



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 4 November 2015

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**INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE**  
**21<sup>st</sup> Meeting 2015, Session 4**

**CONVENER**

\*Jim Eadie (Edinburgh Southern) (SNP)

**DEPUTY CONVENER**

\*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

**COMMITTEE MEMBERS**

\*James Dornan (Glasgow Cathcart) (SNP)

\*Alex Johnstone (North East Scotland) (Con)

\*Mike MacKenzie (Highlands and Islands) (SNP)

Siobhan McMahon (Central Scotland) (Lab)

\*David Stewart (Highlands and Islands) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Robert Aldridge (Homeless Action Scotland)

Rosemary Brotchie (Shelter Scotland)

Liz Ely (Living Rent Campaign)

Gary Paterson (National Union of Students Scotland)

Beth Reid (Crisis)

Kirsten Simonnet-Lefevre (Scottish Government)

Barry Stalker (Scottish Government)

Fraser Sutherland (Citizens Advice Scotland)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Infrastructure and Capital Investment Committee

Wednesday 4 November 2015

*[The Convener opened the meeting at 09:15]*

### Private Housing (Tenancies) (Scotland) Bill: Stage 1

**The Convener (Jim Eadie):** Good morning and welcome to the 21st meeting in 2015 of the Infrastructure and Capital Investment Committee. I remind everyone present to switch off mobile phones, as they affect the broadcasting system. As meeting papers are provided in digital format, you may see tablets being used during the meeting. We have received apologies from Siobhan McMahon.

Under agenda item 1, the committee will take evidence from the Scottish Government bill team responsible for the Private Housing (Tenancies) (Scotland) Bill. I welcome Barry Stalker, who is the bill team leader, and Kirsten Simonnet-Lefevre, who is a solicitor in the Scottish Government. I invite Mr Stalker to make an opening statement.

**Barry Stalker (Scottish Government):** Thank you.

The Scottish Government set out its vision for the private rented sector in the strategy that was published in 2013. That vision is for

“a private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment”.

The bill will contribute to realising that vision by introducing a new private residential tenancy, which will improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors.

The policy has been developed from the work of the tenancy review group, which ministers established to examine the current tenancy regime. The group reported to ministers in May 2014 and recommended that

“the Short Assured Tenancy (SAT), and the Assured Tenancy (AT) be replaced by a new private tenancy that covers all future PRS lets.”

A landlord’s ability to end a tenancy on a specified date—commonly known as the “no-fault ground”—is not included in the bill. Instead, landlords will be able to recover possession of their property using the new, modernised grounds, which cover all the reasonable circumstances that

a landlord would need. Twelve of the 16 grounds are mandatory.

Improved security for tenants will mean that they 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 and communities.

We know that it is tenants who are most likely to end their tenancy and that, when a landlord serves notice to quit, most tenants leave without the need for the landlord to go to court. We expect that pattern broadly to continue.

Under the new tenancy, should a tenant contest a notice to leave, the landlord can apply to the first-tier tribunal to recover possession. The tribunal will provide an accessible, specialist form of redress for both tenants and landlords.

As the new tenancy is effectively open ended, the bill also makes provision for rents. Tenants will be protected against excessive rent increases that take their rent to beyond the market rate. Adjudication will be provided by rent service Scotland, with a route of appeal to the first-tier tribunal.

The bill also provides for rent predictability, whereby rent increases can take place only once in a 12-month period, with three months’ notice. That will help tenants to plan their finances for any future rent increases.

Where rents in a local area have risen excessively and that is having a detrimental effect on tenants and housing, local authorities will be able to apply to ministers to designate a rent pressure zone. Before they make their decision, ministers will need to consult both landlords and tenants. Any rent cap will apply to sitting tenants, will be of a minimum of the consumer price index plus 1 per cent, and will be for a period of up to five years.

Since October 2014, the Scottish Government has consulted extensively on the bill. We undertook two public consultations, with 2,500 and 7,500 responses respectively. We have listened to all stakeholders and sought to understand their perspectives on the proposals. That has informed the policy development—for example, the number of grounds for possession has increased from eight to 16.

We have also undertaken impact assessments, including on business, children’s rights and wellbeing, and equalities. They found that improving security of tenure could particularly benefit some vulnerable groups that may have found it difficult to find secure, long-term

accommodation in the PRS; that the bill has the potential to advance the realisation of children's rights and wellbeing; and that, although it is recognised that there may be some reduction in flexibility for landlords in managing their properties in comparison with the current system, that will not significantly affect the most important driver, which is to get a return on investment. Landlords will still be able to charge market rents, recover possession if the tenant does not pay the rent, and sell their property. Lenders will still be able to recover possession in the event of mortgage default.

Overall, ministers have sought to strike a fair balance in what is being proposed in the bill, and to ensure that the new tenancy will support a well-functioning, modern sector that works for tenants and landlords.

**The Convener:** Thanks. I will kick off the questions. What are the key differences between the current short assured tenancy framework and the proposed new tenancy?

**Barry Stalker:** The first key difference is that the new system is clearer and simpler. The review group found that the assured tenancy system is cumbersome, complex, ambiguous and difficult for many people to understand. There are lots of pre-notice requirements and it is quite easy for a landlord who thinks that they are dealing with a short assured tenancy in fact to be dealing with an assured tenancy, if they have not served the notices in the right order and so on. One of the review group's key considerations, therefore, was to ensure that the new tenancy would be simpler and clearer to use, so that everybody would understand their rights and obligations.

The second key difference, as outlined in my opening statement, is that the new tenancy rebalances the relationship between tenants and landlords. Under the assured tenancy system, landlords who use a short assured tenancy can end the tenancy at the end date on the no-fault ground. That has not been included in the new tenancy. In effect, landlords will now need a reason to end the tenancy, and all reasonable circumstances have been included in the grounds.

Finally, the assured tenancy system was developed in a different age: the late 1980s. There is a lot of evidence that the short assured tenancy was not intended to be used that often. However, it has become the most common tenancy. The bill provides a new tenancy that works for the sector that the private rented sector has become. It is a modern tenancy for the private rented sector, which has grown substantially in recent years and includes a large number of tenants who look to settle for the longer term, as well as tenants who continue to look for the flexibility that the PRS has always provided.

**The Convener:** You talked of rebalancing the relationship between tenants and landlords. Is it the Government's view that the current short assured tenancy arrangements and framework disadvantage the tenant?

**Barry Stalker:** The Government's view is that they can do that. One of the key benefits that we are looking to achieve from the new tenancy is to help tenants better assert their rights without the potential concern around receiving an eviction notice for an unspecified reason.

There are many good landlords in the PRS, and the sector plays an important part in delivering housing supply across Scotland. However, there are still issues around quality in the sector, and particularly around property condition. Having the new tenancy should help tenants to feel more at home and more settled in their communities. It will help them to ask landlords to comply with their obligations and, if necessary, it will help them to exercise their rights, for example to go to the housing tribunal.

**The Convener:** You mentioned the high level of responses that have been received during the consultation process and the impact assessments that have been carried out. Are you satisfied that the consultation process has been sufficiently rigorous and robust to gather all the views of the people who will be affected by the bill? What steps did you take to take the temperature of the sector and of tenants more widely?

**Barry Stalker:** The short answer to your first question is yes. As an official, I am satisfied with the consultation process. We undertook two public consultations.

For the first consultation, we commissioned focus groups to reach out to tenants and landlords who may not necessarily always look to participate in consultations. As officials, we have always been available to engage with stakeholders, including at public events. We are open to discussing with stakeholders any issues or concerns that they may have with our proposals or indeed the opportunities that they see for the new tenancy. We have always done that.

If you look at the trajectory of what we have done, you will see changes in what we eventually put in the bill. I mentioned that the number of grounds has increased. Clearly, the balance is that landlords need to feel confident that the grounds cover all reasonable circumstances. We went from eight grounds to 16—for example, we included a ground that landlords have long been calling for on abandonment—so we have listened to landlords and we have also listened to tenants' representative groups. We have done what we can and we will continue to listen to what stakeholders think about the bill proposals.

**The Convener:** That is helpful.

Can you explain the bill's provisions regarding the statutory terms of the tenancy as set out in part 2, and the tenancy information requirements—which are similar to the current tenant information pack provisions—as set out in part 3? Can you perhaps tell us what benefits the bill's provisions might provide to both tenants and landlords?

**Barry Stalker:** I will start and I will ask my colleague from the Scottish Government legal directorate to contribute as well. On the tenancy terms, the tenancy that the bill introduces is a new tenancy. It is not building on the Housing (Scotland) Act 1988 or on the assured tenancy; it is a new statutory tenancy, and it is open ended.

Part 2 sets out the statutory terms of that new tenancy—the key terms that will apply to all tenancies under the new regime. Part 3 looks at the information that needs to be acquired. As you correctly say, currently landlords have a mandatory requirement to provide information to tenants through the tenant information pack. We are looking to continue the requirement for landlords to provide key information to tenants through the new tenancy system.

We want the new tenancy to be clear so that everyone understands what it means for them and what their rights and responsibilities are.

**Kirsten Simonnet-Lefevre (Scottish Government):** In guidance, we will issue a model tenancy agreement, which will contain the statutory terms that are in schedule 2 and the discretionary terms that may be used by landlords. For example, where landlords and tenants agree more generous rights of access notice—three days' notice rather than 48 hours, for instance—it might be possible to override the statutory terms.

Under the regulations—once we make them—landlords and tenants will be able to agree slightly more generous terms to override the statutory terms. It will also be possible to add further statutory terms to the list, should that be needed in the future. The information that landlords must give tenants will include the written terms of the tenancy and any other information that needs to be passed over in relation to the condition of the property and so on.

We will make regulations that will set all that out quite clearly, together with the method by which the information may be given, which perhaps could be on paper, electronically or by text. There may be a number of ways in which landlords and tenants are able to communicate with each other in the new, simplified tenancy arrangement.

**The Convener:** For clarification, can you say whether the model tenancy agreement will be contained in the regulations?

**Kirsten Simonnet-Lefevre:** It will not be. The regulations will give the statutory terms and the guidance will give other discretionary terms. There will be a framework that people will be able to use.

**The Convener:** Do we have any indication at this stage of what the timescales will be for the publication of those things?

**Barry Stalker:** As Kirsten said, we need to develop the model tenancy agreement through secondary legislation. We are looking to hit the ground running on that and obviously we need to have it completed in time for the new tenancy commencing, which we are looking to do by late 2017.

09:30

**Mike MacKenzie (Highlands and Islands SNP):** The bill proposes an initial tenancy period of six months. Why was that period chosen? Was a longer period considered?

**Barry Stalker:** Yes. The concept behind the initial tenancy period came from the review group, which considered the matter. In summary, because a short assured tenancy works on a six-monthly block—that is the building block on which things work—the view was that it would be good to carry that over to help the sector transfer the current tenancy to the new one.

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—for example, they will not be able to seek repossession on most of the grounds. 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.

Transaction costs and so on are involved when a landlord puts their property into the PRS. They probably want to have a tenant in the property for the longer term, but they certainly want that for the short term, so landlords will find the period helpful. Equally, from a tenant's point of view, there must be a balance. A number of the grounds for repossession, such as the landlord's intention to sell the property, will not apply during the initial tenancy period. That will reassure tenants that they will have a degree of stability over that period.

The trick is to have stability and flexibility, and we recognise that the PRS provides both. If a tenant would like to have a shorter period and the landlord is content with that, the initial period can be less than six months. However, we have set it out in the bill that the period must be a minimum of six months.

**Mike MacKenzie:** That seems to make sense. I will move on to the bill's approach to notices to end a tenancy. The notice period for tenants is shorter than that for landlords. What is the reasoning behind that?

**Barry Stalker:** You are right that a tenant will be required to give four weeks' notice to a landlord if they have been in the property for less than six months or to give eight weeks' notice if they have been in the property beyond that period. A landlord will be required to give four weeks' notice to a tenant if that is before the six-month period has ended and, after that period, the landlord will have to give notice of 84 days, which is basically 12 weeks.

I suppose that the easiest way to explain that is by saying that, when a landlord is recovering possession, the property is not their home, so they will probably look to re-let it. We feel that the timeframe that we have set out will be sufficient for that. When a tenant is looking to leave a property, it is their home that they will be leaving, so we thought that they should have a longer period because they might, for example, need to look for alternative accommodation.

This comes down to a balance. Landlords will have a shorter notice period than tenants will because landlords will be able to re-let the property, whereas tenants will need a bit more time to look for alternative accommodation.

**Mike MacKenzie:** A provision in the bill prevents a tenant from ending a tenancy during the initial period unless they have the landlord's prior written agreement. That could contravene the tenant's common-law right to rescind the tenancy for breach of contract. Is there a difficulty in that regard?

**Kirsten Simonnet-Lefevre:** The provision will ensure that the tenant is tied in for the minimum six-month period. The right of rescission for common-law tenancy exists because tenants often do not have many remedies other than to end the tenancy when, for example, the landlord does not repair a broken boiler. In contrast, tenants in a statutory tenancy arrangement—whether it is the current assured tenancy or the new private residential tenancy—have a large number of remedies in pieces of legislation to ensure that landlords meet repairing standards and so on. We felt that, to give the landlord security, the tenant should be able to tie themselves in for the initial period and would not require the right of rescission, because of all the other remedies that are available.

**Mike MacKenzie:** I am not quite 100 per cent with you there. Will the tenant still retain the common-law right to rescind the agreement in the event of a breach by the landlord?

**Kirsten Simonnet-Lefevre:** No. The tenant will not have the common-law right simply to end the tenancy, but they will have other rights to ensure that the landlord complies with all the requirements of the tenancy and with other legislation.

**Barry Stalker:** This comes down to the need to strike a balance. Increasing security of tenure for tenants helps to enable tenants to assert their rights. For example, when a landlord has not met their obligations on the property's condition, a tenant should be able to speak to the landlord about that and, if the landlord does not do anything about it, the tenant has a course of redress in going to the tribunal. In such a situation—to which I think Kirsten Simonnet-Lefevre is referring—when landlords are not meeting their obligations, tenants have a means of redress to ensure that landlords comply.

I think that Kirsten Simonnet-Lefevre is saying that, in other areas, tenants might not have the same range of redress measures available, so the only form of action that is available to them is ending the agreement. However, we do not see that as the case with the new tenancy.

**James Dornan (Glasgow Cathcart) (SNP):** Excuse me, convener—I have a brief question for Mr Stalker.

**The Convener:** Okay.

**James Dornan:** Are you confident that the tenant is not losing out in any way through the change?

**Barry Stalker:** We have sought to strike a balance; I mentioned the need to rebalance the relationship between tenants and landlords. The provision is about maintaining landlords' confidence in letting out their property while improving tenants' security and their ability to assert their rights, and addressing how tenants feel about their home and how settled they can feel in where they stay.

**Mike MacKenzie:** Forgive me for being a bit pedantic, but I will seek a wee bit of clarification that will perhaps assist us. Kirsten Simonnet-Lefevre mentioned the situation of a tenant with a broken boiler. There is no heating, it is the middle of the winter and the landlord is unable or refuses to repair the boiler. At that point, the tenant cannot end the tenancy but has to go to the tribunal.

In the circumstances that I have described, are you confident that the tribunal would be able to take effective action before the tenant froze to death? I am sorry to put it in those terms, but I am trying to understand the matter properly.

**Barry Stalker:** When we set out legislation such as this, we tend to take a general approach. You mention a specific and extreme scenario, which

nobody would want. On balance, we felt that the provision would give tenants the ability to assert their rights and go to a tribunal, which will be an effective place for them to go to. A tribunal has been called for and supported not just by tenants but by landlords as a more accessible form of redress. It will provide specialist redress on housing, which is not so much the case under the generalist approach of the current system, in which people need to go to court.

**Mike MacKenzie:** Thank you—I will move on.

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** Can I come in?

**Mike MacKenzie:** I have one more question, convener, but I am happy for Adam Ingram to come in.

**Adam Ingram:** Have you looked at the evidence on how tenants use the common-law right at present and the extent to which they will refer cases to the tribunal? It could be argued that it is much easier for tenants to use their common-law rights than to access a tribunal, in which case the change would be a disadvantage to tenants. What evidence have you looked at?

**Barry Stalker:** As you are probably aware, the tribunals are changing. At the moment, for issues that are to do with a property's condition and the repairing standard in the PRS, tenants go to the Private Rented Housing Panel, which is a tribunal. That will merge into the first-tier tribunal that we refer to in the documents that accompany the bill.

The PRHP receives around 200 to 300 applications a year, which relate mainly to the repairing standard but in some cases to rent. That number of applications is not as high as we might expect, given the evidence on some parts of the PRS, where there are issues with condition. Through the new tenancy and by improving tenants' security of tenure, we are looking to help tenants to use the redress that is available to them.

If someone stays somewhere and regards it as their home, they might want to improve it and not have to move. They might want to have the place where they are staying, which is their home, meet the requirements that it should meet and perhaps even go beyond that.

The evidence is that, as a result of the new tenancy that we have set out, more cases could well go to the tribunal. We have reflected that in the accompanying documents, including the financial memorandum.

**Adam Ingram:** We can explore that with other witnesses.

**Mike MacKenzie:** I will move on. One of the significant proposals in the bill is the removal of

the no-fault ground for repossession. There is a balance to be struck between providing tenants with greater security of tenure and dealing with the concern that we have heard from landlords that the measure will hinder investment in the private rented sector. How did you reconcile those two concerns?

**Barry Stalker:** Again, this comes down to a balance. Ministers set the overall objective, which is to improve security of tenure for tenants, balanced with appropriate safeguards for landlords, lenders and investors. That drove the subsequent development of the policy on the new tenancy.

The balance that we have struck is that landlords need to feel confident that they will be able to manage their properties effectively, which is why the grounds are important. We have said that the legislation will provide grounds for all reasonable circumstances in which landlords would need to recover possession of their property.

I have talked about the benefits to tenants of not having a no-fault ground in the new tenancy system. As I mentioned at the end of my opening statement, ultimately, the most important thing for landlords is that they can get a return on their investment and, with the grounds that we propose, they will still be able to do that. They will be able to charge market rents for their properties. If they want to, they will be able to sell properties to realise their capital value. Landlords will be able to manage their properties effectively, because we have provided for grounds that will enable that.

Therefore, the Government sees nothing in the bill that will fundamentally affect landlords and investment. That said, we have listened carefully to landlords. We know that there is strength of feeling out there and that landlords do not want the no-fault ground not to be included. They have made that case strongly to us, but ministers' position is that the bill strikes the right balance. The important point is that, through what we have set out in the new tenancy, landlords will still be able to effectively manage their properties. That is why it is important to get the grounds right.

**The Convener:** On the point about the no-fault ground being removed and replaced with a series of other criteria, have you evaluated the 7,500 consultation responses that you received to divide them between those who are in favour of and those who are against the provision?

09:45

**Barry Stalker:** The first consultation asked about the broad policy intention and 81 per cent of respondents were in favour of removing the no-fault ground. However, landlords and investors

were predominantly opposed to its removal. The position depends on the way in which we look at the consultation. In simple terms, landlords, letting agents and investors tended not to favour the ground's removal, whereas tenant representative bodies and groups favoured its removal. From ministers' point of view, what is important is the balance that I talked about and whether removing the no-fault ground will fundamentally alter the sector and what landlords can get from the sector, which, ultimately, is to be able to manage their properties effectively and get a return on their investment.

**The Convener:** I understand that. I just wanted to know what the balance of opinion was in the consultation. You said that 81 per cent of responses were in favour of removing the no-fault ground. Is that right?

**Barry Stalker:** Yes.

**The Convener:** Does Mike MacKenzie have any final questions?

**Mike MacKenzie:** Yes. I will explore the issue slightly more. I absolutely accept Barry Stalker's suggestion that the primary motivation of any landlord is getting a return on their investment, but what situation will a landlord be left in if they want to remove an antisocial tenant? The tenant might be continuing to pay his rent so, in that sense, the landlord is making good on his investment. However, as a good neighbour and a responsible landlord, he might wish to take action. Would he be impeded from doing so by the removal of the no-fault ground?

**Barry Stalker:** In the proposals that we have set out in the bill, landlords will not be impeded from dealing with antisocial behaviour. Antisocial behaviour is not easy for anyone to deal with. Whether it is genuine antisocial behaviour can be a subjective question. Someone might view behaviour as antisocial that another person sees as just a different lifestyle. I will illustrate that. If an elderly couple were living next door to a young family, someone who likes peace and quiet might be living next door to someone who makes quite a lot of noise. That is never an easy thing for landlords to deal with.

What is important when we are looking at the potential for someone to be evicted from their home is that there should be fair and due process. That is what we set out in the bill. If there is an issue with antisocial behaviour, landlords will still be able to deal with that effectively—first by engaging with the tenant and looking to resolve the problem with them or possibly their neighbours. Ultimately, if it is needed, the landlord has a ground that they can use to evict the tenant.

**James Dornan:** I would like to ask you a couple of questions about eviction grounds. There are a

number of eviction grounds, some of which have received strong support and some of which have received mixed support. Will you briefly outline the proposed process for a landlord to end a tenancy and the role of the tribunal in that regard?

**Barry Stalker:** We have simplified the process and made it clearer. There is one notice, which is a notice to leave. If a landlord wants to end a tenancy, they will issue the tenant with a notice to leave. They will need to do that within the correct time period and they will need to cite the grounds on which they are asking the tenant to leave. The tenant can leave, and we have provided for that in the grounds. If the tenant leaves of their own accord, that brings the tenancy to an end. However, the tenant is also able to choose to stay and contest the notice to leave. At that point, the landlord will need to send the notice to leave to the tribunal. Under section 11 of the Homelessness etc (Scotland) Act 2003, they will also need to inform the local authority that they are seeking eviction. We have joined the provision up with that legislation.

When the tribunal receives the notice to leave, the landlord will have submitted their evidence and it will be for the tribunal to determine. Twelve of the 16 grounds in the legislation are mandatory and, if the tribunal determines that one of those grounds has been met, it must order repossession by the landlord. The other four grounds have a discretionary element.

In most cases, tenants will leave. We know that, in most cases, when a landlord asks the tenant to leave, the tenant does that. However, we accept that there will be cases in which tenants quite rightly—because it is their right—will contest the notice to leave. That is where the tribunal will come in.

**James Dornan:** I believe that all the grounds used to be mandatory. Now, as you say, four of them have a discretionary element. Why is that?

**Barry Stalker:** When all the grounds were mandatory, there were eight grounds; now, there are 16. We are looking to strike a balance—we need to be fair to tenants and landlords—and we have listened to stakeholders. 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.

**James Dornan:** Okay. Let us move on to another point. Homeless Action Scotland and Shelter Scotland have suggested that the grounds covering situations in which the property is required by the landlord for another purpose do not contain definitions that are sufficiently tight to

protect against the potential for abuse by the landlord. How would the Scottish Government respond to such concerns?

**Barry Stalker:** We are setting out the legislation clearly. If Parliament passes the bill, work will be done beyond that, including through secondary legislation. In effect, we have set out the high-level principles on the face of the bill. We intend to issue guidance to landlords so that they are clear about what evidence will be required. The tribunal will also have a view on what the grounds mean and on what evidence it will be looking for to ensure that the grounds are met.

We have included safeguards so that, if a tenant believes that a landlord has sought an eviction not on genuine grounds, the tenant will be able to go to the tribunal to seek compensation, which they will get if the tribunal finds in their favour. Again, it is about balance. Most landlords will be absolutely genuine, and they need to feel confident that they will be able to recover possession of their property. That is why they put it up for rent and make that contribution to housing supply. On the other hand, tenants need to feel confident that, when a landlord says that they are seeking repossession on a specified ground, it is genuine.

**James Dornan:** I take it that Homeless Action Scotland and Shelter Scotland are aware of what you have just said to me. Do you still have some persuading to do with them?

**Barry Stalker:** We regularly speak to all stakeholders, including Homeless Action Scotland and Shelter Scotland, so they may well be aware of the points that I have just covered.

**David Stewart (Highlands and Islands) (Lab):** I want to touch on a question that Shelter Scotland has raised with me about rent arrears. Shelter Scotland's concern is that ground 11, on rent arrears, is disproportionate and unfair to tenants. Perhaps Mr Stalker or his colleague could answer a very specific point in relation to that.

Ground 11 talks about rent arrears over a three-month period, not about three months' rent arrears. It may seem a pedantic point, but let me give you an example. Someone gets a new job and they are waiting for their salary to come in. They are one month behind in their payments and they are unable to catch up within a three-month period. Technically, they are in arrears over a three-month period, which is a ground for eviction.

Is Shelter Scotland right to raise the concern that, if someone is one month in arrears over a three-month period, they could be evicted? That seems to me and to Shelter Scotland to be unfair and disproportionate. If that is correct, Mr Stalker, could you look at amending the bill so that that ground is changed?

**Barry Stalker:** You have set out how the ground works. Again, it comes down to a question of balance, and ministers have tried to strike the right balance. I mentioned previously why that is important. However, there is still some debate around whether a one-month period is sufficient for the mandatory ground to kick in. Your question would probably be better answered by the minister. From a policy point of view, we have tried to—

**The Convener:** I know that you cannot give an answer on behalf of the minister but, in theory, could you look at replacing the period of three months with, say, a period of six months?

**Barry Stalker:** We will respond to the committee's stage 1 report.

**David Stewart:** To echo the convener's point, we have to balance the needs of tenants and the needs of landlords. I understand that. However, it seems to me that Shelter has a point and that the scenario in which someone can be evicted for being one month in arrears over a three-month period is extremely unfair to tenants. I also assume that owners do not particularly want that, because voids are not a good thing for their cash flow. Owners want to ensure that there is security, too.

I think that the way in which the provision is phrased makes it unfair. I know that, as an official, you cannot make commitments today, but could you ask the minister to go homeward and think again on the issue? I think that it is unfair, and I think that tenants across Scotland will think that it is grossly unfair. The rest of the bill seems to be sensible, but that ground is not.

**Barry Stalker:** I am happy to relay to the minister your general support for the bill as well as the points that you have made.

**Adam Ingram:** Some suggestions for additional eviction grounds that were made by respondents to the consultation were not taken forward by the Scottish Government. In particular, there is no general eviction ground that would allow landlords to recover properties that were let to students at the end of the academic year or, more generally, to recover properties that were required for the purposes of a subsequent holiday let. Can you explain the Government's reasoning for not adopting those suggestions?

**Barry Stalker:** The ministers' overall aim was to improve security for tenants and to balance that with safeguards for landlords, lenders and investors. That has guided the policy development in the area. Further, as I mentioned earlier, we wanted a system that was popular and simple to understand. Ministers took the position that they want all tenants who transfer from the current assured system to the new system to be treated in

the same way and to have the same rights under the new tenancy.

When there is one broad tenancy that covers a diverse sector, there will be an element of strain at its margins, and what you have outlined is an example of that. We recognise that, for the student market, landlords will need to adapt their practice to reflect the changes in the new tenancy, but we think that that should not be insurmountable. For example, the legislation states that the minimum time after which a tenant can provide a notice to leave is eight weeks, although it could be longer, and a landlord can ask a tenant whether they have an idea of when they might be looking to move out. It would obviously be up to the tenant to decide that, but there is nothing to prevent a landlord from asking the question. Even if a tenant leaves their decision to the last moment, there will still be eight weeks in which the landlord will know for certain that the tenant is seeking to leave the property, which will provide a window for the landlord to seek to re-let the property.

We accept that the provisions will have some impact on the holiday let and student let markets, but we think that the sector will be able to adapt to the new situation.

**Adam Ingram:** There was a question about holiday lets under the 1988 act. A landlord might be able to operate a business model that involves mainly longer-term lets but that involves some short-term holiday lets over the summer—for example, in Edinburgh, with the festival on the go. Will that still be possible under the new legislation?

10:00

**Barry Stalker:** Under the 1988 act, if a landlord lets out to a tenant a property that they have previously let out as a holiday let and they inform the tenant that it has been let out as a holiday let and that they intend to do that again, that allows them to use a ground to recover possession. Alternatively, if it is a short assured tenancy, they can just set a date and recover possession in that way.

The new tenancy is about improving security for tenants, and the removal of the no-fault ground has been key to that and to ministers' position. With that in mind, 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.

**Adam Ingram:** Okay. Thanks.

I want to raise some issues associated with the first-tier tribunal. When will the tribunal be operational and how might it work in practice? In particular, will you talk about the timescales for eviction cases, the cost of using the tribunal and the potential for legal aid being made available to tenants?

**Barry Stalker:** On the timescales, the new tribunal system is being created and the Tribunals (Scotland) Act 2014, from which it is derived, has been implemented. In late 2016, the new system will start with a housing and property chamber, and there will then be a staged process in which more of the existing tribunals will move into it. It will develop and build from there.

Costs are not a matter for the bill, but ministers have not reached a position on whether to charge a fee to anyone who goes to the tribunal. The PRS element, which comes from the Housing (Scotland) Act 2014, will move into the new first-tier tribunal, and the current tenancy arrangements and the short assured tenancies will merge in. Landlords are currently charged £70 to go to court, and that may or may not carry on as a fee for the new tribunal—that decision has not yet been made. If there was no fee, that would represent a saving to landlords who need to go to the tribunal.

On legal aid, the tribunal procedures are designed to be accessible and understandable, and they do not generally require legal representation. I understand that that will also be the case in the new PRS tribunal. We recognise that the cases that the tribunal will handle, including those that involve repossession, could be serious, and we are considering the requirements for support for parties that bring a case to the tribunal. That support will be provided for in the operational detail of delivery of the tribunal. There could be funding for legal representation and/or some form of lay representation. In other tribunal jurisdictions, funding for legal representation is generally provided through assistance by way of representation—ABWOR—and that is administered in Scotland by the Scottish Legal Aid Board. If that option was selected, that would be set in place by secondary legislation, which would be scrutinised by the Parliament. That is the position on legal aid as I understand it.

**Adam Ingram:** Okay. We can follow up those matters with the minister.

Shelter Scotland has 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 antisocial behaviour cases. What is the Government's view on that?

**Barry Stalker:** I do not think that that is in the bill at present.

**Kirsten Simonnet-Lefevre:** It is not in the bill at the moment, partly because it may come out of the rules of the tribunal itself. The tribunal will have the ability to list or 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.

**Adam Ingram:** Thank you. We can follow that up, too.

**The Convener:** Thank you. That is very helpful.

Following on from the line of questioning on the first-tier tribunal, I want to ask about recourse to the tribunal in cases of "wrongful termination". Sections 47 to 49 of the bill propose that a tenant will have recourse to the first-tier tribunal if they believe that their tenancy has been wrongfully terminated. Can you explain the objectives behind those provisions and how you think they will work in practice?

**Barry Stalker:** Going back to our earlier comments about ensuring that landlords are genuine, I point out that one of the safeguards that we are putting in place—and I should say that we do not know how many landlords do this—is that where a landlord has been disingenuous, a tenant will be able to seek compensation. 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.

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.

**The Convener:** With regard to ensuring that the provisions are—to use your words—effective and have teeth, I note Homeless Action Scotland's comment in its written evidence that very few tenants bring a case against a landlord to the tribunal. Did the Scottish Government 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?

**Barry Stalker:** That is of course Homeless Action Scotland's view. We reckon that there might well be very few such cases, because there might not be a need for very many tenants to go to the tribunal, but tenants should still be able to take such action. If they need help and assistance to do that, that help and assistance can be provided in different ways; for example, there is nothing to stop tenants taking a case to the tribunal with assistance from one of the advice agencies out there. However, I do not think that we have included in the bill a specific ability for a third party to go to the tribunal.

**The Convener:** But would such a provision not fulfil your aspiration of ensuring that the provisions are effective and have teeth?

**Barry Stalker:** It is important that they are effective and have teeth, so we have given tenants the ability to go to the tribunal, and they will also be able to seek assistance if they need it.

**The Convener:** I am not going to press you on that. That will be a question for the minister when she appears before the committee.

**Alex Johnstone (North East Scotland) (Con):** I want to look at the process for increasing rent and challenging rent increases. First, what is the policy objective behind the rent increase provisions in the bill?

**Barry Stalker:** With regard to the policy objective, we feel that, given that this is an open-ended tenancy, we need to consider how we deal with rents. We do not want to increase security for tenants only for that to be potentially subverted by rent hikes, which is why the bill gives a tenant the ability to seek adjudication on an unreasonable rent increase that takes the rent beyond the market rate. We have also focused on predictability to ensure that rents can be increased only once in a 12-month period with three months' notice. That will help tenants plan their finances to deal with any future rent increases. The fundamental point is that, as we have seen, rents in the PRS are market led, and that is reflected in both of the rent provisions in the bill.

**Alex Johnstone:** How do you assess the market rates? Some have suggested to me that they are going up, which is a view that might be based on, for example, advertised new lets. However, it has also been suggested that rates in some areas have been relatively flat or even in decline. How do we decide what the market rates are?

**Barry Stalker:** A tenant would ask themselves whether a rent increase seemed unreasonable. An extreme example might be, say, a 20 per cent increase, which would be quite a lot. Basically, the tenant could have a look around to see what others might be paying.

As for determining the market rent, that would be a matter for rent service Scotland, which has a lot of experience in that area. It would look to build on that experience to provide adjudication through a combination of its work on the data that it holds and its property inspections.

**Alex Johnstone:** I am slightly concerned about the provisions on rent increases. I have rented the same flat in Edinburgh for 10 years and the rent has never gone up. If the bill becomes law, would I—I am sorry; I mean the taxpayer—annually have to pay an increase of CPI plus 1 per cent? Is there an agenda to increase rents where that has not been happening?

**Barry Stalker:** That is not the policy position. The current practice is that landlords tend to increase the rent at the start of a new tenancy on a short assured tenancy system. The bill will not require landlords to increase their rents once a year; instead, where a landlord for whatever reason chooses to increase a rent, they can do so only once every 12 months. In many circumstances, landlords do not increase rents that much for sitting tenants, and the bill sits fairly comfortably with that practice.

**Alex Johnstone:** How easy is it for a tenant to challenge the rent?

**Barry Stalker:** If a tenant wants to challenge the rent, they will be able to make an application to rent service Scotland. The policy intention is to make it easy for a tenant to do that and to ensure that, where there is a case to answer, rent service Scotland will be able to make a determination.

**Alex Johnstone:** When a tenant is deciding whether to challenge a rent increase, it will be vital that they know the typical rents in their area. How will they get that information? Will the Government survey the situation and make the information available or will they be reliant on other organisations to tell them what the rent is?

**Barry Stalker:** The Government provides statistics on rent levels that will give anyone an indication of what is generally happening with rents across Scotland. With regard to individual rents, tenants can look at, for example, what their friends are being charged for similar properties; they will also be able to go online. Those using the PRS tend in the main—though not in all cases—to be younger folk who are well versed in going online and looking at what, for example, different letting portals say rents are being advertised at. A tenant will be able to look at a range of sources when thinking about whether a rent increase that they have received seems unreasonable.

Ultimately, it is for rent service Scotland to determine whether an increase is unreasonable. That determination is based on whether the increase takes the rent beyond the market rate. I

suppose that a tenant's first port of call is to ask themselves whether an increase seems unreasonable.

**Kirsten Simonnet-Lefevre:** Section 29 of the bill places a duty on rent officers and the tribunal collectively to publish information setting out for the public the rents that they take into account when they make adjudications and determinations and what the amount of rent should be under the determinations after applications from individuals. Those statistics will be published and available to people, but I am not sure exactly how that will take place. I expect that the information will be on a website, and tenants who have received a written notice of what seems like a rather high rent increase can go there in the first instance and see the general prices for similar types of property in their local area.

10:15

**Alex Johnstone:** Are we in danger of getting into a position where there is no definitive or authoritative voice on what typical rents are in an area? That might well become an area of dispute in a case.

**Barry Stalker:** Ultimately, the authoritative voice will be rent service Scotland, which will determine whether an increase is unreasonable and takes the rent beyond the market rate. That is, as Kirsten Simonnet-Lefevre has said, the end point, and that information can only grow as the work of the service increases.

**The Convener:** Mr Stalker, your statement in response to Mr Johnstone about this not being the policy position was spoken like a true civil servant. *[Laughter.]*

David Stewart will ask the final questions.

**David Stewart:** On the issue of rent pressure zones, I think that, at one level, committee members understand the need for such proposals. For example, in Aberdeen and Aberdeenshire, rents for a two-bedroom house went up by a phenomenal 40 per cent between 2010 and 2014, although, in fairness, I should note that the reduction in oil prices has led more recently to a falling away of rents in Aberdeen.

I want to check that I understand the provisions correctly. If a local authority feels that there is a demand for a rent pressure zone—for example, in Aberdeen—it can apply to the Scottish Government, which can designate a zone through the affirmative procedure. What would be the minimum size for a zone? Could it be an estate, a village, a town or a city? Does it have to be the whole local authority area?

Another question is why rent pressure zones will apply only to sitting tenants. A quarter of tenants

now have children, and they aspire to stay in the private rented sector long term. Why are we not looking at applying the zone to everyone, by which I mean not just sitting tenants, but people who although they currently hold another form of tenure aspire to be tenants?

**Barry Stalker:** On your first question, nothing in the legislation determines the size of a zone. It is for a local authority to make the application, and the authority will be able to set out the area that they think is appropriate for the rent pressure zone.

On your point about sitting tenants, that is another area in which ministers have sought to strike the right balance. The fundamental problem is that, in areas where, as you have pointed out, rents have been increasing quite sharply, sitting tenants will be at the forefront, because their rent gets increased as rents rise. That is why the policy is to cap rents for sitting tenants in those circumstances.

At the same time, the Scottish Government is committed to increasing overall housing supply, and it recognises that that must be done not only through public funding but by leveraging funding from private sources. 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.

Fundamentally, building more houses will help overall in circumstances where rents have been rising quite sharply, but increasing supply is a longer-term solution to the problem. The more immediate problem is, of course, the fact that rents that are rising sharply are having a detrimental impact on tenants and housing, and the policy provides for a discretionary measure that local authorities can apply to help to mitigate that.

**David Stewart:** I understand that. You have probably picked up from the tone of my question that I think that the provision is sensible; it is, however, a little bit confused. It would be much simpler if, once a local authority had applied for a rent pressure zone designation, the designation applied to everyone, whether they were existing or potential tenants.

Let us take, for example, someone in Aberdeen who had two two-bedroom properties. If one of the properties has a sitting tenant and the other does not, the rent increase would be CPI plus 1 per cent for the sitting tenant and anything that the landlord wanted for the new tenant. That does not seem very sensible, and I wonder whether you could ask the minister to look again at that. Clearly, the policy is a sticking plaster and the longer-term

solution is to provide more supply in crucial hot-spot areas such as Edinburgh and Aberdeen, but you have already picked that point up.

How long will the designation of the zone last? Is that a matter for the Scottish Government, or is the length of the designation something for the local authority to recommend in its bid to Government?

**Barry Stalker:** We say in the bill that the zone could last for up to five years per application.

**David Stewart:** If circumstances change—in the example of Aberdeen, which I will continue with, if the oil price were to reduce and rent levels go down—could the local authority apply to the Scottish Government to deregister the zone?

**Barry Stalker:** Ministers have the power to vary the cap. Kirsten Simonnet-Lefevre can answer the specific question.

**Kirsten Simonnet-Lefevre:** Ministers could use the same powers to revoke the instrument that designated the zone in the first place, if it were no longer appropriate.

**David Stewart:** So if the local authority, which is close to these issues, says that circumstances have changed and that it does not want to have rent control any more, it can apply to the Scottish Government, which can effectively deregister the zone. That is very clear.

Moving on to wider issues, can you tell me what best practice on rent controls the Scottish Government has looked at across Europe? For example, the Netherlands has an excellent system in which the rent that can be charged is linked partly to property quality measures. The great advantage of such an approach is that by linking rent increases to such measures it stimulates and encourages landlords to improve the quality of the sector. Effectively, there is a two or three-star to five-star designation for the sector, and tenants understand that they will pay more rent if improvements have been made to the property. Do you have any views on that, Mr Stalker?

**Barry Stalker:** We have looked at other international comparisons. As with many European countries, the rent controls in Netherlands stem from after the second world war, which means that they have been in place for some time and the infrastructure is in place to enable them to continue. There is a similar situation in Germany.

You are right that about two thirds of the private rented sector in Holland has rent control. It does not apply to the top third, but it applies to the lower two thirds. As you have said, under the system in Holland, which we have looked at, properties are assessed and that assessment is then linked to the rent that can be charged, but my

understanding is that the Dutch Government is looking to move away eventually from having such a high proportion of properties under rent control and to reduce that proportion. Compared with what is a national system that covers most although not all properties in the private rented sector, our proposals in the bill are more limited and proportionate.

**David Stewart:** This will be my final question, convener, because I know that time is against us. You have already covered my point about protection for sitting tenants versus protection for prospective tenants. The other model that has been adopted in other countries is for challenging unreasonably high rent levels. What are your thoughts on that method of generally protecting the sector, both existing and prospective tenants?

**Barry Stalker:** I wonder whether I can clarify your question. When you talk about challenging unreasonably high rents, do you mean initial rents or on-going rents?

**David Stewart:** Both. If a trend were to emerge in a particular city of market forces causing massive rent increases—I mentioned the example in Aberdeen of rents rising by 40 per cent over four years—what mechanisms would exist for challenging rent levels in order to make the sector more affordable?

**Barry Stalker:** Again looking internationally, we know that the Republic of Ireland is considering what is being called rent certainty. However, I think that that is still under development and that no clear decision has been made on it.

The evidence and literature on the options on rent control show that there is a balance to be struck and that going beyond a cap into something that is more about the total amount of rent that can be charged could have potential unintended consequences. Obviously, the bill does not cover the issue but, on that broader question, the evidence says that a number of things would need to be considered so that any rent control or capping option had the intended effect rather than an unintended one. For example, it could reduce investment in housing or, if the market was constrained in a certain way, it could push up rents at the bottom. The evidence suggests that there is a lot to consider on that issue.

**David Stewart:** Thank you. I think that my other question has been covered, convener.

**The Convener:** That is fine.

To bring the session to close, I wonder whether Mr Stalker will say a little about what steps the Scottish Government is considering to raise awareness of the provisions of the new legislation and ensure that tenants and landlords are aware of the new framework.

**Barry Stalker:** Subject to the will of Parliament, if the bill is enacted, we have set aside a budget, which is set out in the financial memorandum, for helping to raise awareness. We will do that through marketing—

**The Convener:** Can you remind us what that budget is?

**Barry Stalker:** The range is £250,000 to £550,000.

There are a number of options as well as marketing. Through the landlord registration process, local authorities hold a database of landlords' addresses, including e-mail addresses, so that is a potential option. We could use social media and the various portals that folk use when they look to rent. There is a range of options. Clearly, once it becomes clear what the legislation is saying, it will be important to raise awareness. We are very mindful of that.

**The Convener:** Will you continue to engage extensively with stakeholders on the implementation of the bill?

**Barry Stalker:** Absolutely. We are open to engaging with stakeholders in a range of fora; indeed, we are doing that now and will continue to do it throughout the process of the bill and, beyond that, when it comes to developing secondary legislation. We are more than happy to do that.

**The Convener:** As members have no more questions, it only remains for me to thank the bill team for attending and for their extremely helpful and comprehensive evidence. We will of course hear from the Minister for Housing and Welfare later in the stage 1 process.

That concludes this evidence session. I suspend the meeting for a few minutes to allow the committee room to be set up for a round-table session on the bill with stakeholder witnesses.

10:28

*Meeting suspended.*

10:37

*On resuming—*

**The Convener:** Under agenda item 2, we will take further evidence on the Private Housing (Tenancies) (Scotland) Bill. In order to allow for a more free-flowing discussion, the committee has chosen to conduct this session in a round-table format. However, we are keen to ensure that we receive evidence on all aspects of the bill, so the session will be structured around its different sections. Given the limited time available, it is therefore important that stakeholders seek to speak on those areas of the bill that are of most

importance to them. Members will ask questions on the various aspects of the bill. I will allow our witnesses to respond, should they have comments, and committee members will then be brought in if they wish to add to the discussion.

I ask everyone around the table to introduce themselves, starting with my colleague to my left.

**David Stewart:** I am a Labour MSP for the Highlands and Islands.

**Beth Reid (Crisis):** I am from Crisis, which is a charity that represents single homeless people.

**Alex Johnstone:** I am a Conservative member for North East Scotland.

**Robert Aldridge (Homeless Action Scotland):** I am from Homeless Action Scotland.

**Liz Ely (Living Rent Campaign):** I am from the Living Rent Campaign.

**Mike MacKenzie:** I represent the Highlands and Islands region.

**Rosemary Brotchie (Shelter Scotland):** I am from Shelter Scotland.

**James Dornan:** I am the MSP for Glasgow Cathcart.

**Fraser Sutherland (Citizens Advice Scotland):** I am from Citizens Advice Scotland.

**Adam Ingram:** I am the MSP for Carrick, Cumnock and Doon Valley.

**Gary Paterson (National Union of Students Scotland):** I am vice president, communities, in the National Union of Students Scotland.

**The Convener:** I will kick off the questions. Do the stakeholders who are present think that the proposals in the bill will achieve the rebalancing of the relationship between tenants and landlords that the Government's bill team referred to in the previous evidence-taking session? You might want to consider whether the balance that the bill provides for will improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors.

**Rosemary Brotchie:** We welcome the opportunity to give evidence on the bill. We have been working with the Government and stakeholders across the sector for many years to bring about change to the private sector tenancy regime, particularly as we think that the current regime is a big impediment to growth and to tenants experiencing confidence and stability.

The changes in the bill—in principle and in their broad structure—are welcome. They will meet the needs of our clients. We have some concerns about some of the detail of the bill and the way in which it will operate, and we hope to address

those today. However, in broad terms, we very much support the bill.

**The Convener:** We will deal with the detail in due course.

**Robert Aldridge:** We share the view that the bill is a great improvement on the short assured tenancy regime.

In some respects, the assured tenancy gave greater security of tenure to some tenants, but it has been so little used in recent years that what is needed is the modernised tenancy for which the bill provides, which will give far more security to most tenants. We are in favour of the generality of the bill, but we have some concerns about a number of the details and the bits around the edges.

**Liz Ely:** We would echo some of those comments. We feel that the measures that are outlined are an improvement, but we have serious concerns about some of the grounds for eviction, particularly in relation to the mandatory nature of those grounds. We will probably deal with those later. We acknowledge that the bill represents a step forward, but there are concerns within that.

**Beth Reid:** We echo that. The research that we have done with Shelter confirms that security of tenure is a huge concern for the client groups that we represent, who are often in some of the poorer-quality tenancies in the private rented sector. They are very worried about security of tenure, so we strongly welcome in particular the removal of no-fault eviction and the introduction of indefinite tenancies. We also welcome the greater clarity and simplification of the system. Having a standardised tenancy will be helpful in that respect, especially for those who are less able to advocate for themselves or understand complex legal terms.

**Gary Paterson:** First, thanks for giving us the opportunity to come here today. Like others, we welcome many of the proposals in the bill. We will get into a little bit more detail on our position, but we echo the comments that have been made about the need to maintain the same level of tenancies so that there is not a discrepancy between students and the general renting public. We also strongly welcome the introduction of rent controls, because of the extent to which rent increases can impact students, who are more likely to move around and have shorter tenancies.

**Fraser Sutherland:** Like everyone else, we welcome the changes and improvements that the bill makes on the current tenancies. We especially welcome the removal of the no-fault ground, which is a huge barrier to the security of tenure of tenants.

**The Convener:** Mike MacKenzie will introduce the issue of the no-fault ground for repossession and the private residential tenancy.

**Mike MacKenzie:** Fraser Sutherland has led us nicely into the area of the no-fault ground for repossession, the ending of which is one of the bill's significant proposals. I would like to hear people's views on that issue. I have heard that, from the landlord's point of view, the provision might discourage investment in the sector, which might impact adversely on tenants by reducing the overall investment in the sector and therefore the number of properties that are available. Does anyone have any comments on that theme?

**Liz Ely:** We are pleased about the proposal to end the no-fault ground for eviction. That will be good for tenants.

On your point about investment, I would make two points. First, countries with a more stringent regulatory framework tend to have larger investment in the private rented sector. When we look internationally, we see that countries with more stringent rent controls and more regulation tend to have more investment, so there is that point to consider.

10:45

On investment, there is also a wider question—which is possibly outwith the scope of the bill—about what kind of investment in housing in general we want in Scotland. The Scottish Government's own research found that only 8 per cent of people want to live in the private rented sector, so 92 per cent of people do not want to live in the private rented sector; they want to live in their own home that they own or in the social rented sector. There is that wider question about what sort of investment in housing we want in Scotland and about the private rented sector more generally. We should also take into consideration the fact that in countries where more things such as the no-fault ground are being removed and there are more stringent rent controls, there is investment in the PRS.

**Rosemary Brotchie:** We need to be clear on what we are talking about when we refer to the no-fault ground. It has become a bit of a shorthand. What it actually refers to is that after the initial period of a tenancy is over, the landlord has the absolute right to end the tenancy by just giving a minimal amount of notice, without reference to anything else. The importance of that from a landlord's point of view is that it enables them to have the flexibility and the confidence to claim back the tenancy. That confidence is important to landlords, because using the court system, which is their other recourse, has proved difficult for them.

With the introduction of the new tenancy regime, from a landlord's perspective—I am sure that you will hear from landlords directly about this—the use of a tribunal system to replace the courts, the new grounds and the simplification of the process should give them that confidence. Professional, reputable landlords who are actively managing their businesses should not have anything to fear from the new tenancy regime.

From a tenant's perspective, removing what we call the no-fault ground is hugely significant, given what we see with tenants who come to Shelter. Forty-six per cent of calls to our telephone helpline are from the private rented sector when only 14 per cent of households in Scotland live in the private rented sector. The really significant thing for tenants is that they will have confidence and security and—crucially—bargaining power with their landlords. We have already heard the concern of tenants that if they make a complaint, they will be subject to retaliatory eviction. We certainly see many cases of tenants who, for example, have complained about a repair issue and have subsequently been served with a notice to quit, which results in them having to leave the tenancy.

If we are concerned about having a high-quality, professionally run and improved private rented sector in Scotland, we need to give tenants that bargaining power, and they need to be able to act as active consumers in the market.

**Robert Aldridge:** I do not disagree with anything that has been said. Rosemary Brotchie and I were fortunate enough to be part of the private rented sector tenancy review group. One of the discussions that we had in that group was about the reasons that a landlord would have for wanting to repossess their property. We went through all of them and they include somebody not paying their rent, somebody behaving in an antisocial manner and so on. Those reasons are covered in the grounds for repossession under the modern tenancy that we are discussing in the bill.

There is a further point, which is particularly in the interests of landlords. We are looking to slightly change why people use the private rented sector so that more tenants are in the private rented sector for the long term and can plan ahead without the uncertainty of perhaps being faced with a notice to quit with two months' notice. We want to enable people with families to make an investment in their community and in their local schools and use the private rented sector over the long term. It is of benefit both to landlords and to tenants to have greater security of tenure.

There are two more points that I wish to make. First, if the no-fault ground were to be reintroduced, it is the only ground that would be used for repossession and 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. That brings me to the final point, which is that there is also an onus on a landlord who is managing a business to manage it properly. If a tenant is behaving in an antisocial manner, for example, the landlord needs to be able to establish that that is what is happening and to manage that property well.

**Fraser Sutherland:** We welcome the removal of the no-fault ground, mainly because of the issues that Rosemary Brotchie set out. We have seen a huge shift in the types of people who are living in the private rented sector: there are now many more families, rather than just students and young professionals as may have been the case 20 years ago. Those 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.

On Mike MacKenzie's point about investment, we need to think about the type of investment that we want. It is not appropriate that people see private rented property as something that they put money into and make money out of. If people want to invest in the private rented sector, they should do so because they want to run homes for people to live in. If someone just wants to make a return on their investment, they should put their money in a financial product rather than in housing. If people want to invest in private housing, they should commit to looking after the property and their tenants. That is what a lot of good landlords do, and we want those people to be involved in the private rented sector. We do not want landlords who just treat property as a way to make a huge profit.

**Gary Paterson:** We strongly support the introduction of the new tenancy. 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.

**Beth Reid:** We support everything that has been said so far. We have found that the people with whom we work are often very worried by the thought that they could be out with four weeks' notice. That is hanging over them, and they worry about where they would go.

As Rosemary Brotchie said, the provisions are about the balance of power between the tenant and the landlord. At present, many tenants want as little contact as possible with their landlord: that

means that the landlord is happy and things are okay. We need a rebalancing.

The key to making the provisions work is to ensure that the eviction grounds are set out clearly, and that they work in a straightforward way so that tenants and landlords know exactly what evidence they need to support the grounds for eviction.

We heard in the previous evidence session that the majority of cases will probably not go to the tribunal. We need to ensure that the system works at the notice-to-leave stage, so that tenants are clear about what would constitute the right evidence for grounds for eviction. Landlords need to be clear about that, too. If there is any ambiguity about that, it will be quite difficult for tenants to enforce their rights.

**Mike MacKenzie:** I was struck by what Liz Ely said about the lessons for us from other countries. You will see where I am coming from, given that I represent the Highlands and Islands, when I say that we have to treat some of those lessons with a bit of caution and remember that Scotland is quite a diverse country. The area that I represent contains most of Scotland's islands and covers remote and rural locations, so some caution is required; we cannot simply transpose something that may seem to work very well in another country on to Scotland.

Are any of the witnesses aware of any research on that? Have any of your organisations done any research with stakeholders to gather evidence that might suggest a scheme that would work well for Scotland, bearing in mind that precautionary note about the Highlands and Islands?

**The Convener:** Who wants to tackle that?

**Rosemary Brotchie:** The evidence from international examples of how tenancy regimes work elsewhere was fully considered by the working group that consulted before the bill was introduced. I am aware that the Scottish Government considered international examples and looked at security of tenure—which I think we are focusing on now—across Europe and beyond.

Shelter has commissioned research on that issue. Although I do not have the details in front of me, I can say that Scotland and the United Kingdom as a whole came out very near the bottom of the list of countries for security of tenure. The current system has led to a lot of the problems that exist in the private sector market in Scotland.

Regardless of whether we are talking about the urban or the rural rental market, the basic relationship between the landlord and the tenant is absolutely crucial in driving improvement and change. As I said, that means enabling tenants to

act as more active consumers and, crucially, encouraging landlords to view letting as a business. We are asking landlords to up their game. The landlords who have been involved in the consultation and who are following the bill process will be hoping that one of the consequences is that some of the less professional and, if you like, more disreputable landlords and letting agents will look at the new market and think that it is not somewhere where they want to be. That will leave space for the more reputable and responsible landlords to grow their businesses.

**Liz Ely:** The reason why I brought up international examples was really to allay fears about investment. We hear time and again that any extra regulation will scare away investment and that, if we do anything, there will not be investment, which will take away supply. However, in countries where there is larger-scale investment, there are also stricter regulatory frameworks. Therefore, even though we might not want to take a model from another country right now and slap it on to Scotland, when we consider the issue of investment and supply, we can see that investment is not struggling in other countries that have stricter regulatory frameworks.

**The Convener:** Before I bring in other members, does any witness have anything to say about good practice in other locations, particularly internationally?

As there are no comments, I invite members to come in.

**Adam Ingram:** I think that Liz Ely made the point that no one wants to be in the private rented sector. That is not a universal phenomenon across Europe, and lots of countries have strong private rented sectors. Is the situation here a consequence of the poor security of tenure that we have had historically in the private rented sector? Could the bill presage significant investment as demand rises for homes in the private rented sector? If we address the security of tenure issue, which, as Robert Aldridge said, is one of the constraints on people seeking private rented accommodation, will that be an important departure?

**Robert Aldridge:** I think that it will be. A large number of people have regarded the private rented sector as somewhere to go before they buy a house or when they are at a transient stage. When the whole system has bedded in, there is a real possibility that people will begin to regard the private rented sector as a housing option for the long term that can be valued. As long as it is combined with good-quality housing management by good-quality private landlords, it will begin to be seen as a longer-term housing option for a broader range of people.

**Gary Paterson:** I certainly agree with that point. For students in particular, it is really difficult not to be in the private rented sector. I cannot really buy a house at this stage in my life. It is hard for us to imagine ourselves in a long-term property when, every six or 12 months, we might have to apply again and we do not really know the landlord's plans for the property. In some scenarios, students have to negotiate financially with the landlord. It is important to provide balance and give people more ownership of the places that they call homes.

**Liz Ely:** I echo the point that the removal of the no-fault ground could have that consequence. The fact that only 8 per cent of people want to be in the private rented sector is in part due to the lack of security, but it is also because it is the least affordable tenure type.

Although I might not look it, I am 10 years away from being a student, but I still cannot afford to buy a house, although I know people who pay less for their mortgage than I pay to rent a one-bedroom flat. We know that the social rented sector is a lot more affordable, too. Security has to come with affordability if the private rented sector is to be a desirable tenure type for people.

11:00

**David Stewart:** Adam Ingram has covered my point, so I just want to make a philosophical point.

**The Convener:** Will you make it brief, please?

**David Stewart:** I will make it very brief. The ability to rent is seen as quite normal in France and Italy, where the aspiration to buy is not the same as it is here. I echo Adam Ingram's point. It is hard to change that philosophy, but maybe we need to look at why it is more acceptable in Italy. Is it about tenure or rent controls? I have friends who teach over there and they think that it is quite standard to rent, but they tend to find that leases are longer term. They might have a five-year lease with rent controls. Perhaps that should be borne in mind in this debate.

**The Convener:** Thank you. Does Alex Johnstone have a different philosophical point?

**Alex Johnstone:** The moment has passed. I will look for an opportunity to come back in.

**The Convener:** There will be other moments.

**Rosemary Brotchie:** I have a small point to add to the discussion. During the past 18 months or so, we have been conducting a campaign and we have had a huge amount of support from people across Scotland, some of which is from landlords who have looked at the current situation and how they can attract people to the sector.

Landlords want people to stay long term. It is of no benefit to them for tenants to move through the sector quickly. Being able to make an offer to someone and say, "We would like to rent to you and keep you here" should be a real benefit to landlords and should attract the right kind of landlords as well as appealing to the growing number of families with children in the private rented sector, who now make up more than a quarter of the people in the sector.

**The Convener:** Thank you.

Does James Dornan want to introduce our questions on the initial tenancy period?

**James Dornan:** I do. I am interested to hear the witnesses' views on the initial tenancy period of six months, and particularly whether they agree that tenants should be restricted from ending their tenancy during that period unless the landlord agrees. I am particularly keen to hear from Robert Aldridge and Gary Paterson, who did not comment on that point in their submissions.

**Robert Aldridge:** My view and Homeless Action Scotland's view is that, in an indefinite, month-to-month tenancy, there is no real need for an initial tenancy period. That need was linked to the short assured tenancy, and it meant that the tenant would have at least six months before a landlord could give them notice.

Given that notice periods are built in to the new tenancy, Homeless Action Scotland does not see the need for an initial tenancy period other than, say, a month, with the tenancy lasting indefinitely until either side seeks to end it with the appropriate notice period or by establishing grounds for eviction. Any grounds, such as the landlord wishing to sell, could be amended to say that they could not be invoked during the first six months or year of a tenancy.

In our view, an initial tenancy period is not necessary, but we are not going to die in a ditch over it, because it would not be an impediment to the legislation.

**Gary Paterson:** I do not want to give a boring response, but I echo Robert Aldridge's point. We did not note anything on an initial tenancy period in our submission and I do not want to make up NUS policy on the hoof. We can consult our membership on anything that we have not noted in our submission during the bill process. However, having flexibility in the long-term ownership of the property is something that NUS Scotland supports.

**Liz Ely:** We do not believe that there needs to be a six-month initial period. For a number of reasons, we feel quite strongly that tenants should not be tied in to that. In many places there is a lot of demand for tenancies, and landlords might put pressure on tenants to stay longer and might tie

them in for longer than they actually want to be in the tenancy. Tenants need some flexibility.

There are also some serious equalities issues with tying tenants in to six-month periods. We have a number of affiliates, which include trade unions and charities such as Zero Tolerance, and it pointed out that, for someone who is in an abusive relationship and needs to leave it quickly, having six months' rent to pay creates a further barrier. Women face a lot of barriers to leaving abusive relationships in the home, and having to pay rent for six months adds another barrier on top of all those stresses.

As Robert Aldridge commented, there is no need for the initial period and it has potential to create hardship for some groups of tenants. We do not feel that it is appropriate to have an initial fixed period for tenants.

**James Dornan:** The point about abusive relationships is interesting. I am sure that there will be some discussion about how that issue can be resolved, if it is not already covered in the bill.

I move on to a question about notices to end tenancies. Do you agree with the Scottish Government that the bill's proposals on that simplify the position and that the proposed timescales strike a good balance between the interests of landlords and tenants? That question is for Fraser Sutherland and Gary Paterson.

**Fraser Sutherland:** We have raised the point that Liz Ely made about the tenant-to-landlord notice to leave as it relates to people fleeing abusive relationships. It is not in anyone's interests if the fact that someone will have to pay rent for an extended period prevents them from leaving such a situation.

I will raise a further point about abusive relationships. Currently, the housing benefit rules allow claimants to get four weeks on two different properties if they have to leave a property for that reason. If we intend that people must give eight weeks' notice, that would leave such people having to find four weeks' rent money themselves. They would be paying for those four weeks because they had to leave the situation, which is not ideal. I do not know whether that can be changed so that tenants can leave if they feel threatened in a relationship.

On notice to leave from tenants to landlords, we would prefer it if there was the same fixed four-week notice period that is proposed for the first period. That would be much easier for tenants to understand because, regardless of the point at which they were leaving, there would be the standard four-week timescale.

**Gary Paterson:** Our feeling is that four weeks is not a lot of time. It is basically just a month, and it

could be midway through the year or at the current time of year that someone is told, "You need to be out in four weeks' time." I am thinking about all the assignments and part-time work that I have to do.

In places such as Aberdeen, Glasgow and Edinburgh, housing is difficult to come by and it sometimes takes a lot longer than four weeks for people to find somewhere to live. Some students who come to the city before they start university or college stay with friends or in hotels for more than four weeks. We think that a period closer to eight weeks would be more suitable.

**The Convener:** Adam Ingram is going to introduce the next section, which is on termination of the tenancy by the landlord.

**Adam Ingram:** Yes. Are the eviction grounds in the bill reasonable from a tenant's point of view and will they work effectively in practice? Are there any in particular that would cause a problem for tenants?

**Robert Aldridge:** I think that the general grounds are the right grounds, but there are some problems with the wording. For example, "the landlord intends" is used throughout the bill. That needs to be firmed up a lot more.

Our view is that it would be more appropriate if all the grounds were discretionary rather than mandatory. We have a new tribunal system coming in, the aim of which is to look at the broader interests of a case and come to a commonsense agreement. If the grounds are mandatory, there is a danger that, in anomalous cases, all the boxes will be ticked when in fact it is unreasonable for an eviction to happen. In particular, there are issues such as when a landlord intends to sell. It would be perfectly possible for a landlord to put the property on the market at a highly inflated price—in an advert or whatever—that they were absolutely sure that they were not going to get, which would show an intention to sell, the tenant to be evicted and someone else to move in. The penalty is simply three months' rent, which seems to be very paltry.

Similarly, the landlord might state that they intend a member of their family to move in permanently. The point is that the eviction will happen before the moving in happens, so what happens to the landlord if they do not move in? Is there simply a penalty of three months' rent? That is a very small amount and not really a deterrent.

In our view, in a range of cases, it would be more appropriate for the tribunal to investigate how reasonable it is for the eviction to be granted in the circumstances. I know that some landlords will be quite concerned about that, but 95 to 98 per cent of cases will be straightforward and the landlord will be able to regain possession.

However, where there is an element of doubt, it is important to address that.

There are other matters, too. For example, if the landlord intends to sell, there is no reason why the tenant should have to move out before the contract of sale is concluded, because nobody else is going to move in. Similarly, the refurbishment ground depends on how big the refurbishment is. Will there be a discussion with the tenant about whether they are prepared to put up with three weeks' disruption, for example, and stay as the tenant, or will they simply be evicted under mandatory eviction? There are a lot of grey areas that are not well served by the grounds being mandatory.

**Beth Reid:** As I said earlier, the grounds for eviction are the key to making the system work well, so we need to ensure that they are clear and do not provide loopholes. We broadly agree with all the current grounds, but it comes down to how they are evidenced, as Robert Aldridge said. What would the tenant need to know to show that the landlord is genuinely going to sell? As I said before, in most cases that will be about notice to leave and not going to the tribunal, because most cases will not go to the tribunal.

Some of the grounds could be worded more clearly. For example, the abandonment one says that somebody has to be not living in a property as their main home. However, if that person is meeting all the elements of the tenancy agreement and is paying their rent and so on, does it matter if they are not there for part of the year or whatever? I think that we need a lot more clarity for that ground.

I understand that all three of the rent arrears grounds would be needed for eviction to be mandatory. Again, though, I am not entirely sure that that is clear.

The other new ground is cessation of the landlord's registration. If that is about being struck off the local authority list, that is one thing; if it is about the landlord ceasing to be registered and therefore saying that the tenant has to be evicted on that basis, that would not be acceptable from our point of view; it needs some clarity.

It is therefore about ensuring that the grounds work really well and clearly for the tribunal and at an earlier stage before that.

**Gary Paterson:** I echo what Robert Aldridge said about the penalty for landlords. The penalty for the tenant is much more significant if they are made to leave the property. We therefore agree with the points that have been raised about the grounds. The tribunals will provide an opportunity to work on the issues without any need for mandatory grounds. However, if those grounds are to go forward, we would at least like to see

discretionary elements attached to them. For example, the refurbishment ground is not detailed; it could mean just a lick of paint. Again, the ground that the tenant has otherwise breached the tenancy agreement could refer to a very minor situation. We talked earlier about rent debt being spread over a couple of months, but technically that is a breach of the agreement.

As a student, I would be really concerned about some of the stakeholders' recommendations about student tenancies being implemented. 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. Better communication between landlords and tenants to improve understanding about what they will want to do in the next couple of months could alleviate some of the problems. Generally, the student market does not meet students' needs, so we do not regard it as best practice and would not want it to continue alongside the new proposals.

11:15

**Rosemary Brotchie:** Generally speaking, the grounds that are set out for landlords recovering possession are the right ones; they cover the range of reasons that landlords might have. However, I agree with colleagues around the table that the detail of how they will operate in practice needs some scrutiny.

I will draw attention to the ones that have not yet been mentioned, but I also echo Robert Aldridge's comment that how the landlord's intention is defined—for example, in relation to the intention to sell or to refurbish—needs to be tightened up. It should be much more than just an aspiration. We should see evidence that the landlord is actively marketing the property.

The ground that relates to breach of tenancy agreement refers to when

"the tenant has materially failed to comply with a statutory term of the tenancy".

We need to understand what "materially failed" means to ensure that tenants cannot be evicted simply for breaching a term of a tenancy that might be statutory but should not reasonably give rise to an eviction.

I draw the committee's attention to the rent arrears ground, which has been mentioned a number of times. As Mr Stewart said in the earlier session this morning, that ground is disproportionate given the outcomes that it could result in for tenants, for a number of reasons. We heard about the case study of a tenant who is entering a job and will be paid their salary a month later. Under the ground and in the schedule, it is specified that delays or errors in benefit payments

may be excluded or taken into account, but universal credit is designed to be paid four weeks in arrears, and seven days' delay is built in on top of that before people can even apply. That does not fall within the exclusion around an error or a delay in benefit payment, but it is how the system is designed to work.

The proposal to allow a tenant to be evicted after three months if they have one month's arrears at any point within the three months is disproportionate and needs to be looked at again. It should be increased to at least three months' rent arrears over the period, which is in line with the current ground for possession under rent arrears.

Further scrutiny is also needed of the ground for eviction where a landlord has ceased to be registered with the local authority. Alternatives to that need to be looked at because, under those circumstances, a tenant would suffer the loss of their home because of a landlord's failure. We need to look carefully at whether that is a reasonable cause for eviction.

**Liz Ely:** Rosemary Brotchie covered quite a few of the additional things that I was going to say. We strongly agree with the point about the grounds being mandatory. Landlords and tenants agree that life requires discretion, and the grounds need to be discretionary because there are many varied circumstances. Penalising tenants for the behaviour of landlords, which would lead to tenants losing their homes, is not the right way to deal with bad practice in the sector.

A further point on discretion is that we would like to see a hardship provision built in for when cases are taken to tribunals. 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. Losing a home is a catastrophic event that brings a lot of hardship, so some discretion is required.

**Rosemary Brotchie:** I echo what Liz Ely said. We need the first-tier tribunal to have the discretion to adjourn proceedings so that it has the opportunity to consider more complex cases.

**Beth Reid:** I just want to pick up on the point about penalties and the maximum award of three months' rent to the tenant when there has been a wrongful eviction. If there has been a wrongful eviction, particularly in cases in which a landlord has deliberately misled a tribunal, the award of three month's rent seems insignificant. It is also worth considering the other costs. If someone is wrongfully evicted and they make a statutory homelessness application to their local authority,

there will be considerable cost to the authority. Again, the maximum award is not a huge deterrent. We must ensure that the tribunal system has teeth, that it acts as a deterrent and that it stops bad landlords from doing things wrongly.

**The Convener:** Thank you, everybody. We will need to move on from this section, but I will give the final word to Citizens Advice Scotland.

**Fraser Sutherland:** To build on Beth Reid's point about wrongful termination orders and tenants getting back three months' rent, I am keen for us to look at whether someone who has misled a tribunal is still a fit and proper person. I think that the answer to that would be no. A fit-and-proper-person test is required for landlord registration. If they have deliberately misled a tribunal, especially on more than one occasion, I expect a local authority to be allowed to look at that in the context of the fit-and-proper-person test and to remove their registration status as a landlord.

**The Convener:** Thank you. Alex Johnstone is going to introduce the next section, which covers the recourse to the first-tier tribunal for wrongful termination and eviction, as well as rent increases.

**Alex Johnstone:** I would be very interested to hear people's views on the bill's provisions on recourse. In practice, is it likely that tenants will make proper use of the provisions? I am also interested in comments on Homeless Action Scotland's suggestion that other third parties should be able to bring cases to the tribunal on behalf of a tenant.

**The Convener:** Who wants to take that question?

**Robert Aldridge:** I am not another third party, but I am from Homeless Action Scotland.

I will build on the idea of third parties being able to take up cases. We are all aware of a small number of landlords who have a very bad reputation and who may, for example, intimidate tenants. We are also aware of particular areas in Scotland where private landlords' activities have been bordering on the extremely criminal. It is important in those circumstances that if a local authority wants to take action it is able to do so.

For example, if there is a pattern over a number of properties of a landlord manipulating the situation, a local authority should be able to take action rather than all the onus being on the tenant. Of course tenants must be entitled to take action, but most tenants who are going through such a scenario will be more focused on finding another home and moving than on going through the process of taking the landlord to a tribunal for a wrongful termination order where the most they might be awarded is three months' rent. It is quite important, particularly where there is a pattern,

that a local authority—or another body—could take that forward.

**Liz Ely:** We support the idea that a third party could take a case to a tribunal for the reasons outlined by Robert Aldridge. If someone has lost or are about to lose their home, it is a stressful time with a lot of hardship involved. Going to court and a tribunal is outwith many people's experience, and they may not be sure how to go about that at a time when they have a lot of other things on their plate, including if they have a family.

A third party's ability to take cases to tribunal would allow the penalties to be implemented. An aspect of the situation relates to the threat of the penalty: if penalties are never given out and no one is ever charged any money, the threat is an empty one. We need the penalties to be used when bad practice is evident. The tribunal needs to have teeth, and those teeth must bite sometimes. In order for that to happen, people need to take the cases to tribunal. A lot of tenants just will not be able to do that because of their own life circumstances; it is therefore quite important that third parties are able to do that.

**Rosemary Brotchie:** We have heard about the importance of access to justice for both landlords and tenants in relation to ensuring how well the new tenancy is received and used and how effective it is in practice. 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. We 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.

**Gary Paterson:** I echo that comment. From a student's perspective, the idea of going to a tribunal can be quite daunting, particularly for someone who has just moved away from home, is living in a new town and does not know that many people. Perhaps they will feel that there is not an equal relationship between them and the landlord and that the balance of power is tipped against them. Any support that could be provided in that regard would be very useful; otherwise I do not expect that students would necessarily feel comfortable using the tribunal system.

**Beth Reid:** I echo everything that has already been said. The other thing to factor in is the level of fees involved in accessing the tribunal and ensuring that it is accessible.

**Fraser Sutherland:** Like Robert Aldridge, I believe that third-party referrals are really important if there is a pattern of abuse by a landlord. Local authorities have the ability to make

third-party referrals to the PRHP 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.

**Alex Johnstone:** In their written submissions and during the discussion around the table, both Homeless Action Scotland and Crisis—whose representatives I am sitting between—have expressed the view that the penalties that are available for wrongful termination are too weak. Can you suggest any alternative approach?

**Beth Reid:** Fraser Sutherland mentioned landlord registration and how that is linked to, particularly in cases in which a landlord has misled the tribunal. That is certainly something to explore.

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. As I mentioned earlier, the costs to the local authority if there has been a homelessness application could amount to well beyond that. It could even be considered whether the landlord should contribute to some of the local authority's costs in such a situation.

**Robert Aldridge:** A range of things could be used. Our submission suggests that, if a landlord has deliberately misled and has deliberately been disingenuous, that should be a criminal offence and subject to quite severe penalties, including potential imprisonment. I am not a legal expert, but I have been told that there is a common law offence of fraud and uttering, which could be used. There is also the potential of using contempt of court proceedings in relation to tribunals, if that is possible.

I think that the deterrent for deliberately misleading a tribunal or deliberately misusing those grounds should not simply be that the tenant should get adequate compensation; there should also be a punitive element against the landlord that amounts to a real deterrent.

**Alex Johnstone:** The next item on the list that is in front of me is rent increases. Without going into too much detail, can we please have your comments on the proposals on rent increases?

11:30

**Rosemary Brochie:** As the Government officials set out earlier, there has to be a mechanism for landlords to increase rent during a tenancy, but there must also be a limit for that so that it is not used as a way of getting a tenant out through the back door under the new secure arrangements. I think that what has been proposed strikes a good balance because it will enable tenants to have certainty about rent rises for their tenancy but allow the market to operate outside of that. The proposal for the operation of rent increases alongside the suggestions of a rent pressure zone strike a good balance.

**Liz Ely:** Our experience, from all the tenants we have consulted, is that there is a crisis of affordability in the private rented sector just now. It is the most expensive tenure type in particular areas, although we understand that there are areas where it is not as expensive. Market rates are too expensive for a lot of people, and we have reports of tenants doing illegal things like overcrowding flats themselves, which is very common, so that they can afford to live in places such as Edinburgh and Aberdeen. Security is a key issue as well in that context. People have fed back to us that they feel secure in their property and would feel secure with the no-fault ground for eviction being removed but would not feel secure if the rent went up.

In terms of what is being proposed in the bill, we feel that rents should be regulated for new tenants and not just for sitting tenants. At the moment, most rent increases happen between tenancies, and regulating rents just for sitting tenants will not bring down the overheated market element in rent pressure areas, as landlords will still be able to increase rates between tenancies. In areas such as Edinburgh and Aberdeen there are a lot of students and they tend to move around quite a bit, so regulating rents for sitting tenants would not do enough to bring down the rent pressure.

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.

**Robert Aldridge:** We are quite happy with the proposals in the bill as an interim measure, because we understand that there are particular issues that need to be dealt with, particularly in the Aberdeen area at the moment. The proposals are a means of doing that. The bill team's evidence was very wise on that, recognising that it is a very complex area indeed. We would recommend investing a considerable amount of time in looking

at a sustainable long-term system for the future. All kinds of systems have unintended consequences, so we really need to get this right. It is far more complex than what we could put on the face of the bill.

**Beth Reid:** On rent pressure zones, Barry Stalker mentioned in the earlier evidence session the importance of the wider measures. I think that the rent pressure zones are very much a temporary solution. If we do not get the wider measures right, we are just going to have to keep the rent pressure zones and renew them every five years. If there is a massive increase in rents in the wider sector, sitting tenants will just have to meet them when the rent pressure zones end.

I presume that charges for improvements mean increases in rents to reflect improvements. I think that the bill needs to be clarified in terms of there being an increase in rent, how that would work in practice and what kind of improvements a landlord might be able to put into the rent.

On rent increases more specifically, the proposal of one rise in 12 months with 12 weeks' notice is very welcome. It is really important to be able to challenge through the rent officer and the tribunal any rent rises that seem to be higher than would be expected. Again, that is about making the process accessible and ensuring that any fees are realistic and that the length of time to challenge is realistic. The current proposal is for 21 days, which seems quite a short time, especially when people need to get advice and so on.

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.

**The Convener:** Those are helpful points.

David Stewart wants to come in briefly.

**David Stewart:** Thank you, convener. I am keen to have a bit more debate about rent pressure zones.

**The Convener:** We are going to come on to that in a moment, but let us first finish off on the current issue. Gary Paterson wants to make a point about rent increases.

**Gary Paterson:** One of our main concerns is for prospective tenants. There is a worry that landlords can just basically play catch-up. They could have someone in for a certain period or, as was noted earlier, they could have a number of

properties at different levels. There is a disconnect in cities such as Aberdeen, where rents for students have increased by more than 40 or 50 per cent but the level of income has not increased. However, there are ways of dealing with that. One way is to build more affordable social housing. One way of finding out whether there are income issues in a hot zone and understanding the problems in an area would be to look at the applications that are coming in for local housing support.

**The Convener:** Mr Sutherland, do you want to comment?

**Fraser Sutherland:** No—Beth Reid covered the point that I was going to make about the notice periods and getting help and support, so I will not repeat her.

**The Convener:** David Stewart will move us on to rent pressure zones.

**David Stewart:** Thank you, convener. I am at the right point in my papers now, so I am happy to raise the issue. The witnesses will have heard our previous discussion about the proposals on rent pressure zones. My general view is that the designation seems quite sensible. I remind the witnesses that the procedure will be that a proposed designation will have to come from a local authority; the proposed zone will then go to the Scottish Government to be designated under the affirmative procedure. There is no minimum size for a zone and no maximum, apart from the size of the local authority.

There are some issues, though—for example, the measure will affect only existing tenants. If an area is declared a rent pressure zone and someone then moves into a house in the zone, will they be subject to the zone or will that happen after 12 months? We need to debate such issues, so I am keen to get views on the measure. Liz Ely raised a technical issue about the use of the CPI. We have to have a measure of inflation and, as she will know, the CPI is a lower index than the retail prices index, which is normally about three quarters of a percent higher than the CPI.

We need to get information about all those issues, so I just throw it open to get some views.

**Rosemary Brotchie:** The value in designating a rent pressure zone will not be just in the impact that it can have on sitting tenants' rent increases while it operates; the real value will be in the power and focus that it will give the local authority to examine and act on the rental market problems in its area. As strategic bodies, local authorities already have to produce local housing strategies. Under the bill, a local authority that is considering introducing a rent pressure zone will have to consult in its area on the designation. There should also be an onus on the local authority to

consider the impact on its local housing strategy and what other measures should be taken. For example, the fact that a rent pressure zone is required should be a red alert that more affordable housing is needed in the area, so steps should be taken to ensure that that is provided.

I reinforce the point that Robert Aldridge made in answering the previous question that, in other countries, the infrastructure for controlling rents has been in place for many years. Because the area is so complex and because of the focus that has been put on the issue as a result of the bill, we want the Government to take time to fully 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.

**David Stewart:** Rosemary Brotchie makes some interesting points, but landlords have expressed the worry that there could be an escape of capital. If the north of Aberdeen was designated and the south was not, would potential new investment go to the area that was not covered by the rent pressure zone, because rents could be increased more there? What are your thoughts on that?

**Rosemary Brotchie:** Under the current proposals, the rent pressure zone will affect only sitting tenants; new investors that come in and let properties for the first time will be able to set a market rent, so I do not think that the zone would have the suggested impact. However, part of the local authority's responsibility when considering a rent pressure zone will be to think about the impact that it would have on the market as a whole and the measures that the local authority might take to encourage new investment in private renting and improve supply. That should be one of the things that the local authority takes into account.

**Liz Ely:** I reiterate the importance in a rent pressure zone of the limit on rent increases applying to prospective as well as sitting tenants in any property. If a rent pressure zone was designated and the landlord knew that, once a tenant was in a property in that area, the landlord would not be able to increase the rent by whatever amount they wanted, that would create an additional impetus to set a very high rent for a new tenant, to overcompensate for the fact that they were in a rent pressure zone. Landlords would think, "I cannot put up the rent too much while they are in there, so before they are in, I had better put up the rent quite a bit." If the limit on rent increases applied to prospective as well as sitting tenants, that problem would not be there.

**Adam Ingram:** Surely that would mean that an investor would not invest.

**Liz Ely:** That might be the case in the zone, but supply might increase. Another question is what we want to invest in. If the rent pressure is very high in an area, maybe that is a red flag for the local authority to invest in more affordable housing there.

**Adam Ingram:** The point has been made that introducing rent controls is a complicated business. The evidence that we have heard suggests that. We can get into situations where ceilings become floors and where we bid up the rent levels in an area by introducing controls. I would like to see an awful lot more research being done on the subject; that is the consensus that I am getting from the groups here.

**The Convener:** Similar measures have been introduced in other countries, but perhaps it would be good for us to learn what the experience has been in those locations. Do the witnesses feel that the bill goes far enough?

**Liz Ely:** We do not feel that the bill goes far enough, although we accept and echo the point that rent controls are complex and more research is needed. As a starting point, we are pleased with what is being offered. There could be a measure that was the CPI plus N, for example, where N could be a negative number in extreme cases. It usually would not be negative but, if that was possible, it would go a bit further towards making renting affordable, which it currently is not.

**David Stewart:** That is a good point, although the CPI could be negative if we had deflation so, in a sense, that would be covered.

**Gary Paterson:** We have noted our concerns about some of the detail. More broadly, we are happy that some form of rent control is being introduced, but it is a small step, and we would like much more significant development in that area. As I see it, there is a severe disconnect between the rent that people are expected to pay compared with the income that they have, particularly for students who struggle to find part-time work and have to rely on their student loans and bursaries.

There is a question to be asked about reasonable investment in properties and a reasonable expectation of what should come out of that. My concern is about being tied to a capital market price. In reality, that does not relate to the income and the lives of the people who live in such properties.

We have talked about this before. Landlords can massively hike up rents after a tenant has left and before someone new moves in. That is negative for society in general, but it definitely impacts on students, because we are much more mobile in the cities that we live in.

11:45

**Rosemary Brotchie:** I will leave aside what we have said about the complexity of the area, which was considered in great detail in the process that led to the bill being published. When we spoke to tenants, they told us that what they really want is security of tenure—that is the most fundamental thing that the bill is seeking to achieve—and certainty about rents during their time of tenure, which is just as important.

We want to create a sector that can thrive and grow and to ensure that we see an increase in supply; fundamentally, high prices are to do with a lack of supply. We want the Government to take a much longer-term look at rents and affordability and to understand what is best done to tackle those issues. However, we think that what is in the bill strikes the right balance.

**The Convener:** That perhaps brings us back to a point that Liz Ely made about where we place investment in order to provide affordable housing. I am not sure that the bill can tackle that, but that is perhaps a good point to end on.

Does anyone want to raise any issues relating to the bill that have not been covered this morning? This is your last chance.

**Robert Aldridge:** I am slightly concerned about the provision in schedule 2 that states that a

tenant must inform their landlord about anyone who is staying with them, which seems to be a large intrusion. It might be more appropriate if the tenant had to inform the landlord of someone who was staying there only if that person was using the property as their permanent home.

**The Convener:** That is helpful.

**Rosemary Brotchie:** Part 6 of the bill has not come up this morning. It gives the partner of a tenant the right to succeed to the tenancy on the tenant's death. That is a welcome move, which we fully support. It brings private sector tenancies into line with the situation in the social rented sector. I am sure that it will come up in future evidence sessions and I wanted to get on record the fact that we fully support it.

**The Convener:** We have covered a lot of ground and I am grateful to members and witnesses for their contributions.

At the committee's next meeting, on 11 November, we will hold a second round-table discussion on the bill, which will involve representatives of landlords and the letting agent industry. We will also take evidence from the Minister for Housing and Welfare on a statutory instrument on the Private Rented Housing Panel.

*Meeting closed at 11:48.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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