The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 11 November 2015

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
22nd 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:

John Blackwood (Scottish Association of Landlords)
Dr John Boyle (PRS 4 Scotland)
Margaret Burgess (Minister for Housing and Welfare)
David Cox (Association of Residential Letting Agents)
Katy Dickson (Scottish Land & Estates)
Jonathan Gordon (Royal Institution of Chartered Surveyors in Scotland)
Malcolm Warrack (Letscotland)
Amanda Wiewiorka (Council of Letting Agents)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 11 November 2015

[The Convener opened the meeting at 09:30]

Interests

The Convener (Jim Eadie): Good morning and welcome to the 22nd meeting in 2015 of the Infrastructure and Capital Investment Committee. Everyone present is reminded to switch off mobile phones, as they affect the broadcasting system. That said, I should point out that, because meeting papers are provided in digital format, people might see tablets being used during the meeting.

No apologies have been received.

Agenda item 1 is a declaration of interests. I welcome our new committee member, Clare Adamson, and invite her to declare any relevant interests.

Clare Adamson (Central Scotland) (SNP): I have no relevant interests to declare, and I simply draw members' attention to the declaration of interests that I have lodged with the Parliament.

The Convener: Thank you. I also take this opportunity to thank James Dornan for his very worthwhile contribution to the committee's work over the past year. However, he remains a committee substitute, so we might well see him, in the best rock star tradition, making a comeback on future occasions.

Subordinate Legislation

Private Rented Housing Panel (Landlord Applications) (Scotland) Regulations 2015 [Draft]

09:30

The Convener: Agenda item 2 is an evidence-taking session on a piece of subordinate legislation. I welcome to the meeting Margaret Burgess, the Minister for Housing and Welfare, and, from the Scottish Government, Denise Holmes, senior policy officer, and Jackie Pantony, principal legal officer. Because the draft regulations have been laid under the affirmative procedure, the Parliament must approve them before the provisions come into force. Following the evidence taking, the committee will, under the next agenda item, be invited to consider a motion to recommend approval of the draft regulations.

I invite the minister to make an opening statement.

The Minister for Housing and Welfare (Margaret Burgess): Good morning. I appreciate the opportunity to give evidence on the draft Private Rented Housing Panel (Landlord Applications) (Scotland) Regulations 2015.

The repairing standard that is set out in chapter 4 of part 1 of the Housing (Scotland) Act 2006 covers the legal and contractual obligations on private landlords to ensure that a property meets a minimum physical standard. However, despite having a statutory right of entry in relation to the repairing standard, landlords have expressed concern about difficulties in obtaining entry to their properties to carry out inspections and repairs. Those difficulties might arise for a variety of reasons. For example, the tenant might have been repeatedly unavailable to grant access, despite making arrangements to do so, or they might simply have refused access.

Section 35 of the Private Rented Housing (Scotland) Act 2011, which is due to come into force on 1 December 2015, will enable a private landlord to apply to the Private Rented Housing Panel for assistance in exercising their legal right of entry in connection with the repairing standard. If a decision is made to assist the landlord, the panel member must liaise with the tenant and the landlord to agree a date and time for the landlord to be given access. In the majority of cases, the independent panel member's intervention is expected to result in the landlord being allowed into the property, without the need for legal action to enforce entry.

The regulations set out the content of the applications to be made by landlords and make

further provision on decisions with regard to those applications. They should be considered in the context of the wider package of measures introduced by the Housing (Scotland) Act 2014, including new measures to strengthen the repairing standard and broaden access to the PRHP by enabling third-party applications to enforce the standard.

I believe that the time is now right to implement the provisions and help landlords to comply with their repairing standard duties, and the regulations form part of the implementation of the wider package of measures that, as I have said, will all come into force on 1 December.

The Convener: Thank you, minister. Do members have any questions?

Mike MacKenzie (Highlands and Islands) (SNP): Can the minister tell us the number of such cases that panel members might have to deal with?

Margaret Burgess: We do not expect the number of cases to be large; in fact, I think that we have based our approach on there being around 100 or 150 cases a year. That said, we believe that if landlords are saying that they are unable to exercise their duties, provision should be in place to allow them to do so.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): On the face of it, the extra cost to the Scottish Government—which is in the region of £150,000 a year—seems a bit high. Can you explain where that figure comes from?

Margaret Burgess: I admit that the costs are on the very high side, but, as we know, the PRHP is undergoing a lot of change and will be taking on a lot more duties and responsibilities. There will be some crossover with regard to accommodation costs, administration costs and staff recruitment costs, and transfers will be made in respect of some of the other functions that the panel is taking over. The extra cost does not all relate to the implementation of this measure; what with the extension of the panel's activity, it is not recruiting specifically to implement the regulations. Your point that the cost is on the high side is very valid, and we will be keeping our eye on and watching that all the way through.

The Convener: What mechanisms are in place to review the operation of the provisions and to ensure that they can, where necessary, be tweaked?

Margaret Burgess: We will be constantly reviewing the operation of the Private Rented Housing Panel once it starts to receive applications, and we will know exactly how many and how often applications are being made under the regulations and whether they are proving beneficial for landlords. All of that will be reviewed as we implement all the provisions in the 2014 act.

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

We move to item 3, which is the formal consideration of the motion. I invite the minister to move motion S4M-14634, which calls on the committee to recommend approval of the draft regulations.

Motion moved,

That the Infrastructure and Capital Investment Committee recommends that the Private Rented Housing Panel (Landlord Applications) (Scotland) Regulations 2015 [draft] be approved.—[*Margaret Burgess*.]

Motion agreed to.

The Convener: That concludes the consideration of this affirmative instrument. We will report the outcome of our consideration to the Parliament.

I suspend the meeting for a short time to allow a changeover of witnesses.

09:37

Meeting suspended.

09:39

On resuming—

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

The Convener: Agenda item 4 is our continued consideration of the Private Housing (Tenancies) (Scotland) Bill. This morning, we will take evidence in round-table format from letting agents and landlords' representatives.

Before we commence the session, I must inform members, witnesses and those in the public gallery that at 11 am they will be invited to be upstanding to observe a two-minute silence to commemorate remembrance day. I aim to suspend the meeting at approximately 10:58, and at 11 am I will invite everyone present to observe the two-minute silence. Following that short suspension, we will resume the evidence-taking session on the bill.

To allow for a more free-flowing discussion, the committee has chosen to conduct the session in a round-table format, but because we are keen to receive evidence on all aspects of the bill, our discussions will be structured around its different sections. Given the time available, it is important that stakeholders seek to speak on the areas of the bill that are of most importance to them. They are not obliged to contribute to each section of our discussion, which members will kick off. I will allow the witnesses to respond with any comments that they may have, and committee members will then be brought in if they wish to add anything.

I now ask everyone to introduce themselves. I am the convener of the committee.

Siobhan McMahon (Central Scotland) (Lab): I am a Labour MSP for Central Scotland.

Jonathan Gordon (Royal Institution of Chartered Surveyors in Scotland): I represent the Royal Institution of Chartered Surveyors in Scotland. I should say that RICS represents not just landlords or letting agents but everyone, because we have a royal charter that says that we have to represent the public interest.

David Stewart (Highlands and Islands) (Lab): I am a Labour MSP for the Highlands and Islands region.

Malcolm Warrack (Letscotland): I am from Letscotland.

Alex Johnstone (North East Scotland) (Con): I am a Conservative member for North East Scotland.

Amanda Wiewiorka (Council of Letting Agents): I am from the Council of Letting Agents.

Katy Dickson (Scottish Land & Estates): I am from Scottish Land & Estates.

Mike MacKenzie: I am a Scottish National Party MSP for the Highlands and Islands region.

David Cox (Association of Residential Letting Agents): I am from the Association of Residential Letting Agents.

Clare Adamson: I am an SNP member for Central Scotland.

Dr John Boyle (PRS 4 Scotland): I am with PRS 4 Scotland and am also director of research for Rettie and Company.

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

John Blackwood (Scottish Association of Landlords): I am from the Scottish Association of Landlords.

The Convener: Thank you very much.

The policy memorandum states that the bill aims to

"improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors."

In general, do you think that the bill's proposals achieve the appropriate balance between improving security of tenure and providing those appropriate safeguards? Who wants to lead off on that?

John Blackwood: I am happy to kick off.

The simple answer is no, we do not believe that the bill provides adequate safeguards for private landlords. It is important to emphasise that we have no objection to giving tenants greater security of tenure; landlords are in the business of letting properties, and we want tenants to stay in them for as long as possible. However, landlords are investors, and they feel that they need the right to be able to bring those tenancies to an end should the need arise.

One of our concerns about the current regime is the lack of security for us and the lack of confidence that we have in the current grounds for repossession when things go wrong. Normally, tenancies are absolutely fine. In the main, tenants act within the confines of their tenancy agreement and are happy to stay on, and good relationships develop between landlords and tenants. Sometimes, however, that is not the case, and we need adequate protections for both tenants and landlords when something happens.

We have 17 grounds under the current legislation and 16 under the new proposals in the bill. Our fear is that, although we have lobbied for some grounds to be added in—and we welcome

some of the additions that have been made—we are losing the right to bring a tenancy to a natural end. Landlords and tenants have been willingly entering into agreements that, under the bill, only tenants would be allowed to end. We believe that that is a matter of concern, especially with regard to antisocial behaviour in our local communities, and especially for landlords who offer student accommodation. We feel that, as a result, there will be a shortage of student accommodation in the private rented sector in the future.

09:45

Dr Boyle: I echo what John Blackwood said. We support more secure tenancies and greater flexibility in tenancies, but he has amply illustrated some of the issues with what is called the end of no-fault possession.

The standard tenancy framework that is being proposed will not be flexible enough to deal with certain groups, especially students, many of whom want leases of only nine to 10 months. If the landlord cannot set a defined tenancy period, they might regard letting to students as more risky and complicated, and that might have the effect of reducing supply to a key tenant group.

Rent controls are our other main concern. Even if they are relatively soft—that is, focused on rent pressure areas where direct Government permission is needed to intervene—they are likely to cause disinvestment and to be seen by many small and large investors as the thin end of the wedge.

The evidence that rents are out of control and need capping is pretty flimsy.

Jonathan Gordon: I introduced myself as representing RICS, which does not represent specifically landlord or letting agent interests. RICS's royal charter says that we must represent everybody's interests.

I am a letting agent and work in the rented sector; I am also a chartered surveyor. If we look at the market, we can see that there has never been any demand from tenants for longer tenancies or complete security of tenure.

What there has always been demand for is better treatment and enforcement of the regulations that exist. The repairing standard is one of the best such standards in any country that I have looked at. The electrical and gas security requirements, and the repairing standard for general items such as the condition of the property, far exceed anything in England or anywhere else in the United Kingdom. The standard has been set with great success over the past few years, but it is not enforced at all.

I think that we have had one complaint from a tenant that went to the Private Rented Housing Panel, and the process was long and laborious. As it happened, the tenant was complaining about things that they had refused us access to fix—that is my excuse for the committee [*Laughter*.]—so in the end the claim was not valid. However, given the length of time that the process took, even if the tenant had not had heating, if their windows had been left unrepaired, if their children's rooms had been mouldy or if the condition of the property had been poor, no visits or enforcement would have been likely to happen within several months of the complaint being made to the panel.

The research that the Scottish Government paid for through the private sector tenancy review group, which recommended a new type of tenancy, found no evidence from landlords or tenants that there was any requirement for greater security of tenure.

The Convener: We will come on to that when we consider the detail of the bill. I wanted to get a general flavour of whether our panel feels that the Government has struck the right balance in the bill.

Jonathan Gordon: In very general terms, if the Parliament introduces security of tenure in the way that is proposed in the bill, the balance of rights between tenant and landlord will be quite a good one. However, I do not think that such a move is required. I think that it will change the market, and not in a good way.

The Convener: Thank you.

Malcolm Warrack: Broadly speaking, I support what is being said. The comments about the student market demonstrate that what is such a large part of the market is not adequately catered for in the proposals. The idea of longevity is a good one, but it applies only to about 25 per cent of the market; the ability of some 75 per cent of the market to have shorter and more defined lease terms needs greater consideration.

David Cox: I broadly support what has been said. The tenancy regime that was created in the 1980s was fit for purpose for a much smaller market than we have today, so consideration of the issue and revision of the tenancy framework so that it is fit for 21st century renting, as is happening here and in Wales, is important.

However, in general, we do not think that the bill strikes the right balance. It is currently weighted in favour of the tenant over the landlord.

There are two key aspects of the bill for us. One is the loss of no-fault repossession, and the other is rent pressure zones. We have heard about the student market already today. We are worried that

there are parts of the market for which the aims of the bill, while laudable, will have unintended consequences; they will end up hurting the people whom they are designed to help.

Katy Dickson: We echo a lot of what has already been said. We support the new tenancy and a simpler system in which both landlord and tenant understand their responsibilities. However, we do not feel that the grounds offered are robust and comprehensive enough to make up for the lack of ability to end a tenancy at the end of the contracted period.

In particular, we echo what Jonathan Gordon said. We would like the current regulations to be enforced to ensure that high standards and a professional sector are achieved.

Amanda Wiewiorka: As a letting agent, I think that one of the main concerns will be a drop in investors coming into the market. With the removal of the no-fault ground and therefore of landlords' ability to take back their property, I think that we will see a fall in the number of investors who want to buy property, such as people with pensions who want to buy one property. They will be scared to go into the market; they will see it as high risk and they will look to invest their moneys elsewhere.

The Convener: Thank you. All our witnesses have contributed. Do any members want to come in? Does Mike Mackenzie have a comment?

Mike MacKenzie: No, I am all right at the moment.

The Convener: Okay. That has been a useful starting point for our discussion. I will move us on to the initial tenancy period.

The bill proposes that there will be an initial tenancy period of six months unless the tenant and landlord have agreed on a shorter or longer initial period. That has been criticised by some of the tenants representative groups: for example, Homeless Action Scotland and the National Union of Students Scotland have told us that they do not see a need for an initial tenancy period. Citizens Advice Scotland and the Living Rent Campaign have said that that could be a problem for some tenants—for example, tenants who are the subject of domestic abuse and need to leave a property quickly.

Do you have a view on that, and could you state for the record what your position is on the initial tenancy period of six months?

Katy Dickson: We think that the initial period as it is drafted is suitable. We think that it is essential so that the landlord has certainty that there is a commitment from the tenant for a certain period. It also protects the tenant from certain grounds of eviction, which we think is essential as well.

David Cox: I agree to a large extent. However, given that it would be only the tenant who could bring the tenancy to an end except by use of a particular ground, what is the purpose of the minimum six-month tenancy, particularly from the tenant's point of view? It gives a level of certainty, but a minimum tenancy would work with a no-fault repossession ground. It would not necessarily work as well when the grounds of repossession in the bill are in place and there is no no-fault repossession ground.

Adam Ingram: Can I come in on that?

The Convener: Yes of course, Adam.

Adam Ingram: Is it appropriate that a landlord or their agent can evict somebody from their home without a specific reason? David Cox seems to be advocating that a landlord should be able to do that at will.

The Convener: That is our next section of questions.

Adam Ingram: I know, but David Cox raised the question on the initial tenancy.

The Convener: Would Mr Cox like to respond?

David Cox: No-fault repossession grounds are used predominantly because they are the easiest method of regaining possession of the property. As Jonathan Gordon was mentioning earlier, other repossession grounds take a lot longer to go through the courts. Having the no-fault repossession ground means that landlords have a degree of certainty that they will get their property back.

In the context of talking about the sort of investment in the private market that we need to deliver the number and quality of houses that we want, giving landlords the certainty that they will get their property back if they want it back is a vital part of how the private rented sector has grown since the regulatory liberalisation of the Housing (Scotland) Act 1988.

Adam Ingram: You seem to be arguing for no balance at all. Basically, in those circumstances, all the balance of power is in the landlord's hands.

David Cox: We need to factor in the difference between the legal framework and normal business practice. A landlord will not evict a tenant just because they have had enough and want a new tenant. The most effective way of generating rental income is to have a long, well-maintained tenancy. For a landlord, investor or letting agent, that is how they make their money and keep the property afloat—it is how they pay the mortgage.

Therefore, when a tenant occupies a property in a tenant-like manner, keeps the property in good condition and pays the rent monthly or quarterly—whenever it is due—the landlord and the agent will

want to keep that tenant for as long as humanly possible. You do not know whether the next tenant will behave in a tenant-like manner or whether they will behave antisocially, damage the property or pay the rent late. Although we are talking about the legal framework, we have to factor in common business practice.

Even in six-month or 12-month tenancies, if the tenant is a good tenant, the landlord or agent is unlikely to increase the rent at the renewal stage because they want to keep the tenant and incentivise them to stay. Therefore, landlord possession cases come about only when there is a problem. The landlord does not say, "I've had enough of this tenant; I want another one." They have to factor in the costs involved in ending one tenancy and starting the next, such as loss of rent. There is also the void period to cover. The second time round, there are letting agent fees and all the marketing activities. We are talking about a considerable amount of money. The result of putting up the rent by, say, £10 a week will be negated if the tenant leaves. The landlord will end up making less money because of the void period and the tenancy changeover costs.

While I would argue that the current framework provides an adequate balance between landlords and tenants, we have to factor in the legal framework, normal business practices and market economics.

Adam Ingram: I am not sure whether you approve of the initial tenancy period.

David Cox: We would support the initial tenancy period, but it would make more sense, in this context, with a no-fault repossession ground. Otherwise, to a large extent, what is its purpose?

John Blackwood: It is important to remember that the Scottish Government's intention behind the bill was to grant security of tenure to tenants in the private rented sector. The initial period of tenure of let is an important part of granting that security. You will be aware that there are some grounds in the bill that landlords cannot use within an initial period. If there was not an initial period, landlords would be able to use all those grounds. If we are trying to grant greater security, as well as cohesion and stability within our local communities, initial periods of let are therefore essential. That is why we would advocate that as an important part of a new tenancy regime, whatever the period of tenure is.

An important point has been raised about what happens in the case of a relationship breakdown. In the current regime, tenants and landlords are able to bring tenancies to an end by mutual agreement. That works very well. If both parties feel that it is time to move on, that can happen. It often happens when tenants fall out, whether or not they are in a relationship. They approach the landlord and say, "This accommodation is no longer suitable to us, given our circumstances—can we agree to bring the tenancy to an end?" That is an important part of the tenancy regime, and it should be maintained. It is not maintained in the bill as it stands; in our submission, we ask for that provision to be reinstated.

The Convener: Does anyone else wish to comment on the initial tenancy period?

Jonathan Gordon: I understand that, legally, it is sensible to have an initial period; otherwise, it becomes a short-term tenancy for people who would use it just for holidays. That would be going a step too far.

I will come back to the issue of ending a tenancy without any reason, because there seems to be no evidence that people are doing that. Within the six-month period, we have often allowed people to leave, for example when tenants have moved into a property and then have had to leave.

In one case where there was a domestic violence issue, we dealt with a support worker who was helping the tenant. We arranged to meet the support worker to get the keys, got the property cleaned, packed up the tenant's stuff for them, advertised the property and got a re-let after a couple of weeks. You need to encourage good landlords and good agents—better regulation of the sector will help with that. That is not part of this bill; other housing legislation needs to be enforced better.

10:00

Mike MacKenzie: What I am going to say is perhaps slightly tangential, but I want to promote a better discussion. We are locked into a situation whereby, so far, the witnesses have suggested that the status quo is almost perfect and that there is therefore no need for the bill. I am beginning to think that I must live in a parallel universe where things are not quite perfect, because the cases in my inbox that I am dealing with, and the fact that I have dealt with a great number of such cases over the past four years, indicate that the situation is not as it has been presented this morning.

A typical scenario is that the tenant complains about a fundamental problem such as the heating system not working in the winter and their landlord evicts them because they have had the temerity to complain that the fault has not been remedied over several months. Sometimes I find myself engaging with another tenant in the same property with the same problem six months or a year later because the same landlord has still not fixed it.

My background is that, man and boy, I built, repaired and managed properties. Given that I live

in the Highlands and Islands, I am obliged to rent a property in Edinburgh and, as a tenant in the private rented sector for the first time in my life, I have been absolutely appalled by the quality of the experience and the knowledge of the people in the sector who I have unfortunately had to deal with. I am not making any of that up. I honestly believe that the system is not working well, and yet what I have heard from every witness this morning suggests that the current situation is almost perfect and does not need to be fixed. I hope that what I have said will promote a more honest discussion.

Malcolm Warrack: You are absolutely right that there is definitely opportunity for improvement—I could not agree more. I suggest that cases of the kind that you talked about do not arise frequently in the overall market, although that is not to say that they do not exist—they do exist. Compliant landlords and letting agents all wish to rid the marketplace of the kind of practice that you described. The reason why we are sitting here right now is that there is a large consensus in the marketplace that we should try to get the legislation right, so that people do not have such experiences.

I am a letting agent, as are one or two of my colleagues here today. We would all advocate that our landlord clients should support us in trying to deliver good service—I think that that can happen. The bigger picture is that all of us around the table are striving to achieve a vision whereby in the next five to 10 years we deliver a housing market that is very different to that which exists today. The tenure mix and ownership structures might be different, as a result of which the circumstances that you talked about will, we hope, have been driven out of the marketplace.

The proposed changes have to be joined together. I will digress just for a moment to mention the Chancellor of the Exchequer's changes to the tax regime for landlords. Generally speaking, they are a good idea, but they have to be carried out in such a way that they join up with all the other different aspects.

I go back to what Mr Gordon said. There have been repairing standards regulations in existence for some years in order to address the kind of circumstance that has just been talked about. I often refer to the interaction between the poor landlord who owns a substandard property and the tenant they let to who is perhaps less able to look after themselves than others are. Obviously, that does not apply to Mike MacKenzie: you are very able to look after yourself, and you have still had a poor service. All in all, we are here to try to create something that addresses that. We do not think that things do not need to change—we think that they do—but we have to ensure that we get joined-up answers.

Mike MacKenzie: Indeed. Thank you.

John Blackwood: To reiterate some points, it is important to stress that all the organisations around this table would say that they support a well-functioning private rented sector. That is important for us. One of the deterrents in achieving that is bad practice from landlords and letting agents. We need stronger enforcement of the current legislation to address exactly the issues that Mike MacKenzie mentioned in his constituency.

It is unacceptable that landlords and letting agents basically flout the law. That should not be the case; action should be taken. Not only should the tenants be granted greater security and not feel that they are living in fear of being evicted, as was mentioned; those landlords should not be allowed to operate. They should not be allowed to let. We have existing legislation that the Parliament passed that is more than efficient in dealing with that. The issue is its implementation, not the law itself.

The Convener: Do you expect your organisation to propose amendments to achieve that?

John Blackwood: Yes, indeed. We are looking at many ways of doing that. We are trying to allow the experience in the private rented sector to become better. That is in the interests of all of us. We want the PRS to be a housing option of choice, not a last resort.

We understand that security of tenure is part of the issue, but taking away the no-fault ground for repossession disincentivises investors. Actually, it encourages them to sell up and move out of the sector. They are good, well-operating landlords in the sector whom we want to keep; we do not want to get rid of them. Perhaps there is a halfway house, which we have talked about for some months. Would it not be better to keep the no-fault ground for repossession but make the period of notice that a landlord must give much longer? That would grant security and encourage tenants to take action in the cases that we have talked about.

Jonathan Gordon: In response to what Mike MacKenzie said, I remind members that we do not represent landlords specifically in the RICS, although I personally do that as a letting agent.

I took over the role of the chairman of the PRS forum in the RICS a few years ago. As soon as I did, the first thing that I did was to meet Douglas Robertson, who eventually ran the tenancy review group. He had led a consultation on something similar. I told him that the Government needed to change the tenancy regime, get rid of all the

complex paperwork and introduce a new tenancy that was much simpler for tenants to understand and enforce their rights in, and in which landlords would understand their rights so that they could evict tenants. Landlords very often get into difficulties with tenants not paying. They do not have the right paperwork in place in order to be able to evict tenants.

We are delighted that a new tenancy regime is being brought forward. We were one of the few in the tenancy review group that advocated that and recommended to the First Minister that that should be done. However, nobody imagined that we would end up in the position of removing the no-fault ground for repossession. That is primarily because there is not any evidence for doing that.

There is evidence of some very bad practice in a proportion of properties that are rented out by landlords who misunderstand the law and think, in effect, that the properties are still theirs more than they are. They do not understand the fact that the tenant has the right to occupy the property as their home; they feel that the tenant is almost a visitor in the property and that the landlord can do what they like—that they can come and go as they please. That type of practice needs to be weeded out, but that type of landlord will still operate under the radar.

We need enforcement of the existing repairing standards, which were strengthened by the RICS leading on the matter with the National Inspection Council for Electrical Installation Contracting. It was recommended that the repairing standard be improved, and that is happening this year. Electrical safety checks, more main smoke alarms, carbon monoxide alarms and portable appliance testing will all be mandatory within the next 12 months. That has all come about through RICS and other landlord bodies recommending that that should be done. The provisions all primarily protect tenants from poor landlords who do not manage their properties well.

In our view, this bill is in danger of putting off the large number of corporate investors who we need in the market to improve the sector. Let us consider a property that you might live in, Mr MacKenzie. Let us imagine that you are living in a one-bedroom flat in Gorgie that has no heating system other than a couple of portable heaters and no decent windows, just old single-glazed windows that are not particularly great. It could be argued that that property meets the repairing standard, because it has heating of some sort and the windows are not broken. We meet landlords of those properties all the time, and one might say to me, “Why should I put in a gas central-heating system or replace the windows? Will I get more rent?” and I would reply, “No, probably not, because there are no properties available and tenants will have to take it.”

What we need are blocks of new-build properties and corporate investors coming into the market to improve it. Although I have some personal sympathies with the removal of the no-fault ground and the idea of security for tenants, I have investor clients—not enough, of course—who wanted to invest in the sector on a corporate basis and build blocks of flats but who are pulling out of the market. We have shown them leads for pieces of land to build houses on, but they are no longer considering doing so. That is specifically because of the potential for rent pressure zones and the loss of the no-fault ground.

Let us take, for example, the blocks of flats that are built specifically for students. They charge far higher rents than I think they should—the latest one that I saw was, I believe, £800 a month. However, the quality of those properties is amazing. Everything is well maintained, they are serviced and everything is fixed immediately. The level of customer service is very good. In a typical flat that is managed by the owner and has a house in multiple occupation licence, the quality is average. However, I have taken over a number of properties that have been managed by agents and found it hard to believe that people are living there or that the council granted an HMO licence—of course, it is not within the council’s remit to say that the property is not in particularly good condition.

If you want to improve the sector, you need more investment. There is a danger that this bill goes slightly too far in relation to rent pressure zones and the removal of the no-fault ground.

Amanda Wiewiorka: To respond to Mr MacKenzie’s point, as a letting agent and a member of the CLA I welcome the proposed regulation of letting agents, which I see as the one way in which we are going to be able to improve the housing stock and make letting agents, who represent around 50 per cent of landlords in Scotland, accountable and ensure that they operate to a code of conduct that deals with the provision of sub-standard properties, lack of communication and failure to make repairs.

On the issue of the minimum length of a tenancy, you must remember that a lot of landlords have only one or two properties and they are not all getting £800 or £900 a month in rent. My agencies are in Angus—I own properties there, too—and I see one-bedroom properties for rent at anything from £250 a month. There are costs associated with a landlord putting a tenant in a property. They do all the credit checks and safety checks; there is a lot of due diligence. They will also have to account for a void period when the property is empty. If they absorb all of that cost to

put in a tenant and the tenant just leaves, as they would be entitled to do at any point, the landlord will make a loss. That means that he will not be able to make that one-bedroom property—which is affordable housing, for some people—available. That might result in a scenario in which the landlord sells the property, as it is just not viable for him to keep it.

If you do not have the six-month period, a landlord might start to take shortcuts—the landlord might think that they cannot afford to do a credit check or carry out the portable appliance testing if a tenant might leave in two or three months.

The other issue that I have found to be important in relation to the no-fault ground concerns antisocial behaviour. We have instances in which tenants are creating an unhappy environment for their neighbours, and the quickest route by which to sort out that problem is to give notice on a no-fault ground. It is a difficult and long process to persuade neighbours and people living in the community to give evidence of antisocial behaviour. Things can drag on and people can sometimes be afraid to give evidence. Having a no-fault ground on which to end a tenancy enables us to deal with that situation quickly for the benefit of everyone in the community.

10:15

The Convener: Thank you. We will move on with a question from Alex Johnstone.

Alex Johnstone: I was going to ask about the removal of the no-fault ground for repossession, but we have pretty much done that to death. Does anyone have something to contribute on the subject who has not yet had a chance to do so?

Katy Dickson: Going back to Mr MacKenzie's point, I would just like to say that we agree that the current system does not work and we support what the review group said. A new tenancy is required. The current system does not work for tenants, as we have heard, but it does not work for landlords either, which is why they have to use what we call the no-fault ground. It is unfortunately named—people do not ask a tenant to leave when there is no problem or when the property is not needed for a legitimate reason.

The review group's report states:

"What would be put in its place, following this modernisation exercise, would be a clear route for landlord re-possession, where the tenant was found to be in breach of the new private tenancy, or following expiry of the agreed tenancy term."

We are concerned that the Scottish Government has not recognised that and has not said why it has chosen to go against what the review group stated in its final report. Without the no-fault ground, the remaining grounds will have to be absolutely watertight in order to get investment and confidence from landlords and investors. We feel that there are holes, so the ability to end a tenancy at the end of the contract is still absolutely required.

Alex Johnstone: The Government and some of the witnesses whom we have spoken to have expressed the view that removal of the no-fault ground will increase tenants' confidence, that it will allow the private rented sector to become a more long-term housing option and that it could be viewed as a positive by some landlords. How do you react to that point of view?

Katy Dickson: It could be a positive if the grounds are robust enough so that landlords have confidence. In the rural situation where we work, the background is different from the background in the places for which a lot of the bill has been drafted. For example, urban tenants will probably stay for only about 18 months, whereas in the rural sector tenants stay for much longer than that and it all works rather well.

The no-fault ground is used regularly because the other grounds do not work, and it is often used to a tenant's benefit. We have a lot of landlords who have experienced tenants coming to them and asking for their notice to quit because they are struggling with either the rent or the location. They might want to move nearer to their family or to services and they need a notice to quit in order to get into social housing. Under the bill, they would not be able to ask for that and the landlord would not be able to provide it. That would put tenants in a difficult position. They would have to either breach their lease or stick it out in a property and location that are not suitable for them.

Alex Johnstone: What I am fishing for is whether anyone has anything positive to say about the removal of the no-fault ground.

John Blackwood: Looking at it from a slightly different perspective, I note that, if we had full confidence in the existing system, the grounds for repossession and indeed the proposed new grounds, we would feel that there was no need for the no-fault ground. A landlord will use the no-fault ground only when something has gone wrong—when there is actually a fault, but it does not fall within the categories in the grounds.

The current grounds are not sufficient and they do not deal with the problems. For example, nobody in the land would take a case to court under the antisocial behaviour ground because it is so difficult to prove in evidence to the court. At present, we require neighbours to take action and to stand as witnesses or give witness statements. They are often frightened to do that—they could be living in fear that the tenant next door will engage in antisocial behaviour or be feeling

intimidated by them—which leaves the landlord with no alternative but to issue a section 33 notice under what we call the no-fault ground.

What will happen to communities in the future if we do not have that notice? How will those neighbours feel? It is fine to grant greater security to the tenant, but what effect will that have on the wider community? Part of the reason for having greater security of tenure is to create sustainable communities. We need to take that issue on board. We need to consider whether it will have the effect of creating sustainable communities or whether it will be more detrimental.

Under the new system, the ground will be exactly the same, and we will still need neighbours to take action and to stand as witnesses. We feel that it is unfair on local communities to be put through that simply for one policy.

Dr Boyle: There is no point denying that there are problems with the PRS. There are also problems in the social rented sector and in the owner-occupied sector. I do not think that you are living in a parallel universe, Mr MacKenzie, but you are probably only seeing part of the universe.

I will set things in context. I do not think that people are going to complain or approach their MSPs if they are happy in their tenancy, but they will approach their MSPs, citizens advice bureaux or organisations such as Shelter if they are unhappy in their tenancy. That is why I say that you are just seeing part of the universe.

Some of the context comes from the Scottish Government's own figures. There is 85 per cent tenant satisfaction with providers in the PRS. I have a direct quote from the Scottish Government's review of the private rented sector, which says:

"The vast majority of tenants are satisfied with their landlord, agent and accommodation."

A survey of 6,500 private tenants by Lettingstats showed that

"just 14% of sitting tenants have experienced rent increases",

and 90 per cent of tenants said that they had "never experienced" an unjustified rent increase.

According to the Scottish House Condition Survey,

"only 6% of properties were 'below tolerable standard'".

The proportion of PRS dwellings meeting the stringent Scottish housing quality standard broadly reflects that recorded for local authority and privately owned stock.

We have to set the situation in that context of the vast majority of landlords and tenants in the PRS being happy and satisfied in the PRS. The danger lies in drafting new legislation to tackle the rogue elements when there is already legislation to deal with them through landlord registration and enhanced enforcement areas, which Glasgow City Council has now applied for in Govanhill. In drafting new legislation to deal with those rogue elements, we actually hamper the rest of the sector and its ability to grow.

Alex Johnstone: One of the witnesses has already answered my next question. Do you believe that the removal of the no-fault ground for repossession will affect investment in the sector?

Jonathan Gordon: It has affected it already.

In a perfect world, starting with a blank sheet, this might be what we would do. Everybody here should be aware of all the discussions about building a private rented sector where the building blocks are flats that are like those in other countries. One of the biggest problems that we have—I did not quite finish with this issue when I was referring to your point, Mr MacKenzie—is that the way to get a flat in a poor condition fixed is to have a block of good flats next to it. The market rent of such a flat will suffer, because people will not rent it, and either the rent will have to be reduced or the flat will have to be fixed.

The bill does not fix that problem. Regardless of whether it contains good measures, the sentiment that is felt among corporate investors is that although they have lots of money floating around the investment market to invest in such things as housing, why would they invest it here rather than in England? That is the sort of choice that they are making. European funds are often involved, and those investors have multiple choices across Europe.

If the removal of the no-fault ground was needed, the bill would be very good, but I do not think that that is needed—it is not the problem, and the bill does not fix the real problem of rogue landlords still not having properly drafted leases. There is to be a prescribed lease eventually. Incidentally, I ask someone to take a note to stop calling it a model tenancy, please, because people will then think that they just have to model their lease on it. The prescribed lease will have specific clauses in it that must be adhered to and copied word for word, so it should be called a prescribed lease, rather than a model lease.

The lease will identify the repairing standard, which should be included in a lease at the moment, but very few people do that. Tenants rarely understand what rights they can enforce. It is a matter of having that understanding, and then strengthening the Private Rented Housing Panel. If someone's heating is not working, they can complain to the Private Rented Housing Panel; it is no good sending a letter to the landlord, requesting a reply in three months, a month or

whatever. We need immediate enforcement, with someone being sent out to check. That person should meet the tenant, who could invite them in because it is their home, and they should have the right to bring anyone in, check whether there is a problem and then take action on it.

The number of cases that would involve that type of enforcement would not be small or insignificant, but it would be small enough that the cost would not be huge. Surveyors or other qualified people—who sit on housing panels anyway—could make themselves available to pop in. I would do it for nothing: I could pop in to properties and check whether there is a basic problem.

Mike MacKenzie: I may take you up on that.

Jonathan Gordon: Barry Stalker was heavily involved in the bill as one of the civil servants—

The Convener: Could you tell us who he is?

Jonathan Gordon: He is the civil servant who represented the Scottish Government in most of the discussions with stakeholders regarding the drafting of the bill.

The Convener: I asked that question for anyone who is watching at home and did not know.

Jonathan Gordon: Barry Stalker has engaged with all the stakeholders who are here today—us, for example—and with other groups.

A big advocate—I will not name them—who works with investors and is very much against the idea of removing the no-fault ground because they want to see better properties, has said that if they lose their job, they will go out and start a vigilante group to go after rogue landlords. They said so in a jokey way, but that highlights the problem: rogue landlords are not being tackled, and the bill does not help with that.

We need good enforcement of what is already in place, and better investment in the sector to drive up standards.

David Cox: I echo pretty much everything that Mr Gordon has just said. We are already seeing, simply on the basis of the idea of the bill's provisions coming into force, institutional investors who were previously looking at Scotland now looking at the other nations of the United Kingdom as better investment opportunities. London is one such area, but Cardiff is going through similar tenancy reform and has kept the no-fault repossession ground in the Renting Homes (Wales) Bill.

That goes back to Mike MacKenzie's example of the heating system and retaliatory eviction. To try to overcome such issues, the legislators in Wales and in Westminster have kept no-fault repossession while placing restrictions on areas where tenants complain about the quality of properties.

I very much echo what Jonathan Gordon said: investors are looking for regulatory certainty. Constant changes in legislation do not help—in fact, they massively hinder—investment in the sector. That is why organisations such as RICS have been talking for 20 or 30 years about how we can get more institutional investment in the private rented sector in all the nations of the UK, and how we can replicate the levels of institutional investment that exist in most other mature private rented markets, such as those in Germany, France and the United States. Those countries have much greater regulatory certainty as their laws do not change so regularly, and they do not have problems—as other stakeholders have said—around enforcement.

The Convener: Why do you think that it is not possible for existing legislation to be enforced more strongly and for the no-fault ground for repossession to be removed? Why can those aspects not be pursued together?

David Cox: They are two very different issues. Enforcement is one of the biggest problems in the industry, not just in Scotland but throughout the United Kingdom. We just do not have the necessary level of enforcement activity.

We are very much arguing that local authorities, as the prosecuting bodies, should be able to keep the fines, which should be ring fenced to fund greater enforcement activity. In the current period of austerity, local authority environmental health and trading standards departments are revenue drains on council resources, rather than revenue generators. If we can flip the balance, we can have more enforcement officers doing more prosecution to rid the sector of the rogue element.

I do not think that the bill will assist with that, as it addresses a different issue. I argue that the big problem is that, although a lot of very good legislation on the regulation of letting agents exists and is coming into force in Scotland, we need proper enforcement to get rid of a tiny minority who bring the entire industry into disrepute.

10:30

Amanda Wiewiorka: I will go back to Mr Johnstone's point about whether the removal of the no-fault ground will have an impact on investors. We have been talking about large investors, but we have to take ourselves out of the cities and look at the small towns and villages around Scotland, where it is not viable for large investors to provide housing. The people who buy housing in those areas are small landlords who probably live in the small town where they are

buying the property. It is those people who are worried and scared that removal of the no-fault ground will take away their flexibility to take back their property. Those people will stop investing, which will have a huge impact in rural areas and in small towns and villages across Scotland.

John Blackwood: To pick up on Amanda Wiewiorka's point, at the end of the day, landlords are investors in the sector, and they are not just institutional investors in the big cities but people in rural communities. If you tell any investor in any sector that you are going to potentially limit their ability to sell their investment, to move back into it or to bring a tenancy to an end when the situation goes wrong, naturally that will have an effect on investment in the sector in the long term. None of us wants that.

Katy Dickson: I agree with a lot of what has been said, particularly from a rural perspective. Our members are not necessarily going to run away from their housing stock, but they may look to assess it. Unfortunately, it will be the affordable housing that they currently offer that will take the first hit if they decide to change their portfolios.

I also want to mention that the Scottish Government has appointed a private rented sector champion to attract more institutional investment. I do not want to speak on his behalf but, as far as I am concerned, his concerns during the consultation stage are very similar to those that we are discussing.

The Convener: Who is the champion?

Katy Dickson: Gerry More.

Mike MacKenzie: Do our guests agree with me that over the past 15 or 20 years the private rented sector has represented not a good investment, but a superb investment? The evidence for that is the growth of the private rented sector—we have seen phenomenal growth over a fairly short period of time. The evidence is the availability of finance for the sector, in buy-to-let mortgages and suchlike, continuing right through the credit crunch. The evidence is the huge differential between the cost of home ownership and home rental. To put the issue in context, perhaps what we are talking about is the difference between it being a superb investment and maybe not quite such a superb investment.

The Convener: Mr MacKenzie, you have made your point well. Who wants to tackle that? I am keen to get through as much of the bill as we can.

Jonathan Gordon: The superb investment part of it is primarily related to the capital value of the property. One of the things that I will come to later when we talk about rent controls, is that the problem is the capital value of the property, the lack of available land for housing, the cost of land for housing and the value of housing, rather than the rental price or the condition of rental property in relation to that income.

We started eight years ago, and maybe 50 per cent of our landlords did not really mean to be landlords. They could not sell their property or were not able to sell it and get their money back to cover their mortgage, so they rent it out. Given all the new changes that have come in, which we have advocated—new smoke alarms and so on—some of them are making no money this year and have made none in previous years.

It is not really the rent that is the issue; it is the capital value of the property that makes a superb investment. That is a separate issue.

Mike MacKenzie: But it is still superb.

Jonathan Gordon: Not in every area—only in some areas. The value of a property that was bought in 2008 in Falkirk will have gone down significantly, and the owner will be making a significant loss. They will be renting out their property at a loss, based on their mortgage payments. That is the only example outside of Edinburgh that I have, but I imagine that other people have examples as well.

The Convener: I will bring in Dr Boyle and then we will move on.

Dr Boyle: It is important to set this in context. UK wide, the average gross yield on a buy-to-let property is 5.8 per cent, and the net yield is around 3 per cent. In comparison, the net yield on commercial property is around 6 per cent. As Mr Gordon said, most investors are in the buy-to-let sector not because they are making a killing on rents; they are in it for the capital appreciation over the long term. If you look back 40 years to 1975, you will see that the average annual capital appreciation in Scotland in real terms is 1.8 per cent. You might think that that is fine, and that you could compound that over 40 years and probably get a decent pension, but it is actually fairly modest. There are also swings and roundabouts. People who got into the housing market in 2001 found that property prices doubled between 2001 and 2007. However, it is likely that someone who got into the housing market in 2007 will be making a loss, in real terms, of around 10 to 15 per cent—that is the average; it varies by location across the country.

Some of the studies that have been undertaken to compare home ownership with rental accommodation are misleading, in my view. They tend to look only at the mortgage against the rent paid, in a very simplistic way, for different house types across the country. They do not take account of the size of deposit that has been put down for the mortgaged property, and they do not

take account of refurbishment or other costs, such as insurance. We need a better evidence base.

The Convener: We will move to another section, which Clare Adamson will introduce.

Clare Adamson: We have already touched on the need for more information about the effect on student and holiday lets as part of the economy. There is an exception in the bill for student accommodation, which relates to the status of the landlord where it is an educational institution, but educational institutions also do holiday lets in some areas. Do you have any comment about that part of the bill?

Malcolm Warrack: This is an area of great concern to the industry as a whole. Tourism and the leisure industry needs to be looked at in relation to holiday lets, but I will start with student accommodation. We find that students, because of the nature of their courses, will probably rent for a period of four years at the most, after which they will graduate and move on in their lives. In my experience as a letting agent, students have two requirements. Either they wish to rent their accommodation on an annual basis, so that they do not get moved out in order to accommodate holiday lets, or they wish to rent for nine or 10 months to allow for the holiday activity to take place.

The flaw in the bill as drafted means that the typical student will now be presented with two different things. On the one hand, they will be offered an opportunity from the university to rent accommodation for nine months, and, on the other, they will be offered something totally different by the rest of the industry—the private landlords with HMO properties. At present, what is being suggested is that tenants coming into a property will be told that at some stage in the future, at their behest, three or four of them will have to get their heads round the idea that they will have to serve a notice to leave on the landlord to say when they are going to go. We will probably talk about that in a little more detail, but my initial response to your question is that there is a huge area around student lets that needs to be investigated. Dr Boyle mentioned some statistics, and I think that there is a huge need in that area of the market for some statistical elements to be brought in so that we can examine what the market needs, because at the moment what the bill proposes does not meet those needs.

John Blackwood: I want to pick up on some of those points. The student sector in Scotland is unique. We are talking generally about security of tenure for all tenants, and you could argue that there is no reason why students should be different from anybody else, but it is a unique sector and cognisance should be taken of that in the production of any new ground for repossession.

My initial reaction is that it is unfair that particular landlords, such as educational providers, have the right to bring the tenancy to an end whereas individual investors in the same marketplace are not allowed to do that. We would say that that is anticompetitive. One of the reasons why it is a good idea to have that ground for repossession is in order for students to plan for the future, so that they know where they are going to be the following term. They may be in halls for their first year at an educational establishment, but that is for a fixed period and they have to move on, and they often choose to move on. Many of us have been there as students, thinking that it is a great idea to share with our pals in a flat and not wanting to be in halls any more; a year later, we might have decided something different. Nevertheless, that is the marketplace.

Importantly, parents are looking for accommodation for their kids, so the market is such that, in the early part of the year, around Easter, they are looking to secure accommodation for the coming academic year starting in September or October. The students themselves might not be too worried about that, but I am sure that their parents are, because they want to get the best value for money that they can and know that their son or daughter will not be scrambling for accommodation at the last minute. Taking away the no-fault ground and not having particular provision for student accommodation will mean that the market will change dramatically, so there will be fewer properties available when students are looking for them. That will inevitably mean that rents will go up, and there will probably be a sacrifice of accommodation standards as well, so overall we do not feel that it is productive for the sector at all.

Jonathan Gordon: I remind members that there are three different parts of the student sector. There is the part that is excluded, which is owned and operated by the universities. They will not operate under the proposed tenancy and do not operate under the current short assured tenancy. Then there is the investment market, which has built blocks of student housing specifically for the student market and rents out the rooms. As well as representing the RICS at this meeting, I also represent it on the PRS working party, which is run by Gerry More. He is not here today, but that group is looking at getting more investment into the sector. It is dealing with the investors that have those student blocks and are considering building more of them in Edinburgh.

There is a big fear that some investments will be withdrawn if the proposal goes ahead, and that

some of the current investments will fail to meet their targets. They will have funding for running those developments and some of them will have planned for 10-month lets to students, so that they can then rent them out for the festival or other events in the summer, particularly in Edinburgh. To make them change their business model when they have invested in those blocks, some of which are still being built, is an unfair move to make, and I think that some exemptions should be made, if not allowing a new ground for eviction. The biggest thing, however, is that, as everybody who has been to university knows, people plan ahead for their accommodation, and those blocks need to plan for new people coming in, so that they can offer them accommodation. If students are able to stay in a property as long as they want to and then just say, "I'm off, I'm quitting university and going round the world," and leave at any time, their room will be empty, and how can the accommodation provider fill it in March, when there are no new students coming in?

It is not a clever idea to include students, and I do not understand why the student lets sector was included in the first place. Nobody has asked for it. Shelter has not asked for it and none of the organisations that I am aware of has asked for it, other than, perhaps, the National Union of Students. Students are living in rooms for the term and then leaving, and to consider them among normal working people or people who are renting a home is not right, because the situation is totally different.

A separate issue, which the RICS is particularly concerned about, is to do with all the HMO properties and other properties that are rented to students in Edinburgh. Has anybody spoken to the tourism sector or to VisitScotland about the impact that the proposals will have on the availability of accommodation during the festival? There is already a huge shortage of accommodation, and we know of a letting agent that specifically focuses on Edinburgh festival lets, and it works with students; the students clean the properties, clean all the bedding and get the properties ready for the people who are coming for the festival in the month of August. All that requires a huge amount of planning not just by the owners but by the agencies who work on their behalf. How would all the tourists from America or wherever who are thinking about coming next year plan for that? A major rethink has to happen with regard to both types of properties, for the individual investor with an HMO property—[*Interruption*.]

10:45

The Convener: Please continue.

Jonathan Gordon: What was I saying?

That was the major part of our thinking in our forum. There is a need to consider and discuss the issue in more detail with organisers of the Edinburgh festivals and VisitScotland, in relation to general tourism in Edinburgh—and other areas, because I guess that Glasgow and Aberdeen must require that kind of accommodation in summer, too.

The Convener: I am sorry for the distraction.

Clare Adamson: In paragraph 68 of the policy memorandum, the Scottish Government said that it

"considers that all tenants, including students, should have the same security of tenure and that practices could be adapted in order to mitigate the impacts of the new tenancy, such as engaging effectively with tenants to establish their plans to remain in or give up the tenancy and marketing properties to a shorter time-frame."

Do the witnesses think that such an approach is possible?

Jonathan Gordon: We have only a small number of HMO properties, and we try to engage with the tenants, but even in the current system it is almost impossible to engage with students and to understand what their plans are. If students realise that they do not have to do any planning until they decide to leave, I do not think that the sector will be able to survive in its current form.

Dr Boyle: There is a question about how the market will adjust. As the bill stands, there seems to be a kind of hope that the market will adjust in an unspecified way and everything will be all right.

Of the students who do not stay at home, 75 per cent are in HMOs. If enough private sector landlords decide that renting to students, as opposed to young professionals—there is plenty of demand from young professionals for accommodation in Edinburgh and Glasgow—has become more risky and complicated and they cannot get the yield by letting during the festival, they will leave the student market and move to another part of the market. That will reduce the supply of student stock quite considerably, as Mr Blackwood said. That is a real danger.

The other risk is to do with how the providers of purpose-built student accommodation will react. Those providers have been in the market building a lot of accommodation, including in Scotland, in recent years. Unite Students, which is one of the largest providers, said in its response to the Scottish Government's second consultation on a new tenancy for the private rented sector:

"In the event there is no fair opportunity to access student accommodation in Scotland, students may want to select the security provided by the English and Welsh legislation as we would not be in a position to guarantee a room in Scotland in advance to receiving notice from the current tenant."

That is going to make Scotland a less attractive place in which to build that type of stock. I know from speaking confidentially to providers of purpose-built student accommodation that some providers are thinking of going to planning and converting some of their existing stock into stock for young professionals, for which they think there is ample demand in Edinburgh and Glasgow. We will lose even more student accommodation.

The sector picked up on the issue quickly and has been making strong representations to Government on the matter over the past nine months. However, it still seems almost to be the settled will of the Government that it will not change its approach and that students will get exactly the same rights as other tenants have—and it will see how the market adjusts.

If something is not done about the issue, I would not want to be a student in early 2018, after the new approach has been implemented. That is my warning.

John Blackwood: May I come back in briefly on the practicalities and how the market might adjust? Everything is planned in advance, from the holiday accommodation through to the new tenants moving in at the beginning of the next term, so landlords are in the habit of signing leases well in advance. Obviously, a lease cannot be agreed unless the landlords know that they will have vacant possession at X date. Therefore, the landlords will not be in a position to agree a new lease, even if the tenants are looking for that and asking to do that because next year a new group wants to move in. The landlords will not be able to secure the accommodation at that stage. [*Interruption*]

The Convener: Okay—please continue.

John Blackwood: My final point was about holiday accommodation. That is done well in advance too. People are looking to plan holidays months and months in advance. It is not just festival accommodation but any sporting activity or whatever anywhere in Scotland. Again, landlords would not be in a position to offer the accommodation in advance—for tourists during the summer, for instance—because they would not know that it would be available. It will have an adverse effect on tourism locally, as well as on future student accommodation. It means that everybody will be looking at the last minute and they will have to pay more for the accommodation, which need not be the case.

Malcolm Warrack: I will not repeat what all my colleagues have been saying but, at the end of the day, the intent that is written here about engaging with the tenants is great. That is exactly what we do at the moment, and in doing that we rely on what is embodied in the legislation. We are using the legislation and engaging with the student population in order to achieve a workable outcome.

The idea about having engagement with the tenants is great—it is what we do now—but if we have not got the right legislation sitting behind us, that engagement will not work. Somewhere along the line, we need something that allows us to give nine, 10 or 12-month tenancies, depending on what the tenants choose, which we know will come to an end or can be renewed. There are a number of different options that work well at the moment. I advocate that we learn from current experience and see how we can travel that into the bill so that we can get something that functions.

The Convener: As no-one else has anything to say on that issue, we will move on with Mike MacKenzie.

Mike MacKenzie: We have already discussed the no-fault eviction to a certain extent, but there are a number of grounds that the bill suggests are legitimate grounds for eviction. How do our witnesses feel about those legitimate grounds, other than the antisocial tenant problem that we have already heard about? Can the witnesses give examples of particular problems that may arise with the grounds for eviction as they are laid out in the bill?

John Blackwood: There are a few, but I will be as brief as I can.

A timeline of how long it will take to take action on rent arrears under the new system shows that it could take longer than under the current one. At the moment, if there are rent arrears, landlords can issue a section 33 notice—the no-fault ground—and they can do that by giving two months' notice.

The current proposal requires there to be three months' rent arrears before a landlord can take action. We have been lobbying the Scottish Government about whether we can instigate action earlier. Under the bill, the tenant has to have been consistently in rent arrears for three months before the notice to leave can be issued, and it will have a month's notice period on it. That is required in order to gain a mandatory ground for repossession if the tenant is more than a month in rent arrears, which is fine; we do not have an issue with that in principle.

The issue is how long it will take to go through the legal process. In effect, a timeline shows that it could be five, six or maybe even seven months down the line before a landlord can come before the tribunal for a decision. If the eviction is granted, the tribunal will then quite rightly say that it will be another month hence.

Therefore it could be a protracted process. We are asking whether legal proceedings could be instigated earlier so that a case can get to the stage of the hearing earlier, which can then of course decide whether there is a substantive ground for repossession. Our concern is not so much about the rights that are contained in the ground; it is about how long the process will take. It could take longer than at the moment.

There are a number of unknown quantities. The current court system takes a long time and is expensive for all parties, including the public purse. We hope that the new tribunal system will be quicker, and it will be less adversarial and more inquisitorial, all of which we welcome and think is a positive step. However, it will still take time to go through the process and we do not know how long that will be. We have concerns about the period.

The mandatory ground for repossession for rent arrears will apply when there is one month's rent arrears. There is the potential that, if a tenant is in effect granted security of tenure for life, they could be almost one month in rent arrears for ever. In that situation, the landlord would have no legal grounds to take action to repossess the property or reclaim the money. We feel that that is inequitable and essentially unfair. We have also mentioned the antisocial behaviour ground.

We lobbied for the abandonment ground to be in the bill, so we welcome the fact that it is and we thank the Scottish Government for taking heed of that. However, the abandonment ground cannot be used within the initial period of let, which could be six months or a year. If somebody abandons a property, the landlord would have to wait six or 12 months before using that ground. That means that the property will be lying empty all that time, which is unfair. It should be possible to use the abandonment ground at any point during the tenancy, assuming that there is genuine abandonment and that the tribunal has decided such and granted the repossession.

Those are the two main issues that we have with the grounds.

The Convener: I now suspend the meeting in advance of the two minutes' silence at 11 o'clock. I will advise all those present when that is.

10:57

Meeting suspended.

11:02

On resuming—

The Convener: Thank you very much, everyone. We will now continue with the meeting.

Mike MacKenzie: My next question has been pre-empted to an extent. Last week, the committee heard from Shelter, which is concerned that the ground for eviction for rent arrears is too draconian. Shelter described a scenario in which a tenant falls into partial arrears in the first month of a tenancy and then makes the next couple of months' payments but is still unable to catch up on the arrears from the first month. That tenant would be subject to eviction, despite the fact that that might well not be in the landlord's or the tenant's interests. There seem to be different interpretations of the matter, so I am interested in hearing how the witnesses feel about that.

John Blackwood: That would be discretionary, as it is not a mandatory ground for eviction. If a landlord took action for that reason, it would be up to the tribunal to decide whether the situation warranted eviction. The tribunal will be more inquisitorial than the current system, so it will look at why the situation has arisen. Perhaps the person lost their job or fell on hard times and they might have a plan to pay back the money or be seeking money advice solutions. To be honest, I would be surprised if any landlord took such action and went to such extremes for partial rent arrears unless, as I said, the tenant was deliberately doing that to be just short of one month's arrears. That is a potential pitfall in the bill. That situation could go on for many months, which is unreasonable if the person is just trying not to pay almost a month's rent.

The tribunal would look at the case on its merits. There are fair safeguards for tenants in that situation. In fairness, a balance has been struck in the drafting of the bill. The issue is how long the process could take. People will not know how long it will take from the time that they apply to the new tribunal system before they actually have their hearing.

Mike MacKenzie: That is a useful insight.

The Convener: Does anyone else want to comment on that specific point?

Katy Dickson: We need to keep it in mind that the maximum deposit that a landlord can take is only the equivalent of two months' rent. If the person cannot be evicted until three months have passed, that is when the landlord will start taking action, and we do not know how long it will be until the tenant actually leaves, so that is a further period in which rent will probably not be paid. The landlord will already be well out of pocket before they even begin to decide whether any repairs are needed or any damage has been done to the property.

Jonathan Gordon: It is worth remembering—I am not sure that this has specifically been said—that 70 per cent or so of landlords are individuals

with one or two properties. Often, such people became a landlord by accident. They may have bought a bigger house and kept hold of it either because they could not sell it or because they thought that that would be a good idea for a pension. However, until it becomes a pension, they are paying a mortgage, and budgets can be tight.

The tenant should be protected, and the tribunal's first job is to protect vulnerable tenants, where it can do so, with the discretionary liability on rent. However, we have a landlord who moved from another agent because it was not collecting rent from the tenant and was not pursuing it well enough—or so the landlord thought; there were actually deeper problems than that. That landlord had moved into a property, but they had to rent it out because they could not sell it to get enough to pay off the mortgage. They were on the verge of becoming homeless or losing the property because they could not afford to keep up the mortgage payments. We are charging them no management fees for six months in order to help them because their budgets have been that tight.

We have managed to fix a lot of the problems with that property, but we must remember that a significant number of people in the sector are just doing their best and that they have tight budgets as well. Losing a month or two's rent might not sound like much for a business. The people I have described should be treated as a business in some ways, but it must be remembered that they are just normal people who perhaps have a property that will be their pension when they retire.

Amanda Wiewiorka: Thinking about tenants who have rent arrears, I think that the inability to use the no-fault ground will force landlords to be more and more selective about who they put in their properties. Landlords will not be prepared to give a second chance to people who have a history of non-payment of rent. Any risk that is associated with putting people in their properties will be heightened, and I think that we will see tenants being forced into the lower end of the market and to the rogue landlords. We need to consider the impact of the legislation on tenants' ability to find good properties and landlords.

Mike MacKenzie: I understand that landlords can take out rent insurance in order to insure themselves against the non-payment of rent. I became aware of that only recently. Do any of you have any experience of rent insurance?

Jonathan Gordon: I have a little experience of that.

John Blackwood: Is your experience positive? One of the concerns about insurance products is that, if it is possible for providers to get out of paying, some of them will find a way of doing that. Often, landlords find that it is just not cost effective to have such insurance policies because there are so many caveats under which they will not pay out or they require tenants to fulfil certain criteria about their financial ability to pay, whether they are on benefits and so on. The products are geared up to make sure that there will be as few claims as possible. They exist in the marketplace, but fewer and fewer landlords and agents are using them because of the providers' ability not to pay out when they are required to do that.

Jonathan Gordon: The policies are expensive and the excesses are large. We offered them to all our clients at one point, but nobody took them up.

We have a robust referencing system. The first thing that we want as an agency is a tenant who will look after the property and pay their rent on time. We have tenants who go through our referencing process and do not quite meet it. In such cases, we sometimes ask for a slightly higher deposit—not more than two months' rent, but we normally take only just over one month's rent—or we might ask for a guarantor even if they are not a student, and their parents can step in.

When we advertise a property that is in reasonable condition in a decent area in Edinburgh, we are inundated with people wanting to view it and take it. Rather than just trying to work with good tenants, we will look for the most robust and definite reference-checking process, and we will try to strengthen that. If someone has had a guarantor, they may not want to do that any more, and we will just move to the next person. That changes the market a bit.

We have to be cautious about what we wish for. If a person works in the sector and tries to help tenants, they might make it more difficult for the tenants whom they are trying to protect.

Mike MacKenzie: Thank you for that.

We have already touched on antisocial tenants. I want to correct perhaps a slight misapprehension. MSPs see more of the universe than you might perhaps assume. On investigation, we find that some complaints to do with antisocial tenants that are brought to our attention, for instance, are not reasonable. There is a difficulty that the bill attempts to resolve. An antisocial tenant in some people's eyes is perhaps not all that antisocial in other people's eyes. Evicting somebody from their home can be quite a harsh penalty. A person can commit certain significant crimes and not find themselves the victim of a penalty as severe as losing their home. What are your comments on resolving that issue in a general way? Does the bill offer the reasonable opportunity of evicting antisocial tenants?

David Cox: No, we do not think that the bill is sufficient. It falls down predominantly because

there is a discretionary rather than a mandatory ground.

I think that Mr Blackwood mentioned that trying to use the existing antisocial behaviour ground is exceptionally difficult. A house in multiple occupation in which potentially four or five unrelated people live together is probably the easiest example to use. If one person causes antisocial behaviour, the other people in the property or the neighbours will complain, but with a "may" as opposed to a "must", if the other people who live in the property give evidence against that single person who is making their lives a misery and the court does not uphold that, the person will go back to live with those other people. That will make the living situation very difficult. There will be fear of retribution against the people who testified.

We are therefore talking more about a personal safety ground as much as anything else for landlords, neighbours or other tenants who live in the property. There is intimidation and threat in such antisocial behaviour situations. Therefore, a landlord will not currently use that ground, and I would be very surprised if any landlord or agent used the discretionary ground in the bill because of the fear of the consequences if they were not successful.

John Blackwood: I appreciate that we have already talked about this point, but a thrust of the bill is creating strong and sustainable communities. The Scottish Government believes that that is really important so that tenants can feel through the security of tenure that they are part of the community and can contribute to it in a much more fulfilling way.

A responsibility comes with that to act in a neighbourly way. Mike MacKenzie was, of course, quite right to say that what is antisocial behaviour to one person might not be to another, but we have to be cognisant of the expectations and needs of our neighbours. Ultimately, it would be up to any tribunal to decide whether there was enough evidence or whether the evidence was good enough to grant and warrant eviction. I would put the power in the tribunal to make balanced and proper decisions on that.

My greater concern is not about trivial issues, because in most cases they can be dealt with, or, quite frankly, the landlord will turn around and say, "Do you think I'm going to put out a good, decent tenant who is paying their rent and complying with their tenancy agreement just because you don't like them?" That is unacceptable, and I hope that the landlords will take a strong view on that, too. Ultimately, the tribunal would do so anyway, as I said.

Our issue arises where there is real antisocial behaviour that is disrupting our communities. Under the Antisocial Behaviour etc (Scotland) Act 2004, landlords have a duty to take action but under the bill they would be stymied in any action that they could take.

11:15

Siobhan McMahon: My first question has been answered, so I will move to my second one. Section 43 provides that, during the initial period of the lease, the landlord can end the tenancy using any one of five out of the 16 eviction grounds. Are you happy with the bill's approach on that?

Katy Dickson: I repeat what John Blackwood said earlier. We want the abandonment ground to be added in, so that a landlord can take swift action if they have good reason to believe that a property has been abandoned.

Siobhan McMahon: You do not disagree with the list as it is; you would like an addition to it.

Katy Dickson: That is right.

Siobhan McMahon: Is that the consensus?

John Blackwood: I concur. In our submission, we asked that grounds 9, 14, 15 and 16 be added to the list.

Jonathan Gordon: I concur with all that. In the case of abandonment, something could be done whereby a landlord would be able to serve a notice—sheriff officers are not that expensive—on the abandonment ground and then take the property back, so that when the tenant came back to say, "Yes, I am living here," the notice would be there. That could speed things up.

The Convener: Adam Ingram will introduce the next section.

Adam Ingram: It concerns issues associated with the tribunal. Mr Blackwood has expressed concern about the length of time that it would take for the process to reach the tribunal. Perhaps he could comment on that.

I also seek comments about the witnesses' confidence that the tribunal will improve access to justice for landlords. Do they have any concerns about how it will operate?

John Blackwood: I start by declaring an interest. I hold a public appointment as a member of the Private Rented Housing Panel and the Homeowner Housing Panel, so I would be one of the people on the tribunal. Obviously, I have a vested interest when discussing its jurisdiction.

Having said that, a tribunal service is a much more appropriate way of doing justice. It would be consistent. I would be one of the three members who would constitute the committee that would make decisions. All committee members are specialists in housing law and in their field, which

is much different from what we have under the current court system.

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

My concern about the length of time is that an application cannot be made until after three months. After three months, a landlord would be issuing the notice to leave, which could mean that there would be four months of rent arrears. Even with the best will in the world, it could be another month or two after the landlord applied to the tribunal before a local meeting could be arranged. That landlord could easily be without rent for five or six months. That is not the intention of the initial ground. All that we are asking is that proceedings can be raised at an earlier stage. The tenant's interests would still be protected, because ultimately the tribunal would decide whether the ground was warranted.

Adam Ingram: Last week Shelter Scotland suggested that the tribunal should have discretion to adjourn its proceedings in order, for example, to monitor payments relating to rent arrears or, in antisocial behaviour cases, to monitor a tenant's behaviour. What is your view on that?

Katy Dickson: I return to the first point. We very much welcome the tribunal system, but we ask that there is no underestimation of the resources that are required. The system needs to be well staffed and well resourced so that it can deal with cases quickly. Until it proves itself, it can be considered a risk, although it is a nicer option than what we currently have, which we know definitely does not work.

We have concerns about the discretion to adjourn. It adds an additional risk to a risky system. We do not know how long that could go on for. Will a tenant be given another six months? If it has got to the stage at which a landlord is taking them to a tribunal, there is obviously a problem, and it needs to be dealt with robustly.

John Blackwood: The tribunal service has an ability to adjourn. Any tribunal can be adjourned if the panel members deem that to be appropriate.

Adam Ingram: My final point concerns wrongful termination. What are your views on the provisions in the bill? It was hinted—actually, it was expressed, rather than hinted—that the proposed compensation of up to three months' rent was somewhat limited and needed to be significantly higher, as it is in some cases of wrongful termination at the moment.

The Convener: Who wants to tackle that?

John Blackwood: I am happy to do so, if no one else is.

You might not be surprised to hear me say that the proposal is pretty balanced, from the private rented sector perspective. It is important that the final act, whatever it has in it, has teeth and is robustly enforced. That is one theme that we want to bring out strongly in this evidence-taking session. There is no point in having law that, effectively, will not do the job that it is intended to do. We want a well-functioning private rented sector and we want landlords to comply with the law. If they do not do so, there should be adequate provision to take action against them.

I would say that the three-month period is adequate, to be honest. The issue will be in evidencing and proving that. We could be talking about regaining possession of a property if a landlord wants to sell it. The counterargument to that concerns a consideration of what exactly would be involved in that selling process. Does the property have to be on the market? Is there a timeframe for putting it on the market? Of course, markets can change, and an owner might find that they are not able to sell the property. Does that mean that they should be penalised?

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

Katy Dickson: We also believe that the fine of three months' rent strikes the right balance. The fear is that a landlord would take the fine on the chin in order to get rid of a bad tenant. However, you have to remember that the fine would not be the end of the sanction. The risk is that their landlord registration could be revoked. They would not repeatedly use the provision, as they could lose their business.

The other point to make is that there would be no reason for people to wrongfully evict, except in the circumstances that John Blackwood has covered, which I do not think should count as wrongful eviction. If the grounds are watertight, the landlord will use the grounds. They will not need to

think, "I've got a real reason to get rid of this tenant, but what ground can I fit it into, even though it does not fit well?" They will just use the appropriate ground, and there will be no reason to wrongfully evict someone.

The Convener: We are tight for time, so we will move on to rent pressure zones, which David Stewart will address.

David Stewart: I am interested in the witnesses' views on the rent pressure zone proposals. Is there evidence of excessive rent increases in Scotland? From our evidence session last week, witnesses will be aware that the proposal is that local authorities must make an application to the Scottish Government, which will decide whether to grant the application under the affirmative procedure; that a zone will apply only for five years; and that there is no minimum or maximum size, which means that a zone could cover an estate, a village, a town, a city or the whole of a local authority's area.

If rent pressure zone status is granted for an area, the rent increase cannot be greater than the consumer prices index rate plus 1 per cent. The witnesses probably know that the current rate of CPI is -0.1 per cent. There has been debate about the use of the CPI because, ironically, it does not cover housing costs, which seems a bit odd. The retail prices index is a much better index if we are looking purely at housing costs. There is quite a lot of meat in what is an interesting area, and I would be grateful for witnesses' views.

Jonathan Gordon: The most important thing to remember is that the rental market is a market and that it is based primarily on people getting a return or a yield on their investment in a property. Whenever we consider the rent for a property, the first thing that we do is look at what the rent should be to give a yield of between 4 and 6 per cent. That is often what the rent is set at, even in areas in which people think that rents have soared. That is the case because property values have soared. Therefore, the Government should be tackling the price of housing, as that would control rent prices.

If rent prices are tackled, that completely skews the housing market. Our view as surveyors is that that does not make any sense. I do not do home reports but, when surveyors do home reports, they look carefully at the comparable evidence in the market. In putting in a rental figure, they have to consider market rents, but they also have to think about the yield on the property. The introduction of any restrictions on rent could have an impact on that.

Another problem with rent pressure zones is that they definitely provide a level of uncertainty for all investors, because they do not know what will happen. Not knowing whether a council is going to suddenly introduce a rent pressure zone is probably the biggest thing that will put off individual and institutional investors. Investors—particularly corporate investors—will not consider investing if rent pressure zones are established in certain areas.

As I said, we speak directly to a small number of investors, but I am sure that Dr Boyle speaks directly to many more. They are saying that, if the provision is enacted in its current form, they will not invest. They might well consider doing so when the situation changes or markets change but, as things stand, they can invest elsewhere; they do not need to invest here.

Another problem with rent pressure zones is that there is no way of defining what is happening with rents. The provision in the bill is all about how the rents of people who are on existing tenancies are raised. All the headlines are about advertised rents. We advertise all our properties on Rightmove or Zoopla. That data is publicly available, but nobody knows by how much I increased the rents of existing tenants of existing stock.

This year, we assessed all the rents for all our properties and we wrote to about 30 per cent of our landlords because we thought that the rent had fallen behind the market. Only one landlord wanted to increase the rent. In every email, we included the caveat that the tenant was a good one who was not causing any problems and that the inspections were good, so they might want to consider not increasing the rent. None of the landlords wanted to increase the rent, apart from one, who wanted to increase it by only a marginal amount to keep pace with their other costs. There is a danger that the measure might change the market in ways that do not suit tenants.

Malcolm Warrack: Rent pressure zones are a poor idea. If one looks at what has happened in the past few years in the market in Aberdeen, where there was a booming oil market, market forces have probably corrected that more quickly than any rent pressure zone would.

I will pick up on what Mr Gordon said, although Dr Boyle is probably the best person to address the question. Earlier, I mentioned the student market. There is a shortage of data—real facts and figures—on what is happening in the marketplace. I encourage everybody here to come together with a view to bringing together such data.

In my office, I have an internal system that takes the information from the energy performance certificate, which every advertised property has and which includes the floor area and the energy efficiency rating, and calculates a rent per square foot, or per square metre, per month. We can

analyse street by street what is happening to all the rents in our portfolio. That takes a bit of work. It would take quite a bit of work to do it nationally, but we need to do something like that so that we have hard-and-fast figures. The solution to a lot of the problems is to get supply into the marketplace.

11:30

Dr Boyle: Although I do this kind of thing for a living, if you were to put me up against the wall and ask me what the average rent that is achieved in Scotland today is, I would have to be honest and say that I do not know. I think that it is somewhere between £500 and £750 per calendar month, but it entirely depends what index is looked at. All the methodologies and indices have their strengths and weaknesses and there is no definitive rental index in Scotland that shows what is happening with rents in different parts of the country or in different property types at any one time.

In Ireland, the Private Residential Tenancies Board tracks every rent—a bit like Registers of Scotland tracks every house sale. The board has a definitive database of rents that shows how they are changing. We do not have such a database; there are serious holes in the data sets that we use to decipher what is happening with rent movements.

The evidence is mixed, but the bulk of it suggests that rents have not been rising by more than inflation anywhere over a period of time that goes back to 2008, 2009 or 2010. In fact, nominal rents—without even adjusting for inflation—in Scotland fell between 2008 and 2011. Once we adjust for inflation, we see that Aberdeen was the only place in Scotland where rents rose by markedly above inflation, but only for a short time—they are now coming down—which was a result of a bubble in house prices and in oil prices and of incomes rising.

Whether RPI or CPI is used as an inflation measure is an interesting question. The advantage of using RPI is that it takes account of housing costs. The disadvantage is that it is no longer designated as an official statistic by the Office for National Statistics, although the ONS still reports on it. If you were looking for some kind of inflation measure, I would have thought that you would have to use one that incorporates housing costs in some way. It would be well worth exploring that with the ONS in further detail.

I reiterate Mr Warrack's point that rent rises are a signal to the market to increase supply. It is fairly basic economics that, once rent control is in place to depress rents below market levels, supply is reduced. That is what has happened in places such as San Francisco and Stockholm. If someone in Stockholm wants to rent a flat in the city centre, their letting agent will tell them to come back in 10 years' time, because that is the length of the waiting list. If someone is happy enough to go to the suburbs, they will have to wait only about seven years.

The investor market will probably see rent controls as the thin end of the wedge that will make Scotland appear less attractive than other parts of the British isles, particularly given build to rent, which is a potential game changer for getting new supply going in this country.

I said that Ireland collects very accurate rental data. It is interesting that over the past year rents in Dublin have gone up by 10 per cent on average, which is a marked increase. Ireland thought carefully about introducing rent controls but backed off, because people were worried about the impact on supply. Ireland rowed back pretty much at the last minute.

The Convener: I am conscious of the time—

Dr Boyle: I am sorry—I will make one final point. A couple of weeks ago, I attended a Movers & Shakers property networking forum conference in Edinburgh, as did a number of people who are here today. The aim was to bring together all the investors, developers and housing associations and the Government. The housing minister made a speech about the bill. I ask people to look at the list of the conference's attendees. They will see that very few of the big investors and funders were present. The following week, a similar conference was held down south, and all those people were there. That shows where Scotland appears on the radar for the type of investment that we are talking about.

David Stewart: Dr Boyle has made interesting points.

For the record, I will read out some information that we got from the Scottish Parliament information centre, which is our independent information service. SPICe looked at Government publications on rents in 2014 and 2015. The table entitled "Annual change in average private rents by property size" shows changes of 1.6 per cent for a one-bedroom property, as much as 3 per cent for one bedroom in a shared property, and 2.8 per cent for a three-bedroom property.

The crucial point is the regional disparities, which Dr Boyle touched on. As we would expect, greater Glasgow, Lothian and West Lothian are top of the league, whereas average rents in Aberdeen and Aberdeenshire have fallen quite dramatically, in particular because of the difficulties with the oil price. I was interested to see that rents have shot up in Argyll and Bute, which Mike MacKenzie and I represent. That is quite

surprising; the area is now in the middle of the table.

The regional disparities are interesting, and the figures on annual increases are useful, too. My key point is that in effect the consumer prices index shows that we are in a deflationary position, so we must bear that in mind when we look at how the figures have changed.

Dr Boyle: Absolutely. The SPICe briefing is very good.

David Cox: I agree with a lot of what has been said about investment. If there is rent control in a small part of a country, investors—be they landlords or institutions—will look for somewhere else to invest.

I agree that the CPI does not take account of the cost of housing. With the changes to the retail prices index, I know that the Valuation Office Agency is in the final stages of creating CPI plus housing—CPIH—which it hopes will become the new national measure of inflation. As the committee considers the bill, I urge it to speak to the Valuation Office Agency and see whether CPIH would be a more appropriate barometer.

Our main concern is this. Rents generally go up in line with house prices, and the problem is that we do not have enough house building in this country. If we artificially impose controls on rent prices, some investors will go elsewhere and those who remain will be much more selective about the tenants that they take—the issue has been raised in response to the provisions on rent arrears. Where increasing demand, such as there is in Edinburgh and Glasgow, meets stagnating supply, where are people supposed to live?

As demand increases, agents and landlords will be much more selective about who they take, so someone on a low income or who has had homelessness issues, antisocial behaviour issues or rent arrears issues will be highly unlikely to secure a good-quality tenancy. That means that the people whom the bill is designed to help will be hurt the most. They are the people who will, unfortunately, be pushed into the hands of the rogue and criminal operators at the very bottom of the sector. The provisions' effect will be exactly the opposite of what was intended.

John Blackwood: I concur with a lot of what has been said. It is important to remember that we are talking about supply and demand. It is market forces. If we have a shortage of housing, people will pay more for it, which can result in rents increasing.

It is important to acknowledge that we are talking about official Government statistics or ONS statistics when we talk about an average rent increase across Scotland of 1.6 per cent. The increase in Scotland is much less than the increase in other parts of the UK. That does not seem to indicate that we have an overall problem, albeit that there are regional variations.

In its second consultation on the bill, the Scottish Government recognised that heavy-handed regulation of sectors, even locally, can have an adverse effect on the marketplace. It said:

> "Heavy-handed regulation of rents ... could jeopardise efforts to improve affordability through increasing supply by discouraging much-needed investment."

We have to be careful about that and about not frightening off investors in Scotland.

Jonathan Gordon: A point that I have been thinking about is that rent control is almost too simplistic. If we think about economics or any kind of supply and demand, we know that in considering rents we must consider the capital value or the cost of running the property. If the Bank of England puts interest rates up to 5 per cent and everybody finds that their buy-to-let mortgages are shooting up, but they are not allowed to increase the rent on their property, they will go bust. That would not work with any other market. Milk prices are said to be too low for farmers—and they probably are—but, if the price of wheat doubles, the cost of the milk in the supply chain will have to go up. If the cost of supplying a property to the rental market goes up, the price will have to be adjusted. We need to tackle the source of the problem rather than the outcome, which is rents rising.

There is no evidence that rents have risen too much. As Dr Boyle said, there were a number of years when I was working in Edinburgh when rents were not really rising at all, even when property prices were rising, so some of the recent rental increases there have just been catching up with the underlying gross yield of between 4 and 6 per cent. There is no evidence that rent controls are required, but there is evidence that more housing is required.

David Stewart: The committee took evidence that suggested that rent pressure zones should be an interim measure until further research is carried out into different models of rent control and their potential effects. Do you agree with that?

We should look at best practice as well. In the Netherlands, rent increases are linked to quality, so increasing the facilities in the flat or house that is being let could be linked to an increase in rent. How do the witnesses feel about those points?

Dr Boyle: Kath Scanlon is probably the best source for international evidence on rent control. She is at the London School of Economics and has written widely on the subject. At a Shelter conference, she made a good point about the danger of cherry picking an aspect of another

country's housing market policy, assuming that it can be dropped into your own housing market and expecting it to have a benign or even positive impact.

Germany has rent controls, but it is interesting that rents in Berlin have gone up far faster than those in Edinburgh. The situation is markedly different; the Germans have almost a benchmarking approach to setting rent levels.

Germany, the Netherlands and a number of other countries that have rent controls have had their housing market systems for a long time, so everyone—investors, landlords and tenants—has had time to get used to and adapt to that. What they also have, which we do not have here, is incentive packages for landlords in the sector that are far greater than those here. In Germany, for example, rent losses can be offset against other income in tax returns.

The Germans have a planning and legislative system that promotes housing supply. In Munich, about five units are built for every 100,000. In most of the main Scottish cities, the figure is about two and a half. If rent controls were combined with measures to increase supply, greater incentives for landlords and an institutionalised housing system that had been around for 30 to 40 years, they might work. A combination of all those measures would have to be in place.

David Stewart: The proposals on rent pressure zones apply only to sitting tenants, but some have suggested that they should also apply to new tenancies. What are your views on the proposals?

11:45

John Blackwood: I understand that the proposals are about offering predictability of rents and not about controlling rents. The Scottish Government has been clear about that, and it is probably a wise approach in that we do not want to deter future investment by controlling the market, even though it is still controlled by the back door. It is important to emphasise and recognise that.

We are looking at creating communities where tenants in the private rented sector have security of tenure once they are in a tenancy and predictable rent levels in the future. That is the most appropriate way to deal with the issue, rather than tackling the market.

The only downside is that it is all very well for people to have predictability about how their rent could go up in rent pressure zones, but the market is completely without that control, which is partly the point that is being made. A tenant with one of those tenancies has protection or predictability and security of tenure, but it might be more difficult for them to move on to another, similar property in the area because they might not be able to afford it. That is why there are issues in comparable areas in other parts of the world that have introduced similar rent controls.

The Convener: As there are no further comments on rent pressure zones, we will move on to the provisions in the bill that allow people to challenge rent increases.

Section 19 provides that a landlord may increase rent that is payable under a tenancy by giving the tenant a rent increase notice, with the minimum notice period being three months. Section 17 provides that the landlord may not increase the rent more than once in a 12-month period.

My question is for Mr Cox. Your organisation's evidence suggests a shorter notice period than three months for rent increases. I would be interested to know the justification for that and what real benefit it would provide to landlords, particularly as, in practice, some increase their rents only at the end of the tenancy?

David Cox: Section 17 provides that rent may be increased only once in every 12 months. Having a three-month notice period would mean that landlords would have to calculate what the rent is going to be three quarters of the way through the tenancy, at which point, particularly in the light of the ability to go to the rent officers and to appeal to the first-tier tribunal after that, the tenant could complain if they disagree with what the rent will be.

As we have discussed, the markets change quite regularly, and three months is a long time. A landlord could say, "Your rent will go up by £X in three months' time", but if the market suddenly changes for one reason or another during that time, or it does not move as fast as the agent or landlord expects it to, that would open up the landlord—through no fault of their own, and merely because they tried to predict what the market would do at a point in the future—to complaints to the rent officers and the first-tier tribunal.

The Convener: What would you change?

David Cox: We would shorten the period to either one month or two months. We recommend one month.

Jonathan Gordon: The RICS does not have a strong opinion against the proposal. Overall, we feel that it is sensible for everybody to have a clear understanding of what can and cannot happen. The proposal will bring tenancies into line with commercial leases, so people would know when rent reviews were going to happen. I can see the argument that it is difficult to think three months ahead, but I do not have an issue with that. It is a

good idea for tenants to know when reviews will happen and to be able to plan for what they have to do in their budgets as far in advance as possible.

Katy Dickson: Scottish Land & Estates supports the provision as drafted, as well. The majority of our members do not review rents more than once a year anyway, so that provision fits in with what they already do.

The Convener: Are you happy with the three-month period?

Katy Dickson: Yes. We do not see a problem with having to give tenants more notice.

The Convener: Okay. Thank you.

We move on to succession following the death of a tenant. Section 54 provides that

"a private residential tenancy is not terminated by the death of the sole tenant."

Section 55 sets out that, if the deceased tenant leaves behind a partner who has occupied the let property as his or her "only or principal home", the partner can inherit the tenancy, subject to specific criteria being met. What do you think of that?

John Blackwood: Section 56 was a concern to us with regard to the security of tenure continuing after the physical death of the tenant. Obviously there are practical implications for us.

As a landlord, I have had to deal with the situation where a tenant has sadly passed away and who had no relatives, no estate and no will. There is a requirement in section 56 for the executor to give notice to the landlord. In that example, there was no executor, and the only way of getting one would have been by asking the court to appoint one, which is a bit pointless if there is no estate and, resultantly, no will.

What we need to do, in a way, is help to support the moving on of that tenancy after the physical death of the tenant—obviously, assuming that there is no succession by partners and the tenant was living on their own. We need to enable that property to get back into the marketplace so that somebody else can move into it.

We feel that the proposal is inequitable and that there should be a similar arrangement to the one for social housing. Why should the situation be different in the private rented sector?

Katy Dickson: We do not have a problem with succession to a partner; it is reasonable under most circumstances. We would like to see it restricted to one succession, however, as it already stands in the 1988 act.

We think that the continuation brings a complication, though. As has just been asked, what if there is no executor? What if notice is not given? What if there are no funds to pay the continuing rent? We also believe that a successor should already be identified. Another section of the bill says that the landlord should be notified if someone is living with the tenant as a married partner, so the landlord will already know if a partner is there to succeed to the tenancy.

David Cox: I support everything that has just been said. I would raise again the issue of tenants dying intestate, because that can cause significant problems for regaining possession and getting the property back into use.

Amanda Wiewiorka: I agree with everything that has been said.

The Convener: My final question is whether there are any areas that we have not covered in our discussion this morning. This is your opportunity to put them on the record.

Katy Dickson: I would like to bring up two additional grounds that we would like to be added to the current list of 16. I do not think that either of them would take away from the security of tenure for tenants, and I think that they are very reasonable grounds to propose.

In order for a rural business to grow and develop, it is often necessary to expand the workforce. A lot of that workforce needs to be accommodated on site. We would therefore like to see a ground included that would allow a landlord to ask a family or a current tenant to leave in order to accommodate a new employee.

The other ground is more open. If we can accept that the no-fault ground has gone, the only other way that we can see to give a landlord the full safeguard that we have been promised would be to allow a landlord to take a case to the tribunal for any other reasonable circumstance. It would be totally discretionary, but such a ground would give the safeguard that, in very unusual circumstances, and not necessarily because of a fault of the tenants, the landlord could make their case to regain possession of the property.

David Cox: I want to raise an additional point on a totally different issue. It is a minor one, in relation to the statutory terms in schedule 2 related to access. The schedule says that

"the landlord will give the tenant at least 48 hours' notice that the landlord requires access for the purpose of carrying out work on the let property or inspecting the let property in order to determine what work (if any) to carry out."

In the case of a broken boiler or something like that, it is not always practical to give 48 hours' notice. I am sure that we have all dealt with plumbers, electricians and tradesmen who say, "I can come this afternoon or I can come next Tuesday." At that point, the landlord or the agent will have to say, "You can't come this afternoon,

so you'll have to come in a few days, because I have to give the tenant at least 48 hours' notice." We ask that that section be caveated with "where practically possible". We have also to take into account the other factors that weigh on a landlord or agent's ability to get somebody into a property to undertake works.

The Convener: Are there any other comments?

Jonathan Gordon: The RICS agrees that, where a business has been renting out a property and then needs to employ somebody who would normally stay in that property—if they had not until then needed a farm worker but circumstances changed such that they now did—there should be a ground similar to the one for religious purposes, so that they could end a tenancy if they need to have the property back for a new employee.

My second point is more general. I want to remind anyone who is listening that the RICS does not specifically represent landlords' interests. The majority of the things that I have worked on in my role for the RICS over the past few years have improved protection for tenants, and we have focused specifically on things relating to the tenant rather than to the landlord.

It is also true of the landlord bodies that are represented here that they want a good sector that works well for everybody. There will always be disagreement over rent because of differing views on how the market should be allowed to operate, but when it comes to considering what should happen, we all want things to improve. Regardless of how small you think the rogue element is, tackling that rogue element is the important thing, rather than tackling everybody. Sometimes it is a distraction to focus on changing things that are not going to help. The loss of the no-fault ground and the rent control measures will not protect the tenants that Shelter and other bodies are concerned about. In my personal view, they could make things worse by reducing the supply in the market.

Dr Boyle: I would like to correct something that I said earlier. I meant to say that an average of 2.7 homes per 1,000 people in Scotland's main cities were built, but I think that I said per 100,000 people, which would have been an anaemic build rate. The figure is 2.7 homes built per 1,000 people in Scotland, and in German cities it is five per 1,000 inhabitants. I just wanted to correct myself on that point.

John Blackwood: We have not mentioned section 38(3), which talks about an instance in which a tenant gives notice to the landlord but then decides that they do not want to leave after all. The landlord has the right to refuse that, but we are unsure what legal ability the landlord would have to regain possession of the property, so we think that there needs to be an additional ground for repossessing the property when the tenants have given prior notice.

Malcolm Warrack: I will make one final comment on the student issue. The consumer is at the heart of the bill, and we are trying to deliver a product for them. I suggest that, in considering how the bill is adjusted, we should think in terms of what students want from either university accommodation or private landlord accommodation, and then look at consistent delivery of accommodation from all the sources.

The Convener: If there are no further comments, Mr Warrack has had the final word. I thank our witnesses for attending today's meeting. It has been a long meeting, but I hope you feel that it has been a productive one. I am sure that members of the committee feel that it has.

The next meeting of the committee is on 18 November, when we will take further evidence on the Private Housing (Tenancies) (Scotland) Bill from council representatives and legal bodies.

Meeting closed at 11:59.

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