



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 2 December 2015

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PRIVATE HOUSING (TENANCIES) (SCOTLAND) BILL: STAGE 1 1

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
25th Meeting 2015, Session 4

CONVENER

*Jim Eadie (Edinburgh Southern) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (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:

Margaret Burgess (Minister for Housing and Welfare)

Kirsten Simonnet-Lefevre (Scottish Government)

Barry Stalker (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 2 December 2015

[The Convener opened the meeting at 10:03]

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

The Convener (Jim Eadie): Good morning. I welcome everyone to the 25th meeting in 2015 of the Infrastructure and Capital Investment Committee. I extend a very warm welcome to the students and the staff from the University of Stirling, all of whom are involved in housing studies, who have joined us in the public gallery this morning.

Everyone present is reminded 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. Apologies have been received from David Stewart.

Agenda item 1 is an oral evidence session on the Private Housing (Tenancies) (Scotland) Bill at stage 1 from Margaret Burgess, Minister for Housing and Welfare, Barry Stalker, head of private rented sector strategy and the private tenancies bill team, and Kirsten Simonnet-Lefevre, principal legal officer, Scottish Government. I welcome the minister and officials. Would you like to make a short introductory statement, minister?

The Minister for Housing and Welfare (Margaret Burgess): Yes, I would. The bill will introduce a new private residential tenancy, which will improve security, stability and predictability for tenants, while providing safeguards for landlords, lenders and investors.

The private rented sector plays a vital role in meeting Scotland's housing needs. This Government recognised that when we published our strategy for the sector in 2013. That was the first strategy for private renting in Scotland, and was developed in partnership with stakeholders. In it, we set out our vision for:

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

To achieve that, the Scottish Government has undertaken a range of action to improve private renting. That includes clarifying the existing law on the charging of premium fees, so that tenants

cannot be charged for getting a tenancy; setting up the tenancy deposit schemes in Scotland to protect tenants' deposits; legislating to create a new tribunal for private renting; legislating to regulate the letting agent industry; and providing local authorities with additional, enhanced powers to tackle bad practice, where that occurs. However, to deliver the better quality, more professional sector that we have set out to achieve, we need to do more than that. We need to rebalance the relationship between landlords and tenants to one that is fairer for both and that works in today's private rented sector.

Change is never easy, but sometimes it is necessary. The change that the bill will bring about is necessary in order to make private renting better for everyone. We will have a modern, open-ended tenancy. There will not be a no-fault ground. Instead, landlords will use new grounds for repossession, which cover all the reasonable circumstances that they would need. Rents will also be more predictable, with adjudication provided where rent increases take rent beyond the market rate. Local authorities will also be able to apply for rent pressure zone designation where rent increases in a local area are having a detrimental impact on tenants and housing.

I want all tenants to feel more settled in their homes and communities. That will benefit families, but also many other tenants, including young people, people with caring responsibilities and more vulnerable people.

Tenants should be able to assert their rights, where necessary, without fear of arbitrary eviction. That includes being able to ask their landlord to carry out necessary repairs.

The new tenancy will provide a step-change in improving the quality of private renting by changing the tenant-landlord relationship. That is not just my belief—I have recently received a letter from Shelter Scotland giving its full support for the bill's core principle.

I recognise that landlords must also feel confident in their ability to effectively manage and regain possession of their property. If they do not have that confidence, there is a risk that some might leave the sector. I would want to avoid that, so it is important to ensure that we get the balance right and that the grounds for repossession will work for landlords as well.

We have considered the grounds carefully, including what grounds should be mandatory or discretionary and, as part of our consultation, we have increased the number of grounds from eight to 16.

The first-tier tribunal will play a key role in dealing with disputes under the new tenancy. The creation of the tribunal has been widely supported

by both tenants and landlords' representatives. It will provide a more accessible, specialist form of redress.

Where a ground is mandatory, the tribunal will still need to establish whether it has been met. Landlords will need to provide evidence in support of an application. Let me be clear about that: a landlord simply saying that they intend to meet a ground will not be adequate proof.

In most cases, tenants will end the tenancy. This is what happens under the current tenancy and I expect that to continue. However, where a landlord brings a tenancy to an end and that is disputed, then an application will need to be made to the tribunal. Let me assure the committee that sanctions will apply should a landlord mislead a tenant into leaving their home or mislead the first-tier tribunal into issuing an eviction order. Some of the sanctions are set out in the bill, as they are specific to the new tenancy, but criminal sanctions, such as for illegal eviction, will also continue to apply.

The Government will ensure that tenants are made fully aware of their rights. For instance, we will include information about tenants' rights and where to seek advice in the notices prescribed under the new tenancy.

I know that during the committee's evidence sessions enforcement has been raised as a particular concern. I reassure the committee that we will continue to work with local authorities to improve the enforcement of existing regulations in the sector. Shortly, we will consult on new statutory guidance for local authorities on landlord registration to deliver tougher, more targeted enforcement. We will continue to work with our partners, the Convention of Scottish Local Authorities and local authorities to ensure that the private rented sector is regulated effectively and robustly.

Those are broader matters of policy, but this bill is about rebalancing the relationship between tenants and landlords. Clearly—as in any case where a balance is struck—it will not suit everyone entirely. Some will want to go further and some will want less change. Getting the balance right is not easy. Overall, we 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 both tenants and landlords.

The Government has undertaken extensive consultation and carefully developed the policy to make sure that we get the balance right. I have outlined the work that we are doing to create a better, more professional private rented sector and the new tenancy is absolutely key to achieving that.

The Convener: Thank you, minister. I will kick off our questions. You said that the bill's aim was to rebalance the relationship between tenants and landlords. Will you explain why the Government has got the balance right, notwithstanding the fact that it is always difficult to achieve such a delicate balance? We have received evidence from a range of stakeholders and you alluded to the fact that some, such as the Association of Local Authority Chief Housing Officers and the Govan Law Centre, suggested that the Government had not gone far enough in favour of tenants. At the same time, the Scottish Association of Landlords and the Council of Letting Agents suggested that the Government had gone too far. Why has the Government got it right?

Margaret Burgess: It is a very fine balance and getting it right is not easy. However, we have consulted widely on the bill for some time and it is part of what we are trying to achieve for the sector. As you said, evidence from some says that we are going too far one way and evidence from others says that we are going too far the other way. That in itself says that perhaps we have got it right, as we are somewhere in between those positions. That is what we are seeking to achieve.

We want to get the balance right. It has not been easy and we are not going to please everyone, but we have struck the right balance.

The Convener: The committee heard that if the Scottish Government wished specifically to target bad practice from landlords and letting agents, a more appropriate route might have been stronger enforcement of existing legislation. This morning you said that the Government will introduce new statutory guidance on tougher enforcement. Could the existing enforcement measures not solve many of the problems that the Government seeks to address through the bill?

Margaret Burgess: No, they could not. The bill is trying to do something quite different. It is creating a modern tenancy agreement, which will provide stability and security for tenants, and predictability in rents. Enforcement of existing legislation would not be able to do that on its own. The bill and that enforcement are complementary. We can do more on enforcement and we are working hard at that. That is also about improving standards in the sector. However, the bill brings the tenancy agreement into the 21st century. That is what we are trying to achieve.

The Convener: We have a tight timescale for the passage of the bill. Can you say anything about the timescale for publishing the new statutory guidance?

Margaret Burgess: The statutory guidance relating to landlords and enforcement is separate

from the bill. We will consult on it from the end of the year into 2016. One of my colleagues might want to say when we plan to publish the guidance.

Barry Stalker (Scottish Government): We intend to have the new guidance ready and available from spring next year.

The Convener: That will be available for local authorities and the sector to make use of. That is great.

Alex Johnstone (North East Scotland) (Con): I will ask how student accommodation will be affected. We have had a number of representations from people who are involved in the provision of student accommodation through a business model that includes using that accommodation as a holiday let during times of the year when students are not using it. What is your response to the concerns that we have heard? Has a business case been made for entirely exempting student lets in the private sector from the new tenancy regime?

Margaret Burgess: We wanted to have a tenancy that was the same across the private rented sector, whether or not the tenant was a student. We consulted widely on that and spoke to student groups. We have introduced a new ground for eviction, which is that if someone who is in purpose-built student accommodation ceases to be a student, they can be evicted. We have had a number of representations from the purpose-built student accommodation sector. We think that practices can be changed, because students may not want to stay throughout the period.

We also want landlords to be aware of the fact that, when they let accommodation to someone, it is that person's home. We want people to feel that their private rented sector accommodation is their home. However, as you say, there has been representation from the purpose-built student accommodation sector. I am still considering what that sector is saying to us.

10:15

Alex Johnstone: Will the minister consider a ground for eviction for student accommodation that is related not to the status of the landlord but to the status of the tenant as a student?

Margaret Burgess: I am not minded to do that; I am more minded to reconsider what to do on purpose-built student accommodation. I am considering the student sector at the moment. We are thinking very carefully about what stakeholders have said about it and I will be interested to see what the committee's report says about student accommodation, but I am not minded to make being a student a ground for eviction in itself.

Alex Johnstone: According to my reading, accommodation that is owned by the universities is exempted from the bill. Is it conceivable that accommodation that is privately owned but entirely used as student accommodation could be treated in the same way?

Margaret Burgess: The reason why accommodation that is owned by universities has been excluded is that it sits separately because the Scottish Further and Higher Education Funding Council is involved and it is non-charitable, non-profit making. Therefore, we felt it appropriate to exempt such accommodation.

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

Alex Johnstone: In considering that, do you intend to take into account the fact that the significant improvements in the student accommodation that is available have largely been based on investment that has been attracted by a business model that may cease to exist under the bill?

Margaret Burgess: That is one of the reasons why I am considering the matter carefully. I am examining what evidence has been produced so far, considering what the stakeholders are telling us and will look at what the committee says in its stage 1 report. We are giving the matter a considerable amount of thought.

Clare Adamson (Central Scotland) (SNP): Minister, you mentioned that one of the key measures that will give tenants more security in the future is the removal of the no-fault ground for eviction. However, we heard in evidence that the removal of that flexibility in the sector may dissuade landlords from investing. What is your response to that and how will you reassure landlords that the private rented sector will continue to be a sound investment?

Margaret Burgess: I certainly do not consider that that will put landlords off investing in the sector. We are clear that the bill is about making the sector better and more attractive to let their properties in. Removing the no-fault ground simply means that landlords cannot ask tenants to leave for any arbitrary reason simply because a tenancy has come to an end. We have included in the bill 16 grounds on which landlords can reasonably get their property back. That is sufficient.

The removal of the no-fault ground has been very well supported by tenant representative groups. Local authorities support what we are doing on that as well. It is central to what we are doing in creating a modern tenancy. I notice that

the chair of the review group, Professor Douglas Robertson, said that it is a good step forward in bringing the private rented sector into a modern tenancy regime.

Clare Adamson: I welcome the minister's reassurance in that respect, but Gerry More, who was appointed by Homes for Scotland as a PRS champion, has raised concerns about unintended consequences with regard to the purpose-built student sector and the end of the no-fault ground for eviction and has suggested that the introduction of rent control areas might make Scotland "less attractive" for investment. We should also take into account last week's budget, which contained measures on mortgages for buy-to-let properties. Are you concerned that there might be an impact on the sector from this change?

Margaret Burgess: I do not think that there will be such an impact from what we are proposing in the bill. Moreover, the announcements in last week's budget with regard to mortgages for buy-to-lets might put people off investing in the sector in England, but at this stage they do not apply to Scotland.

We are working very closely with Gerry More, the private rented sector champion. We funded Homes for Scotland to appoint such a champion, and we are working hard with him, but I must point out that he said that this could put Scotland at a disadvantage. We are doing other things with Gerry and looking at ways of attracting investment into the private sector such as rental income guarantees. Furthermore, the chief planner has written to all local authorities, telling them to consider the importance of the private rented sector when they look at housing needs and assess demand in their areas. We are doing a lot to encourage the private sector.

Of course, there are two sides to every coin. For all those who are saying that the current proposals in the bill will put off investors, there are people, organisations and investors who are telling us that they will not detract from investment. We need to hear both sides of the story. This is all about striking a balance, and we think that we have done that and that what we are proposing is proportionate.

Clare Adamson: Thank you, minister.

Mike MacKenzie (Highlands and Islands) (SNP): Good morning, minister. A number of stakeholders that represent tenants' interests have said that all, or at least more, of the eviction grounds should be discretionary in order to ensure that the tribunal has an opportunity to assess the reasonableness of an eviction according to the circumstances of the individual case. What are your thoughts on that?

Margaret Burgess: This brings us back to striking the right balance between what is right for tenants and what is right for landlords. Landlords have to be able to reclaim their properties in certain circumstances, but as I said in my opening remarks, it is not the case that, even with mandatory grounds, a landlord can simply go to the tribunal and say, "I want to reclaim my property on this ground." The tribunal will have to look at the evidence and be sure that the ground is established.

If, for example, a landlord goes to the tribunal and says, "I want to refurbish my property. I've issued a notice to the tenant, but they won't leave", the tribunal will have to consider whether the refurbishment is such that the tenant must be displaced and moved out of the property. Landlords will need to establish real grounds for asking tenants to vacate premises in order that they can carry out the work that they say they want to do. We are certainly looking at ways of making it clearer either in the bill or in secondary legislation that this is not a tick-box exercise and that grounds—even mandatory ones—must be established. The tribunal must be satisfied that such grounds have been met.

Mike MacKenzie: If a landlord were to argue that they intended the property to become, say, a family member's home, how would the tribunal establish whether that was actually the case or just a spurious ground for getting rid of a tenant?

Margaret Burgess: I will say a couple of things about that. I cannot pre-empt how the tribunal will act and what it will look at, but it will be composed of people who are experts in the field who will look at the evidence that is put before them. In the case of a landlord who wants to move a family member into a property, that would not involve a tick-box exercise because they would have to give information and details. As I said, I cannot pre-empt what the tribunal will say, but we are consulting on whether to make it an offence for a landlord to make a misleading statement to a tribunal and whether the penalty or fine for that should be £5,000.

That is part of the overall picture of a landlord being a fit and proper person to carry out the business of being a landlord. If it is established that a tenant has been misled by their landlord, the tenant can be compensated, by the tribunal, up to the value of three months' rent. That would be in addition to any other penalties for the landlord for illegal eviction, giving a false statement to a tribunal or not being a fit and proper person to be a landlord. I think that there is a lot that will make landlords think twice before trying to use spurious grounds to remove a tenant who should not be removed. I think that most landlords appreciate that and manage their properties well, but those

who do not could face many penalties through legislation.

Mike MacKenzie: Shelter Scotland and other stakeholders representing tenants' interests have argued strongly that the rent arrears ground will in its current form have a disproportionate effect on tenants and should be amended. They point out, for instance, that a tenant who got into arrears of their first month's rent and paid the next two month's rent but did not succeed in catching up with the arrears within the three-month period might be disproportionately affected by that situation having created a ground for eviction, even though the landlord might not be seeking that. Is more work required on that?

Margaret Burgess: I will make a couple of points. Rent arrears can be a key issue for landlords and the viability of their business: they might have mortgages to pay and therefore require tenants' rent to come in so that they can do that. We have to get the balance right on arrears. It must be clear that landlords can recover their property and effectively manage it.

However, it is recognised that rent arrears can also be a problem for tenants who might be suffering financial hardship. Our intention is to ensure that, as soon as they fall into arrears, tenants are provided with advice and know where to get money advice. We say in the bill that if rent arrears over a three-month period add up to a full month's rent, that is a mandatory ground for eviction. However, if arrears are caused by a delay in payment of benefits that is not the fault of the tenant, the mandatory ground for eviction is not met.

There will be the opportunity within the three-month period for a tenant to make an arrangement with the landlord to catch up with arrears: the landlord will not automatically have to evict somebody who has rent arrears. The landlord could issue a notice to the tenant to leave because of rent arrears and say that if the arrears are not cleared within three months they will take the case to a tribunal, but there would be the opportunity within that period for the tenant to work with the landlord to make arrangements to repay the arrears. The landlord would not have to take the case to tribunal at the end of the three-month period. Many landlords in the private sector currently work on arrangements with their tenants to ensure that rent arrears are reducing and that tenants can remain in the property.

However, we have to give landlords that ability to reclaim their property, because it is their business and some of them have no other way of recovering it if tenants continually do not pay their rent, so we think that we have struck the right balance with the three-month period.

10:30

Mike MacKenzie: Some landlords have complained that there is in the bill no mechanism to deal with tenants who persistently make late payments, although they eventually pay. Does that cause you concern?

Margaret Burgess: You are right to say that there is nothing currently in the bill to cover tenants who persistently make their payments late but nevertheless do make their payments. The bill covers a month's rent arrears that have not been paid and are outstanding for a three-month period. There is currently nothing in the bill to cover the situation in which somebody is paying their rent late every month, but does not accrue a month's arrears for a three-month period, as long as the landlord is getting the rent.

Clare Adamson: We have taken evidence on the antisocial behaviour ground for eviction. During our meeting on 18 November, witnesses described that ground as "mandatory", whereas the material that is associated with the bill describes it as "discretionary", which has led to a little bit of confusion. For the record, will you give us your understanding of the nature of the antisocial behaviour ground in the bill?

Margaret Burgess: The antisocial behaviour ground is discretionary. The landlord will have to establish that antisocial behaviour has taken place. If the matter goes to tribunal, the tribunal can determine, based on the evidence in front of it, whether the landlord can evict on the antisocial behaviour ground.

Clare Adamson: Thank you for that clarification. Some witnesses who represent landlord groups have expressed concern that landlords will no longer be able to tackle effectively the behaviour of antisocial tenants because, in many such cases, neighbours and co-tenants would be fearful about giving evidence before a tribunal. How do you respond to those concerns?

Margaret Burgess: The first thing to say is that we all understand and appreciate the alarm and distress that are caused by antisocial behaviour. That is not acceptable in the private sector or in the social sector, and we understand the difficulties that it causes people. However, it has to be established that antisocial behaviour has taken place, and a process has to be followed before a person loses their home. As the law currently stands, things can be arbitrary in the private sector; people can be asked to leave simply because their lifestyle is different. It might not be antisocial behaviour, so it could be an arbitrary decision. If a landlord is asking people to leave their home and is evicting people, the ground of antisocial behaviour must be established

The tribunal will look at the evidence. The tribunal is not as formal or adversarial as a court, but members of the tribunal will have to see the evidence that is presented to them. It may be the case that they will not call neighbours as witnesses; there may be sufficient evidence in the information that the landlord provides. There could be statements. There could be a variety of things. Ultimately, it is up to the tribunal to decide whether that ground has been met. That will allow landlords to manage their properties effectively and it will give tenants an opportunity to state their case, if it is being suggested that they are behaving in an antisocial way, because they are entitled to give their side of the story, as well. I do not think that that will cause greater difficulties for landlords than the current system does.

At the moment, if the tenant is early in their tenancy, it might be the case that the landlord would just have to wait for the tenancy to run to its end and then not renew it. However, if there is evidence of antisocial behaviour early in a tenancy, the bill will allow a landlord to issue a notice to leave on antisocial behaviour grounds. That is fair and proportionate.

Siobhan McMahon (Central Scotland) (Lab): My question follows on from Clare Adamson's first question. It helps that you have said that antisocial behaviour is a discretionary ground because there has been a lot of discussion about that. Why did you decide to make it a discretionary ground? A lot of people, particularly landlords, have been calling for it to be mandatory. It would help me to know your thought processes on that.

Margaret Burgess: Antisocial behaviour has been a discretionary ground since we published the bill. We decided to make it discretionary because it is about fairness. There has to be evidence that the behaviour is actually antisocial and is causing problems for neighbours.

We also need to ask whether the situation can be put right. It might well be that mediation, for example, can sort out the antisocial behaviour problem. Is the behaviour so bad that the person needs to be evicted? Some people will be that bad and the tribunal will say that the evidence shows that the behaviour is not acceptable and that an eviction order should be issued. In other cases, the tribunal might ask them to come back later if the antisocial behaviour persists. However, there could be circumstances when the tenant says that they are sorry, that they were out of order and that they are willing to look at their behaviour and talk.

There is a range of things to consider, but ultimately the decision was about fairness and about establishing whether behaviour is actually antisocial. It is not right that a landlord can, under the current system, make an arbitrary decision,

without evidence, that a tenant has committed antisocial behaviour.

Siobhan McMahon: Landlords have given us evidence that they are concerned that neighbours might not put themselves forward for a tribunal because the person might not be found guilty of antisocial behaviour and might return to cause disruption in their block of flats, for example. Is that a concern to you?

Margaret Burgess: That applies across the board, whether it be in the social rented sector or the private rented sector. We have to make it clear that antisocial behaviour is not acceptable anywhere, but it might well be that the tribunal might not feel the need to call witnesses or tenants. If the landlord knows about antisocial behaviour, that means that somebody has told them. Generally it will be a neighbour who reports the situation to a landlord in whatever sector.

The neighbour will already have spoken out, therefore, and the tribunal might not require to call witnesses. The landlord might want to take witnesses along; if they are willing to go, that is fine. The tenant might want to go and speak on their own behalf. It all depends on the circumstances and on the tribunal. I understand that people can be reluctant to do that because they are fearful for themselves. If behaviour has been intimidating and frightening and the evidence can show that, the tribunal will do the right thing.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): On other grounds for eviction, a number of stakeholders have said that a landlord's having ceased to be registered should not be a mandatory ground for eviction because that would wrongly penalise tenants for landlords' failings. Are you persuaded by that view? Is that something that you might consider?

Margaret Burgess: We are looking at a number of issues. If a landlord ceases to be registered, they are not a fit and proper person to be a landlord, so how long should we allow a tenant to remain in a property that has a landlord who is not fit and proper? We are trying to get to something a bit clearer. It about balance.

Kirsten Simonnet-Lefevre might have something to say from the legal perspective.

Kirsten Simonnet-Lefevre (Scottish Government): When a tenancy is indefinite and the landlord is not a fit and proper person because they are not registered, there has to be a way of bringing the situation to a conclusion. Having that as a ground to evict would bring the situation to a conclusion if the landlord does not change his behaviour and register again.

Adam Ingram: Unfortunately, however, that seems to penalise the tenant, rather than the

landlord, for the bad behaviour or poor performance. I understand that that ground was not consulted on prior to the introduction of the bill. Can you explain why you brought it in without consultation?

Margaret Burgess: There were a number of reasons for that. In our first consultation, we had eight grounds for eviction. In our second consultation, we had 11 grounds. We listened to stakeholders and examined other evidence, which is why the ground was not specifically consulted on. However, we have to look at the issue. I absolutely take your point that it is not the tenant's fault if their landlord fails to be registered. If a landlord loses their registration, that is because they have been behaving in a way that means that they are not fit to be a landlord of that property.

In some instances, a local authority can serve a rent penalty notice, which means that the landlord is not allowed to rent, even if a tenant is there. We are looking at the measure to see whether we can make it better. We absolutely understand that the ground could arise through no fault of the tenant. Likewise, if a landlord wants to sell their house or bring in a family member, that is not the tenant's fault. However, if a landlord behaves badly, that will impact on the landlord and could affect their registration. There could be penalties on the landlord and it could affect whether their business continues. It is about working with the landlord to see whether they can change their practice and be a registered landlord. We have to look at that.

The point that we make is that we cannot have somebody living in a property indefinitely when the landlord is not fit and proper to manage that property.

Adam Ingram: Yes—but you are looking at that area.

Margaret Burgess: We are looking at that area to try to strike the balance a bit differently.

Adam Ingram: My next question is about landlords' intentions. I think that you have already covered that with your answers on refurbishment and your answers to Mike MacKenzie's question about the ground for eviction to allow a family member to move in. Will detailed guidance be produced on the landlord-intention eviction ground? Will there be something that people can refer to easily?

Margaret Burgess: We will provide guidance for landlords anyway, but we are also looking at whether we can do something to make the bill clearer on that, and we are open to suggestions. We cannot instruct the tribunal what to do, but we can look at how we can make clearer what we mean by "intention". We want to make it absolutely clear that the landlord will still have to evidence what they are saying to a tribunal. I am clear that

any notice to leave that goes to a tenant should clearly set out their right to go to the tribunal. The notice should say that, if the tenant disputes what the landlord says or thinks that it is spurious, they can take the case to the tribunal, and it should also set out where the tenant can get assistance to do that. It should be clear that it is not just a case of the notice being issued, the tenant leaving and it then transpiring that it is all—

Adam Ingram: Bogus.

Margaret Burgess: Exactly.

We want to be absolutely sure that tenants know their rights and are encouraged to exercise them, and know where to get help to do that. If we can do so, we want to make the bill clearer on that. We are looking at how we can make it absolutely clear so that we can have a bit more confidence.

I understand the point that members have made that, if someone simply says that they intend to sell the property or move a family member in, the notice will be granted because that is a mandatory ground for eviction. However, a notice will be granted only if the ground is established—mandatory grounds have to be established as well. If we can make that clearer, we will certainly do so. If the committee has any suggestions on how we can make it clearer, we will certainly look at those, too.

Alex Johnstone: Some stakeholders have argued that ground 6 as it relates to employees is too narrow, particularly in the context of rural businesses. It was suggested that there should instead be a ground that allows eviction where the property is needed to house a new employee, regardless of what the property is currently being used for. Has the case been made for a broader formulation of the relevant ground?

10:45

Margaret Burgess: No, I do not think so. If someone ceases to be an employee, that is a ground for regaining the property. Security of tenure is a particular issue in rural areas, which the new tenancy will help to address. I would be concerned if a family were evicted from their rural home so that someone else could be given the tenancy, whether the new tenant was an employee or not. The family might be part of the community, with children in the local school, and I would be concerned if they were asked to leave so that an employee could come in.

Employers have to look at their properties and how they manage them. I know that there might be difficulties for employers, but if the purpose of the bill is to give people security of tenure in what they regard as their home in the private sector, it would

be unfair to allow a family in a rural home to be moved on so that an employee could be brought in. A person who is no longer an employee can be asked to leave—we put that in the bill after listening to concerns—but I am not persuaded that to ask people to leave so that an employee can be brought in is the right approach.

Holiday lets do not come into this situation, and some employers use short-term holiday lets for employees. There are other ways for people to house their employees.

Alex Johnstone: Other grounds for eviction, which are not in the 16 grounds in the bill, have been proposed. For example, it has been suggested that additional grounds are needed to deal with situations in which a tenant has died or disappeared, or has served a notice to leave but failed to vacate the property. Is there the prospect of additional grounds to deal with such situations?

Margaret Burgess: I am not convinced that there is a need for additional grounds to deal with the issues that you mentioned.

If a tenant dies, there is provision for the bereaved partner to succeed to the tenancy. However, there are arguments that we need to look again at what happens on the death of a tenant. The proposed approach in the bill could be disadvantageous to the deceased person's family and the landlord, so we are considering lodging an amendment at stage 2 to bring a tenancy to an end if there is no bereaved partner to take it over. That might resolve the point that you made about what happens when a tenant dies.

A tenant who serves a notice to leave but stays on in the premises beyond the end of the notice period no longer has a tenancy. They are no longer a tenant and they are illegally occupying the property, so the sheriff court would have to step in. They could not be taken to the tribunal, because the tenancy would have come to an end, so it would be for the sheriff court to eject them for illegally occupying premises.

Adam Ingram: There are restrictions on applying for an eviction order during the initial period of the tenancy—I think that only five or six of the grounds for eviction can be used during that period. The Council of Letting Agents and others have argued that it should be possible to use additional eviction grounds during the initial period—for example if a tenant has abandoned the property. What do you make of that suggestion?

Margaret Burgess: I am looking carefully at the evidence to the committee and to the Government on the initial tenancy, the grounds and how it will operate, and I would welcome any comments and suggestions on how we should proceed. For example, in the case of abandonment, are the

grounds sufficient? Is the initial tenancy meeting the purpose that we intended it to meet at the outset of the bill?

Adam Ingram: I move on to wrongful termination. Some stakeholders have suggested that the compensation paid to tenants for wrongful termination should be more than three months' rent. You have explained that that would not be the only penalty faced by a landlord, but three months' rent is not a large sum in relation to the impact on the tenant.

Margaret Burgess: It depends on what the rent is. We felt that three months' rent would be sufficient to allow the tenant to find other accommodation and pay the deposit on that accommodation. It also lets the landlord know that they should not wrongfully terminate a tenancy. As I said, there are also other penalties on the landlord.

Compensation must be based on what has been lost, which is why we came to that figure. We felt that it was a reasonable figure and one that the tenant could probably recover from the landlord. Together with the other penalties that the landlord might face, the compensation should deter landlords from wrongfully evicting tenants. We made our intention clear that we were not prepared to have wrongful evictions. We want people to be able to stay in their home and we want landlords to recognise that we are serious about that. We came to the figure of three months because we felt that it was reasonable compensation.

Adam Ingram: But people in that situation—tenants who are being evicted in those circumstances—have a pressing need to find another home, so they might not necessarily take their case to the tribunal. It has been suggested by bodies such as Homeless Action Scotland that third parties such as local authorities should be able to bring cases to the tribunal on behalf of tenants. Is that something that you have considered?

Margaret Burgess: No, it is not something that we have considered.

We have to be clear about this. We will always advise tenants of their rights and what they can do, and there will also be a model tenancy agreement. That is important. However, in any case that goes to a tribunal, it is the tenant who has been wronged and—although this does not mean that the tenant cannot get assistance to take their case to tribunal—the tenant must be involved in the process. We cannot have a local authority or an organisation going to the tribunal without the tenant's knowledge or involvement.

While third parties should not necessarily be taking cases to tribunal on behalf of the tenant, the

tenant should get assistance to make their case to the tribunal: they should be supported in making their application and they should be accompanied to the tribunal to put their case forward. It is an important part of empowerment that the tenant should be involved in the process. However, I understand Adam Ingram's point that some tenants will have other things to do at the time, such as get a new tenancy.

It is important that people who are unable to make their case and take it to a tribunal can be accompanied and supported in order to allow them to do that. I am very keen that the tribunal system is accessible to everybody and that people are encouraged to use it if they feel that they have been wronged, but they must be part of the process.

Adam Ingram: The operational detail of the tribunal is still to be set out. Can you update the committee on any developments in that respect?

Margaret Burgess: Current private rented sector cases will be transferred to the tribunal from the end of 2016. We will be consulting very soon on access to and representation for people at the tribunal, as well as its operation and whether there should be costs.

I am clear that the tribunal system will be less formal than the court system, that the tribunal members will be experts and will build up further expertise in the subject, and that people will be able to represent themselves at the tribunal but will also be able to be accompanied by someone—a lay representative, a family member or whoever—who can help them and speak on their behalf. That is how I am approaching the housing sector tribunal, although, as you will be aware, it will be part of the overall Scottish Courts and Tribunals Service.

Kirsten Simonnet-Lefevre may have something to add on the update.

Kirsten Simonnet-Lefevre: We have a consultation that is currently open on various parts of the procedure, but there is more to be consulted on.

Adam Ingram: A question has been raised about access to legal aid. Is that covered by the consultation? Do you have any preliminary views on that, minister?

Margaret Burgess: I have no preliminary views, given that we are consulting at the moment. I am very keen that people can have representation at a tribunal if they wish it, whether that is a legal representative or a specialist lay representative from the voluntary sector. There are many experts out there, and expertise will build up.

Mike MacKenzie: Some of the stakeholders and committee witnesses have suggested that the

rent pressure zone proposals will not address the underlying reason for rent increases, which they maintain is due to a lack of housing supply. The Association of Local Authority Chief Housing Officers also suggested that those powers will not be widely used by local authorities. What does the minister think about those comments?

Margaret Burgess: We are all very clear that increasing housing supply across all tenures is the sustainable long-term solution to addressing the affordability of housing.

The powers will be discretionary and it will be up to each local authority to decide whether it wants to use the powers in its area if rent increases that are way above market levels are causing overall pressure in the local housing system. It is not for the Government to say to local authorities whether they should use a certain power; rather, it is up to the local authorities to recognise that there is a discretionary power and to ask themselves whether it would be a useful tool for them to use at a particular time.

We see the power being used only in some areas; there will not be pressure on rents in other areas.

11:00

Mike MacKenzie: Some witnesses have suggested to the committee that there is insufficient data on private rents for the proposals to be used effectively. Do you think that that is correct? Can you say how data capture on private rents could be improved?

Margaret Burgess: I do not know whether I am in a position at the moment to tell you how it can be improved. We provide annual statistics on rents in 18 broad rental market areas. I appreciate that some of those areas span more than one local authority, but the data from the rent service's market database is quite robust.

Rent service Scotland and the tribunal will publish information on how they set rents as well. It is in the bill that they will publish the data on how they set the rents, make their determinations and adjudicate on rents. That will also help a local authority to determine whether it requires to invoke the discretionary power in its area.

Mike MacKenzie: The Royal Institution of Chartered Surveyors has suggested that rent capping will provide a level of uncertainty for investors and that investors—particularly corporate investors—may be deterred from investing in rent pressure zones. Bearing in mind your answer to my first question about the need to increase supply particularly in rent pressure zones, the RICS is suggesting that rent capping might have the contrary effect—that it ultimately

would not be a good effect. Do you feel that there is merit in those concerns?

Margaret Burgess: I think that the RICS is concerned about the uncertainty. As I said at the beginning of the meeting, there are two sides on the issue. Some investors are telling us that they do not see the current proposals as a disincentive to invest in the private sector because they are looking at the other measures that we are introducing to promote the private sector to invest. For that reason they do not necessarily see rent capping as a disincentive. Others have said that they feel that it could be a disincentive because they are uncertain where it is going or how far it could go.

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

Mike MacKenzie: Finally, the bill suggests that in the rent pressure zones the caps would limit rent increases for sitting tenants but not for new tenants. Some stakeholders have suggested that they would like to see the rent controls applied to new or initial tenancies as well. Do you feel that the measures in the bill are sufficient to give adequate protection for tenants?

Margaret Burgess: I think that the measures are proportionate. When we looked at rents and talked about capping rents, we were looking at sitting tenants and the increases that they have had.

However, as I said in answer to one of your previous questions, the way to ensure sustainable rents and affordability is to increase supply, and that is something that the Scottish Government has already announced that it will do through affordable housing. What we are currently doing to attract investment in the private sector and get more properties in the sector will make the rents more affordable. That is what we are consulting on, and that is what we are doing.

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

The Convener: I return to the issue that Adam Ingram raised about the right of third parties to take an issue to the tribunal. This is perhaps more a question for Kirsten Simonnet-Lefevre. I seek clarification that the provisions in the bill are consistent with other housing legislation. The

Housing (Scotland) Act 2014 amended the Housing (Scotland) Act 2006 to give local authorities third-party reporting rights to the Private Rented Housing Panel. Is that provision the same as the provision that is proposed in the bill?

Barry Stalker: I am happy to provide an initial answer to that.

The provision in the bill is slightly different. The 2014 act provides local authorities with the ability to report a potential breach of the repairing standard to the PRHP, which can assess whether there has been a breach and, in cases in which there has been, issue enforcement notices on landlords. As part of that, local authorities have a new power to enable them to inspect properties to determine whether the repairing standard is being met. In effect, a tenant can take a potential breach to the PRHP and, when the new power is commenced, a local authority will be able to assess whether the repairing standard is being met and report on that to the landlord. If the landlord does not take appropriate action, it will be able to report that to the PRHP. That is very much about the condition of the property and the local authority's ability to assess—independently of the tenant—whether the condition of the property meets the repairing standard.

The Convener: I can see the justification for that, in the light of the circumstances that you have outlined.

The bill proposes that there will be an initial tenancy period of six months unless the tenant and landlord agree on a shorter or longer initial period—that is set out in section 52. Some of the tenant representative groups that we heard evidence from, including Homeless Action Scotland and the National Union of Students Scotland, do not see a need for an initial tenancy period. Citizens Advice Scotland and the living rent campaign said that the provision could be a problem for some tenants, for example in cases in which a tenant is the subject of domestic abuse.

In response to those concerns, do you feel that the initial tenancy period provides sufficient flexibility for tenants?

Margaret Burgess: I responded to a question on that, which I think was from Adam Ingram. I am open to looking at the initial tenancy period, the grounds for eviction in that period and the flexibility that is available. I am interested in the evidence that has been received on the issue and in what the committee might suggest. I am willing to look at that.

The Convener: That is helpful. A specific example that was raised in evidence was the situation of a tenant who is being subjected to domestic abuse and needs to leave the property

quickly. The Government would obviously be sympathetic to taking any further measures that are necessary to address that.

Margaret Burgess: Absolutely. I saw that evidence, and that is part of the reason why we will look again at what we are proposing on initial tenancies and at what we can do to address the fears that were voiced in the evidence.

The Convener: Okay. My colleague Alex Johnstone touched on the issue of the death of a tenant, and you said that a bereaved partner should be able to succeed to the tenancy, but that we would need to be careful that we do not disadvantage the family or the landlord. Could you say a bit more about that issue?

Margaret Burgess: I will defer to my colleagues if I go way off key, but as it stands, the bill allows a bereaved partner to succeed to the tenancy, provided that the property is their principal home.

If there is no bereaved partner, under the current proposals in the bill, the family, the estate or the executor must bring the tenancy to an end in a reasonable time. If there is no executor for a person who dies intestate, an executor must be appointed. We have considered the stakeholder evidence and representations on the issue and agree that that provision is not advantageous to a family, who might have to spend money from the estate to appoint an executor in order to bring a tenancy to an end. We do not think that it is fair to landlords, either. We therefore intend to lodge an amendment at stage 2 that will ensure that the tenancy ends on the person's death if there is no one to succeed to the tenancy.

The Convener: Can you explain how the bill's proposals tie in with other legislation affecting the private rented sector, and are you convinced that the proposals are sufficiently connected to and coordinated with other elements of housing legislation?

Margaret Burgess: I think that they are. I tried to make the point in my opening remarks that the bill is part of what we are trying to do in order to modernise the housing sector. It ties in with what we are doing in relation to the regulation of letting agents, the issuing of new statutory guidance on landlord enforcement and what we have done in the Housing (Scotland) Act 2014. All of that is just part of the picture that we are building for a modern private sector, which houses 700,000 people in Scotland. I am keen that people in the private sector can call the place they live in their home and can feel and believe that it is their home, just like people in other tenures can, as long as they pay their rent and abide by the standards of good behaviour that one would expect from a tenant. That is what we are trying to do, and I think that we are getting there. The final

part is this modern, open-ended tenancy, which gives people confidence in the sector and enables them to report problems, such as a landlord's failure to repair the property, to a tribunal without the fear that they might lose their home as a consequence. The legislation completes what we are trying to do in the private sector, and I think that we have got it right.

Siobhan McMahon: The Finance Committee took evidence from Glasgow City Council, which suggested that the methodology for identifying the rent pressure zones is more complicated than was suggested. It also questioned the basis of the financial memorandum's suggestion that local authorities would incur only modest costs in respect of the pressure zones. I understand that the bill team offered to meet the council. Can you update the committee on how that meeting went, and what was concluded?

Margaret Burgess: Officials have met Glasgow City Council to talk about the private sector, including the rent pressure zones, a number of times. The bill places no obligation on local authorities. The rent pressure zones are a discretionary measure. We are not saying that local authorities must use that power.

Of course, we will discuss matters with councils if they come to us to say that they want to use the power but cannot do so because they are financially restricted, for example. We will consider any such issues and continue to discuss such matters with those councils. I repeat, however, that the power is discretionary. The bill does not place any new obligations on local authorities. The power is there for them to use if they feel that it would be useful to do so. Councils will balance the costs of the measure against the benefits of invoking it. We are open to discussion with local authorities, and that will continue right through the process.

Siobhan McMahon: I appreciate that answer, minister, but has the bill team met Glasgow City Council to discuss the specific issue that was raised with the Finance Committee? I understand that there will be a lot of dialogue between your team and all authorities on various parts of the bill.

Margaret Burgess: I know that officials have met Glasgow City Council on that matter, but I do not know whether the bill team has done so. Barry Stalker might be able to answer that.

Barry Stalker: Some colleagues and I met representatives of Glasgow City Council a couple of weeks ago to discuss the bill, as the minister said. Now that the bill has been published, the council has had the opportunity to consider it in more detail and to consider more broadly the regulation of the private rented sector. We had early discussions with the council, which had

questions that were based on its early take on the bill. At the meeting, we were able to reassure it about some of the issues that it raised.

However, as the minister said, the key point is that we will continue to work with local authorities as the bill is implemented, subject to the will of Parliament and the bill being passed. If local authorities want to raise matters around implementation and present a good case for us to provide more help and assistance, we would be happy to discuss that further with them.

The Convener: As there are no further questions, and the minister has no further comments to make, I thank the minister and her officials for their attendance.

This has been our final oral evidence session on the bill at stage 1. The committee expects to publish its stage 1 report in January.

11:15

Meeting continued in private until 11:42.

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