lead to quite high rent increases. We welcome the fact that certain things are being proposed, but we think that more work needs to be done to address quality issues.\(^\text{166}\)

265. PRS 4 Scotland suggested that the Retail Price Index (RPI) might be a more relevant measure of inflation to use, given that it takes account of housing costs. It suggested that it may be worth exploring this with the Office for National Statistics, although it understood that RPI is no longer designated as an official statistic by ONS, although it still reports on it.\(^\text{167}\)

266. ARLA confirmed that the Valuation Office Agency is creating a measure of CPI which takes housing into account (CPIH) and it hopes it will become the new national measure of inflation. It suggested this might be a more appropriate measure of establishing market rents.\(^\text{168}\)

267. ALACHO agreed that CPI is not necessarily a good measure of the costs that landlords face and that it is house price inflation that is responsible for increasing rents, rather than ordinary inflation.\(^\text{169}\)

268. Govan Law Centre cited evidence from the Scottish Parliament Information Centre briefing which showed that rents had increased in the four-year period from 2010 to 2014 by almost 40 per cent in Aberdeen and Aberdeenshire and by 17.2 per cent in Lothian. It highlighted that the CPI increase was 11.7 per cent and there was an argument that rents should go up by only 11 per cent. However, it also queried why rents should go up by any amount where a landlord has a buy-to-let mortgage that would be linked to the Bank of England’s base rate of 0.5 per cent.\(^\text{170}\)

Committee recommendation

269. The Committee notes comments received in evidence regarding the suitability of using CPI in the calculation of rent caps. It calls on the Scottish Government to respond to these concerns and whether it would consider alternative methods for calculating the rent caps as provided for in Section 34 of the Bill.
Exclusivity of measures to sitting tenants

270. Several of those providing evidence were of the view that rent caps should also apply to new tenants, as well as sitting tenants. For example, Living Rent Campaign stated that most rent increases happen between tenancies and there was a risk that landlords in rent control zones would increase the rent exponentially between tenancies to overcompensate for not being able to increase rent for sitting tenants. This could be a problem in areas where there are a lot of students who tend to move accommodation more regularly, such as Edinburgh or Aberdeen.  

271. The Scottish Association of Landlords explained that they understood that the proposal was about offering predictability of rents and not controlling the market. However it pointed out that a tenant with the security afforded by that protection might find it difficult to move on to another, similar property in the area because they might not be able to afford it.  

272. The Minister confirmed that the measures applied to sitting tenants only, however she thought that the measures were appropriate and confirmed—

> I do not think that there has been sufficient evidence to suggest that we should take the approach any further. I also think that doing that would take a lot more work and consultation than what we are intending to do with this Bill. The core part of the Bill is about security of tenure, stability for tenants and predictability in rent increases.

Committee recommendation

273. The Committee notes that the measures, as drafted, only apply to sitting tenants in areas which are designated as rent-pressure zones. The Committee is not minded, based on the evidence received, to call for these to be extended beyond sitting tenants. However it would welcome further information from the Scottish Government on how inflated rent increases might be prevented in situations where tenants move between tenancies.

Overall Committee recommendation

274. The Committee supports the general principles of the Bill and recommends to Parliament they be agreed to.
Gerry Monr was appointed by PRS Champion, Homes for Scotland, with funding from the Scottish Government, as Scotland’s private rented Sector “Champion”.

1 The Private Housing (Tenancies) (Scotland) Bill, as introduced (SP Bill 79, Session 4 (2015)).
6 Savills. Written submission.
9 The Property Store. Written Submission.
10 The Private Housing (Tenancies) (Scotland) Bill Policy Memorandum, (SP Bill 79–PM, Session 4 (2015)), paragraph 62.
17 The Council of Letting Agents. Written submission.
18 The National Landlords Association. Written submission.
21 The Chartered Institute of Housing. Written submission.
24 Alex Johnstone dissented.
25 Alex Johnstone dissented.
31 The Council of Letting Agents. Written submission.
37 Alex Johnstone dissented.
41 Newlyn Property Development. Written submission.
42 University of Aberdeen. Written submission.
47 Ken Layhe. Written submission.
48 Edinburgh University Students’ Association. Written submission.
50 Unite Students. Written submission.
51 Gerry Monr was appointed by PRS Champion, Homes for Scotland, with funding from the Scottish Government, as Scotland’s private rented Sector “Champion”.
52 PRS Champion, Homes for Scotland. Written submission.


RICS. Written submission.


Homeless Action Scotland. Written submission.

The Housing and Social Welfare Law Campaign Group. Written submission.

The Living Rent Campaign. Written submission.


Kincardine Estate. Written submission.


Policy Memorandum, paragraph 43.

Delegated Powers and Law Reform Committee. 75th report, 2015, Private Housing (Tenancies) (Scotland) Bill at Stage 1 (SP Paper 843).


Infrastructure and Capital Investment Committee. Official Report, 4 November, Col XX.


Citizens Advice Scotland. Written submission.


Infrastructure and Capital Investment Committee. Official Report, 2 December 2015, Col 16.


Letscotland. Written submission.
Where there the rent officer or Tribunal determines that a tenant’s rent should greater than the

34 Infrastructure and Capital Investment Committee. Official Report, 4 November, Col 16.
40 Infrastructure and Capital Investment Committee. Official Report, 4 November, Col 16.
42 Homeless action. Written submission.
48 Shelter. Written submission.
58 Where there the rent officer or Tribunal determines that a tenant’s rent should greater than the previous rent, Section 26 of the Bill states that “the tenant will have 28 days within which to pay the landlord the full amount due. If the tenant fails to pay the landlord within this timescale, on day 29 the sum is treated as rent arrears for the purpose of that eviction ground.
73 Infrastructure and Capital Investment Committee. Official Report, 11 November, Col 44.
79 Infrastructure and Capital Investment Committee. Official Report, 18 November, Col 42.


Annexe A

Extracts from the Minutes and associated written evidence

20th Meeting, 2015 (Session 4), Wednesday 7 October 2015
1. Decision on taking business in private: The Committee decided to take items 3 and 4 in private.
3. Proposed private tenancies bill: The Committee considered and agreed its approach to scrutiny of the proposed bill at Stage 1.

21st Meeting, 2015 (Session 4), Wednesday 4 November 2015
1. Private Housing (Tenancies) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Barry Stalker, Private Housing (Tenancies) (Scotland) Bill Team Leader and Kirsten Simonnet-Lefevre, Solicitor, Scottish Government.
2. Private Housing (Tenancies) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1, in a round-table discussion, from—
Robert Aldridge, Chief Executive, Homeless Action Scotland; Rosemary Brotchie, Policy Manager, Shelter Scotland; Liz Ely, Chair, Living Rent Campaign; Gary Paterson, Vice President Communities, National Union of Students (NUS) Scotland; Beth Reid, Policy Manager (Scotland), Crisis; Fraser Sutherland, Policy Officer, Citizens Advice Scotland

Written evidence – Wednesday 4 November 2015

- Citizen Advice Scotland
- Crisis
- Homeless Action Scotland
- Living Rent Campaign
- Living Rent Campaign Supplementary Submission
- NUS Scotland
- Shelter Scotland
- Shelter Scotland Supplementary Submission
- Shelter Scotland Correspondence
- Shelter Scotland Additional Correspondence
22nd Meeting, 2015 (Session 4), Wednesday 11 November 2015

4. Private Housing (Tenancies) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1, in a round-table discussion, from—
John Blackwood, Chief Executive, Scottish Association of Landlords; Dr John Boyle, Spokesperson for PRS 4 Scotland and Director of Research and Strategy at Rettie & Co Ltd; David Cox, Managing Director, Association of Residential Letting Agents (ARLA); Katy Dickson, Policy Officer (Business and Property), Scottish Land & Estates; Jonathan Gordon, Chair, PRS Forum, RICS Scotland; Malcolm Warrack, Chairman, LetScotland; Amanda Wiewiorka, Chair, Policy Group, Council of Letting Agents.

Written evidence – Wednesday 11 November 2015

Scottish Association of Landlords
PRS 4 Scotland
PRS 4 Scotland Supplementary Submission
PRS 4 Scotland Second Supplementary Submission
Association of Residential Letting Agents (ARLA)
Scottish Land & Estates
RICS Scotland
LetScotland
LetScotland Supplementary Submission
Council of Letting Agents

23rd Meeting, 2015 (Session 4), Wednesday 18 November 2015

1. Decision on taking business in private: The Committee agreed to take item 5 in private, and agreed that future discussions on the consideration of evidence and draft reports on the Private Housing (Tenancies) (Scotland) Bill should be taken in private at future meetings.

2. Private Housing (Tenancies) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Tony Cain, Policy Manager, Association of Local Authority Chief Housing Officers (ALACHO); Kenny Haycox, Private Rented Services Manager, City of Edinburgh Council; Councillor Harry McGuigan, Spokesperson for Community Well-being, and Silke Isbrand, Policy Manager, Community Resourcing Team/Housing, Convention of Scottish Local Authorities (COSLA); Mike Dailly, Solicitor Advocate and Principal Solicitor, Govan Law Centre; Chris Ryan, Senior Associate Solicitor, Head of Housing and General Team, Legal Services Agency; John Sinclair, Member of the Property and Land Reform Committee, Law Society of Scotland.

5. Consideration of evidence (in private): The Committee considered evidence heard on the Private Housing (Tenancies) (Scotland) Bill.
Written evidence – Wednesday 18 November 2015

- Association of Local Authority Chief Housing Officers (ALACHO)
- Convention of Scottish Local Authorities (COSLA)
- Govan Law Centre
- Legal Services Agency
- Law Society of Scotland

25th Meeting, 2015 (Session 4), Wednesday 2 December 2015
1. Private Housing (Tenancies) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
   Margaret Burgess, Minister for Housing and Welfare, Barry Stalker, Head of Private Rented Sector Strategy and Private Tenancies Bill Team, and Kirsten Simonnet-Lefevre, Principal Legal Officer, Scottish Government.
2. Private Housing (Tenancies) (Scotland) Bill (in private): The Committee considered evidence heard on the Bill at Stage 1.

1st Meeting, 2016 (Session 4), Wednesday 6 January 2016
5. Private Housing (Tenancies) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were suggested and the Committee agreed to consider a revised draft at its meeting on Wednesday 13 January.

2nd Meeting, 2016 (Session 4), Wednesday 13 January 2016
2. Private Housing (Tenancies) (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.

Annexe B

Infrastructure and Capital Investment’s Committee’s online survey

- Summary of responses to the online survey, Scottish Parliament Information Centre (SPICe)

List of other written evidence

- Anonymous
- Brodies LLP
Annexe C

Reports from other committees

- Finance Committee Report, 2015 (Session 4): Report on the Private Housing (Tenancies) (Scotland) Bill’s Financial Memorandum
- Delegated Powers and Reform Committee’s 75th Report, 2015 (Session 4): Private Housing (Tenancies) (Scotland) Bill at Stage 1