The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 10 February 2016

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
6th Meeting 2016, Session 4

CONVENER

*Jim Eadie (Edinburgh Southern) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)
*Alex Johnstone (North East Scotland) (Con)
*Mike MacKenzie (Highlands and Islands) (SNP)
Siobhan McMahon (Central Scotland) (Lab)
*David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Margaret Burgess (Minister for Housing and Welfare)
Patrick Harvie (Glasgow) (Green)
James Kelly (Rutherglen) (Lab) (Committee Substitute)
Charlotte McHaffie (Scottish Government)
Jackie Pantony (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 10 February 2016

[The Convener opened the meeting at 09:30]

Subordinate Legislation

Letting Agent Code of Practice (Scotland) Regulations 2016 [Draft]

The Convener (Jim Eadie): Good morning everyone. I welcome you to the sixth meeting in 2016 of the Infrastructure and Capital Investment Committee. Everyone present is reminded to switch off mobile phones as they affect the broadcasting system. As meeting papers are provided in digital format, you may see tablets being used during the meeting. Apologies have been received from Siobhan McMahon, but we are expecting James Kelly to attend later this morning as substitute.

Agenda item 1 is to take evidence on the draft Letting Agent Code of Practice (Scotland) Regulations 2016. I welcome from the Scottish Government Margaret Burgess, Minister for Housing and Welfare; Charlotte McHaffie, senior policy officer, private rented sector regulation team; and Jackie Pantony, principal legal officer.

The instrument is laid under the affirmative procedure, which means that the Parliament must approve it before the provisions can come into force. Following the evidence session, the committee will be invited at the next agenda item to consider a motion to approve the instrument.

I invite the minister to make a short opening statement.

The Minister for Housing and Welfare (Margaret Burgess): I welcome the opportunity to give evidence on the draft Letting Agent Code of Practice (Scotland) Regulations 2016.

The private rented sector plays an increasingly important role in meeting housing need across Scotland. Because letting agents manage about half of all annual lettings, they are well positioned to improve standards in the sector by ensuring that the homes they let are of good quality and well managed. Many letting agents operate in a professional manner, but that good practice is not shared by all. The draft code is intended to rectify that by setting out the standards of practice that all letting agents must meet.

The key features of the code include a clear framework that has been structured to follow the letting process, making it easy for letting agents, landlords and tenants to navigate; a requirement on letting agents not to act for landlords who are refusing or unreasonably delaying complying with their legal obligations and to inform the relevant authorities, which will help to enforce standards; and a requirement on letting agents to hold client money protection and professional indemnity insurance, providing additional protection for landlords and tenants if things go wrong.

In drafting the regulations we have drawn on existing voluntary codes of practice and related documents, worked with industry bodies as well as housing and tenants groups, held a public consultation and, as far as possible, future proofed the document to avoid it becoming out of date, for example due to changes introduced in the Private Housing (Tenancies) (Scotland) Bill.

Importantly, the code gives consumers and the Scottish ministers the ability to challenge poor practice by agents through the first-tier tribunal. By providing consumers with a more accessible form of redress, landlords and tenants will be in a better position to assert their rights, which should in turn encourage agents to make improvements in their services.

The Scottish ministers will also be able to take breaches of the code into account in determining whether a letting agent should be admitted to, or permitted to remain on, the mandatory register of letting agents that ministers are required to establish. Ultimately, a letting agent who fails to comply with the code may be removed from the register, which would mean that they would no longer be able to operate.

The code will support positive change in the letting industry.

The Convener: As no member has a question, it would appear that all are satisfied with your opening statement, minister. In that case, I thank you for your evidence.

Agenda item 2 is the formal consideration of the motion. I invite the minister to move motion S4M-15460.

Motion moved,

That the Infrastructure and Capital Investment Committee recommends that the Letting Agent Code of Practice (Scotland) Regulations 2016 [draft] be approved.—[*Margaret Burgess.*]

Motion agreed to.

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

I suspend the meeting briefly to allow a changeover of witnesses.

09:34

Meeting suspended.

09:41

On resuming—

Private Housing (Tenancies) (Scotland) Bill: Stage 2

The Convener: Our next agenda item is to consider the Private Housing (Tenancies) (Scotland) Bill at stage 2. We have a large number of Scottish Government and non-Government amendments to consider, but we hope to make as much progress as we can today in disposing of them. The committee will have an opportunity to complete consideration of amendments on 24 February, if necessary.

I welcome back Margaret Burgess, the Minister for Housing and Welfare, and her supporting officials. I remind members that the minister's officials are here strictly in a supportive capacity and cannot speak during stage 2 proceedings or be questioned by members.

Members should have a copy of the bill, the marshalled list and the groupings for today's consideration.

Section 1 agreed to.

Schedule 1—Tenancies which cannot be private residential tenancies

The Convener: Under group 1, we will consider the meaning of private residential tenancy. Amendment 1, in the name of the minister, is grouped with amendments 2 to 17, 80 and 102.

Margaret Burgess: The amendments seek to amend schedule 1 of the bill, which outlines the types of tenancies that cannot be private residential tenancies. The Scottish Government recognises that the recent growth of purpose-built student accommodation—PBSA—now provides much-needed new accommodation for students that has been developed for the specific purpose of providing bespoke accommodation. It is similar in character to the accommodation that colleges and universities provide, which is exempt from the bill's provisions and does not form part of the mainstream private residential sector.

In responding to the committee's stage 1 report, I said that I would bring forward an amendment that would have the effect of exempting PBSA properties from the bill. Amendment 9 is designed to do just that as it will extend the existing student-let exemption to include purpose-built student accommodation. Amendments 1 to 8 make some minor consequential changes to the existing exemption as a result.

The effect of amendment 9 is that the tenancies offered by PBSA providers will not be private residential tenancies. Among other things, that will

ensure that PBSA providers can continue to provide accommodation for students through their nomination agreements with colleges and universities. In order to do that, they need to be able to offer fixed-term tenancies so that they know what properties will be available for the next academic year well in advance of it beginning.

Schedule 3 of the bill lists the eviction grounds under which landlords can regain possession of their property. One of the grounds is that the tenant is "not a student", which was included with PBSA providers in mind. Amendment 102 removes that eviction ground and it will no longer be relevant if PBSA providers are to be exempt from the new tenancy regime altogether, which I believe is the most appropriate approach.

Amendment 80 makes a consequential amendment to section 37 of the bill to remove the reference to the eviction ground of "not a student". If amendment 102 is accepted, that eviction ground will no longer apply.

Amendments 10 to 15 clarify what is meant by "resident" landlord in schedule 1. The effect of amendments 10 and 11 is to confirm that, when a tenant moves into a shared flat with the landlord, it cannot be a private residential tenancy.

09:45

Amendments 12 and 14 simply change the location of what is currently paragraph 9 of schedule 1, as it will not be relevant to the new text that is being inserted by amendments 10 and 11. At the same time, a minor change is made to the reference to an executor to avoid any confusion in a case where an executor is also a beneficiary. Amendments 13 and 15 are minor consequential amendments to update paragraph references.

Amendment 16 excludes those tenancies where the landlord is the Scottish Police Authority. Police Scotland has housing for officers, mainly in rural areas, so that they are able to fulfil their operational requirements. The amendment will enable Police Scotland to continue to move its officers around the country and to provide housing for them where that is required.

Amendment 17 adds an exemption for the Ministry of Defence. The effect of the amendment will be that the MOD will be able to maintain its operational effectiveness in deploying its personnel across Scotland.

I move amendment 1.

Alex Johnstone (North East Scotland) (Con): I welcome the amendments in this group. I would like the minister's views on a couple of minor points in relation to the changes in student accommodation.

First, I believe that there is no provision for accommodation that is currently private rented accommodation to become student accommodation. Are you deliberately sticking to purpose-built student accommodation, or could you envisage accommodation transferring from one purpose to another when need is identified by means such as a change of planning permission for houses in multiple occupation?

Secondly, is the minister content that the bill adequately defines what a student is? Is it anticipated that any closer examination of that definition might be necessary?

Margaret Burgess: In answer to your first point, we have been clear that we are talking here about purpose-built student accommodation that has nomination rights with universities. We will define in regulation later exactly what we would include in purpose-built student accommodation.

On the second point, I think that we are satisfied that we have the definition of "student" right in the bill.

David Stewart (Highlands and Islands) (Lab): I generally accept the minister's amendments, but could she look carefully at having a review of student accommodation in the future and perhaps make a commitment to ensure that students renting such accommodation are not charged pre-tenancy fees and are protected by the repairing standard set out in section 13 of the Housing (Scotland) Act 2006?

Margaret Burgess: In response to David Stewart, we have made a clear commitment that, if the bill passes, we will review how it works for the student sector, both in purpose-built student accommodation and in the wider private rented sector. Currently, there are students in the purpose-built sector who are in short assured tenancies, and some have occupancy rights through the university standards. Universities have to meet those standards. We anticipate that that situation will continue, but we will certainly take on board what David Stewart has said.

Amendment 1 agreed to.

Amendments 2 to 17 moved—[Margaret Burgess]—and agreed to.

Schedule 1, as amended, agreed to.

Sections 2 to 4 agreed to.

Section 5—Statutory terms of tenancy

The Convener: Amendment 150, in the name of David Stewart is grouped with amendments 151, 18, 19 and 20.

David Stewart: The purpose of amendment 150 is to ensure that no one can contract out of the

statutory terms. In general, my amendments are supported by Shelter Scotland, Citizens Advice Scotland, the Govan Law Centre, the living rent campaign, Crisis and the National Union of Students. Unless I state otherwise, all the amendments in my name that we discuss this morning are supported by all those organisations.

I lodged amendment 150 to clarify what is in the bill. It will ensure that any terms put in the lease by the landlord that are contrary to the statutory terms will have no legal standing with a tribunal should a landlord attempt to enforce them, even if the tenant has signed the lease. That will give tenants clear and unambiguous protection against any terms introduced by their landlord that could undermine their rights. In effect, it prevents an undermining of the security of tenure.

I move amendment 150.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I will speak exclusively on amendment 151.

The purpose of amendment 151 is to make the duty to inform a landlord about others staying in the property more proportionate. As the bill is currently drafted, the tenant is obliged to send their landlord details of every person who has stayed in the property—even if that is just a friend who was staying overnight. That represents unreasonable intrusion into the lives of the tenant. Indeed, as currently drafted, the bill would mean that the tenant might be in material breach of the tenancy and liable to be evicted for failing to notify their landlord that someone had stayed for a day or two.

Although the aim of paragraph 3 of schedule 2 is welcome in giving landlords the power to prevent overcrowding and subletting, the simple technical change in amendment 151 that specifies that, for notification, the additional person is living in the accommodation as their main home renders the paragraph more proportionate.

Margaret Burgess: Schedule 2 of the bill already provides that it is to be a statutory term of every private residential tenancy that the tenant is to tell the landlord about anyone aged 16 or over who resides in the property. Amendment 18 will ensure that it is also a statutory term of tenancies that the tenant tell the landlord if that person subsequently ceases to reside in the property.

The purpose of amendment 18 is to ensure that landlords know how many people are living with their tenants, so that landlords can manage their properties, for example—as was said—by ensuring that there is no overcrowding.

Schedule 2 outlines some of the terms that will be laid down in regulations as statutory terms of the private residential tenancy. One of the terms that the regulations must include is that a tenant must allow the landlord, or any person authorised by the landlord, reasonable access to the property to carry out work or to inspect the property in order to determine what work to carry out—if any. Except where access is required urgently, the landlord must provide the tenant with at least 48 hours' notice that the access is required.

Amendments 19 and 20 reframe the obligations relating to access in order to make it clear that the tenant can waive the 48 hours' notice if the tenant is content to do so. However, other than where access is required urgently, there is no obligation on the tenant to allow access if he or she has not received this notice. The effect of the amendments is to provide more flexibility where both parties are in agreement.

There is no need for David Stewart's amendment 150 as it is already implicit in the bill that landlords and tenants cannot contract out of the statutory terms. Section 5(2) states that the statutory terms are terms of every private residential tenancy. That is also why section 12(4) talks about a contractual term "purporting" to displace a statutory term, rather than talking about it actually doing so.

I understand that there has been a suggestion that it would be simpler for a tenant for these terms to apply automatically, rather than the tenant needing to go to the tribunal in order to have them apply. Let me be clear: a tenant does not need to make an application to the tribunal in order for the terms to apply. They apply automatically, but if a tenant wants to see how a statutory term fits alongside other contractual lease terms, he or she should be able to ask for a document that shows that. I am happy to clarify that, and I hope that that gives Mr Stewart the reassurance that he seeks.

There might be cases in which including the provision that is suggested in amendment 150 could lead to difficulties. Section 5(3) provides a power for the Scottish ministers to allow the effect of the statutory terms to be modified or displaced by the parties in certain circumstances—for example, where a protection is enhanced by the parties in a way that is in the tenant's interests. The amendment might cause confusion in such cases, as there may be a question mark over whether the modification is a statutory or contractual term. I therefore urge David Stewart not to press his amendment.

On Adam Ingram's amendment 151, schedule 2 sets out the statutory terms that are provided for. That includes "notification about other residents", about whom the tenant must inform their landlord if they are residing in the property. That is so the landlord knows how many adults are living with the

tenant, so that they are able to effectively manage their property.

Amendment 151 limits the statutory term so that a tenant need tell the landlord about a person aged 16 or over residing in the property only if it is that person's only or principal home. I think that that is a sensible approach, and I am content to accept the member's amendment in principle. However, I consider the drafting to be defective, so I ask Adam Ingram to withdraw the amendment and allow me to lodge an amendment at stage 3 that has the same purpose and effect.

David Stewart: I hear what the minister says, and I ask that she considers the issue in advance of stage 3 and gives us an opportunity to consider the issue again at that stage.

Amendment 150, by agreement, withdrawn.

Section 5 agreed to.

Section 6 agreed to.

Schedule 2—Statutory terms required by section 6

Amendment 151 not moved.

Amendments 18 to 20 moved—[Margaret Burgess]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 7 to 11 agreed to.

Section 12—Application to First-tier Tribunal to draw up terms

The Convener: The next group of amendments are technical, drafting and consequential amendments. Amendment 21, in the name of the minister, is grouped with amendments 22 to 29, 42, 56, 83, 129, 134 and 139 to 141.

Margaret Burgess: Amendment 24 will join up the process of a tenant applying for a written tenancy agreement with the process of applying for an order for payment against the landlord to ensure that a tenant does not go away with a financial award but still without any written terms for his or her tenancy. Section 14 enables a tenant to apply to the tribunal to make an order against a landlord who has failed to provide the tenant with the necessary tenancy information, including written terms of the tenancy, which are required under section 8. An order can require the landlord to pay the tenant up to a maximum of three months' rent.

Amendment 24 will ensure that where the terms of the tenancy are not set out in writing between the parties, an application for a payment order under section 14 can be made only in conjunction with an application to the tribunal to draw up written terms under section 12.

10:00

On amendment 56, where a tenant disputes a landlord's proposed rent increase, the bill provides for how the rent officer or the tribunal is to calculate the open-market rent of the property. The provisions state that that should include an assumption that the property is being let by a willing landlord. The law assumes that a willing tenant is implied in any calculation of open-market rent. However, for the avoidance of any doubt, amendment 56 states explicitly that there is also an assumption that the property is being let to a willing tenant. That is something that the Law Society of Scotland called for as part of its stage 1 evidence to the committee.

On amendments 139 and 140, section 61 sets out definitions for a number of terms that are used throughout the bill and includes, among other things, a definition of "rent". Amendment 139 confirms that "rent" means any sums paid periodically by the tenant to the landlord, rather than one-off payments. Amendment 140 clarifies that rent includes sums payable in respect of services, repairs, maintenance or insurance. Such payments are included to ensure that sums cannot be charged that fall outwith the definition of rent in a way that would undermine the protections that we are introducing in relation to rent increases.

On amendment 141, the bill contains amendments to other acts that refer to the day that section 1 comes into force. For now, that is unavoidable because the actual date of section 1's coming into force is to be set later by regulations. Those amendments in their present form will put those reading the amended acts to the trouble of having to find the commencement regulations to see on what day section 1 was actually brought into force. To make life easier for those looking at the amended acts online or in updated print versions, amendment 141 will allow regulations to insert the actual date that section 1 comes into force. Similarly, amendment 141 will allow regulations to remove section 6(5), with effect from the day that section 1 comes into force because on that day section 6(5), which applies only before section 1 comes into force, will become irrelevant.

Amendments 21 to 23, 25 to 29, 42, 83, 129 and 134 will fix minor drafting points.

I move amendment 21.

Amendment 21 agreed to.

Section 12, as amended, agreed to.

Section 13 agreed to.

Section 14—First-tier Tribunal's power to sanction failure to provide information

Amendments 22 to 25 moved—[Margaret Burgess]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Meaning of notice period in sections 12 and 14

Amendments 26 to 29 moved—[Margaret Burgess]—and agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Frequency with which rent may be increased

The Convener: The next group of amendments are those concerning the effective date of rent increase notice. Amendment 30, in the name of the minister, is grouped with amendments 32 to 35, 40 and 41, 43 to 52, and 55.

Margaret Burgess: Section 19 of the bill provides that a landlord must give a tenant at least three months' notice before the landlord can increase the rent. Amendment 33 reconfigures how the rent increase notice takes effect. The result of the change will be that, if a tenant receives a notice that fails to give enough time, perhaps due to unexpected postal delays, the notice can still take effect, but not until the three months' notice period has elapsed from the actual date of receipt by the tenant.

That approach provides a fall-back position for cases in which there are unexpected delays in a tenant receiving the notice. However, in the vast majority of cases, the rent increase notice will, unless it is disputed, simply take effect on the date specified.

Amendments 30, 32, 34, 35, 40, 41, 43 to 52 and 55 are consequential amendments that result from that reconfiguration. The overall effect is that neither party will be unclear about the validity of a rent increase notice, but the tenant is always guaranteed the protection of a minimum of three months' notice of any increase.

I move amendment 30.

Alex Johnstone: I have a brief question arising from the minister's explanation. How will you confirm receipt of a rent increase notice?

Margaret Burgess: There are regulations about when a notice is received when it is sent by special delivery. That is laid down not in the bill but in interpretation legislation. There is a legal definition of when someone receives notice.

Amendment 30 agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

After section 18

The Convener: The next group is on restriction on diligence. Amendment 31, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 31 will introduce a restriction on the debt recovery action that a landlord can take against a tenant for unpaid rent. It will also apply to a liability arising under section 26 as a result of a rent increase. The amendment will ensure that a landlord can carry out diligence against a tenant for outstanding liabilities of that nature only if they have first obtained the consent of the first-tier tribunal. That protects the tenant by ensuring that all relevant circumstances can be considered before any diligence is allowed to proceed, which mirrors the effect of a similar protection that exists for assured tenancies under the Housing (Scotland) Act 1988.

I move amendment 31.

Amendment 31 agreed to.

Section 19—Landlord's power to increase rent

Amendments 32 to 35 moved—[Margaret Burgess]—and agreed to.

The Convener: We now move on to amendments on modification of rent increase notice. Amendment 36, in the name of the minister, is grouped with amendments 37 to 39.

Margaret Burgess: I will speak to all the amendments in the group. As I said when we discussed group 4, section 19 of the bill provides that a landlord must give a tenant at least three months' notice before they can increase the rent. Amendments 36 to 39 relate to the ability of landlords and tenants to modify the date or the amount in the rent increase notice by agreement. That is designed to allow the parties to reach a compromise if they wish to do so, while still ensuring that they cannot bring forward the date of the increase and shorten the original three months' notice to the tenant. Provisions to that effect have been in the bill since its introduction, but they are now being moved to a section on their own, for accessibility.

The amendments also clarify that, where the rent is subsequently referred to a rent officer for adjudication, the modification will be void for both the rent officer's and the tribunal's purposes.

I move amendment 36.

Amendment 36 agreed to.

Section 19, as amended, agreed to.

After section 19

Amendment 37 moved—[Margaret Burgess]—and agreed to.

Section 20—Tenant's right to refer increase to rent officer

Amendment 38 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is on a tenant's right to refer rent. Amendment 152, in the name of David Stewart, is grouped with amendment 153.

David Stewart: The amendments refer to a tenant's right to refer rent. The bill does not allow a tenant to refer the rent to a rent officer until they have received a rent increase notice from their landlord. That means that tenants who sign up to rent a property at a vastly inflated rent are not able to challenge that until they receive notice of an increase. Tenants who are not familiar with the local area's market rents—for example, migrant workers and foreign students—may be particularly vulnerable to that.

Amendments 152 and 153 will also allow tenants who live in a rent pressure zone to refer their rent to a rent officer. The bill does not currently allow for that, and it seems to be unfair that tenants who are already paying above-market rents, even though they are in a rent pressure zone, should not be able to seek recourse to fix their rent at a market rent.

I hope that members can support amendments 152 and 153 to ensure that there is a level playing field for all tenants and that no tenants pay more for their home than the local market rate.

I move amendment 152.

James Kelly (Rutherglen) (Lab): I speak in support of David Stewart's amendments 152 and 153. It is important that tenants can expect rents to be set at a fair level. It cannot be right that people may be trying to profit unfairly in certain areas. The amendments seek to ensure that there is fairness by allowing someone who feels that the level of rent that has been set is not on a par with the local market rent to refer the matter for review. They are sensible amendments that seek to underline the importance of fairness in rents.

Margaret Burgess: Section 20 provides tenants with the ability to refer a rent increase to a rent officer in order to protect tenants from unreasonable rent increases that take their rent to beyond the open-market rate.

Amendment 152 would undermine the landlord's ability to contract with the tenant because, in practice, a tenant could accept an initial rent when taking a tenancy and immediately seek to have it reviewed. It could also place a disproportionate burden on rent service Scotland and the tribunal. I believe that the proper way to address issues of rent affordability is what the Government is already doing: building more houses.

On amendment 153, there would be little point in enabling sitting tenants in rent pressure zones to refer their rent to a rent officer because the amount by which their rent could increase would be capped and therefore could not be assessed in terms of the open-market rate.

I ask David Stewart not to press amendment 152 and not to move amendment 153.

David Stewart: I stress that the person who would be arbitrating on the rent increase would be the rent officer that the Government has set up. We are not talking about some outside, Rachman-like landlord deciding on it. It is important that there is proportionality in the system and I believe that, under the European convention on human rights, we need to provide protection to tenants. Both amendments are fair and proportionate, and are supported by all the organisations that I mentioned earlier, which know what it is like to deal with tenants through their front-line services.

I will press amendment 152.

10:15

The Convener: The question is, that amendment 152 be agreed to. Are we agreed?

Members: No

The Convener: There will be a division.

For

Kelly, James (Rutherglen) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 152 disagreed to.

Amendment 153 moved—[David Stewart].

The Convener: The question is, that amendment 153 be agreed to. Are we agreed?

Members: No

The Convener: There will be a division.

For

Kelly, James (Rutherglen) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 153 disagreed to.

Amendment 39 moved—[Margaret Burgess]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Rent officer's power to set rent

Amendments 40 and 41 moved—[Margaret Burgess]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Rent officer's duty to issue provisional order

Amendment 42 moved—[Margaret Burgess]—and agreed to.

Section 22, as amended, agreed to.

Section 23 agreed to.

Section 24—First-tier Tribunal's power to set rent

Amendments 43 and 44 moved—[Margaret Burgess]—and agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Liability for over or under paid rent

Amendments 45 to 52 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is on grounds for eviction: rent arrears. Amendment 53, in the name of the minister, is grouped with amendments 54, 172, 173, 183, 184, 111, 111A, 111B, 185, 186 and 187. I point out that amendment 183 pre-empts amendment 184, and that amendments 111 and 185 are direct alternatives.

Margaret Burgess: I will speak to my amendments 53, 54, and 111 and respond to Alex Johnstone's amendments 172, 173, 184 and 187, and David Stewart's amendments 183, 185, and 186.

Amendments 53 and 54 extend the time that is available to a tenant to meet a liability that arises as a result of a rent adjudication where the final decision sets a higher rent than the tenant is currently paying. That protects the tenant from the possibility of being evicted purely for failure to pay the sum that is due unless, as with other rent arrears, it remains unpaid for three consecutive months or more.

Where a tenant's rent is increased as a result of a rent adjudication, the tenant becomes liable to pay the landlord the extra amount that he or she would have been due to pay if the rent increase had not been delayed by the adjudication. The bill provides the tenant with 28 days to do that. On the expiry of the 28-day grace period, any outstanding sum is currently treated as having fallen due on the date when the rent should have increased in line with the rent increase notice. If that date was more than three months earlier, that could allow the landlord to seek to evict the tenant on the rent arrears eviction ground.

The effect of amendment 53 is that, if the tenant does not pay off the liability in full within the 28-day grace period, the tenant will be treated on the next day as having been in rent arrears for only 29 days. That offers greater protection, as the tenant cannot be evicted for rent arrears until he or she has been in arrears for at least three consecutive months. That meets the call that Crisis made at stage 1 for tenants who are in such a situation to be given additional time to pay the sum before the landlord can seek to evict them for rent arrears.

Section 3 provides that the rent arrears ground is mandatory if, on reaching the tribunal, the tenant has been in rent arrears for a continuous period of three months and, at any point during that time, the amount was at least one full month's rent. Amendment 111 provides that if, on first consideration by the tribunal, the tenant pays off their rent arrears in full or reduces them below one month's rent, the eviction ground will be discretionary. That responds to the committee's recommendation in its stage 1 report

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

The Scottish Government considers that the three-month period is sufficient and strikes the right balance. Landlords need to be confident that they will receive rent when they let their property, and they should not have to wait any longer before they may refer a case to the tribunal. However, it is recognised that rent arrears can also be a problem for tenants, who might be suffering from financial hardship. That is why tenants, as part of the notice to leave, will be provided with information on their rights and on where to get money advice. The effect is that the tenant will be given further time to make repayments to the landlord before the tribunal first considers the case.

Alex Johnstone's amendments 172 and 173 would allow a landlord to apply to the tribunal for

an eviction order on the basis of rent arrears without the tenant needing to be given 28 days' notice. I cannot support that. It could mean that a tenant had to defend an eviction application immediately after the tribunal had declined to grant an eviction order. Where the tribunal has endorsed the tenant's right to stay in the property at least in the short term, that should be respected. The notice period in relation to rent arrears is not a particularly long one, and it is only right that the landlord should not be able to make subsequent applications without first giving the tenant notice.

If Mr Johnstone's concern is about borderline cases, the tribunal will be able to address the matter by exercising its power to adjourn. It will be able to allow a short period to see whether some or all of the arrears are paid off during that time, and then make its decision accordingly. It does not need to decline to grant eviction orders solely on the basis of a mere promise to pay, which might never materialise.

I cannot support the proposal to remove the requirement for the tenant to have been in arrears for three consecutive months before he or she can be evicted for them, as that would impose an unreasonably low threshold of tolerance. There is no timeframe within which the three separate months need to fall, so the months in which arrears have occurred could be years apart and the arrears could long since have been paid off. Even if there was a requirement for the three non-consecutive months to fall within a particular period, I could not support the amendments. The Government's intention is that the eviction ground should apply only where there is a cumulative failure to pay all sums that the tenant is due to pay.

I appreciate that Mr Johnstone might be concerned that three consecutive months could be a long time for a landlord to wait if he or she is not receiving any rent with which to pay the mortgage. That is why I have always made clear that a landlord could choose to serve notice on a tenant after one or two months. Of course, the eviction ground will not be satisfied at that point, but the landlord is saying that if the eviction ground applies at the end of the notice period, he or she can go to the tribunal without further delay.

The notice will have signposts to sources of advice, which might help the tenant to pay off those arrears. If the arrears are paid off before the tenant has been in arrears for a three-month period, the landlord will not be able to evict the tenant. I therefore ask Alex Johnstone not to move amendments 172 and 173.

Amendments 183, 185 and 186 would change the qualifying amount for the mandatory ground to three full months' rent. That would mean that if a tenant was in rent arrears of less than three full months' rent, the repossession ground would be discretionary. The calculation on whether the qualifying amount is met would be made as at the date of the tribunal hearing, rather than any point during the period of arrears.

Rent arrears are an important issue for landlords and can make their businesses unviable. Landlords need to be confident in letting out their properties that they will receive rent. Many landlords in the private rented sector are not large businesses that can weather cash-flow problems. If we make letting unviable, that will drive down supply and disadvantage all tenants in the longer term. It is therefore important to strike a balance between the needs of tenants who fall into arrears and need time to make up their payments, and landlords, who might have a mortgage to pay.

Amendment 111, in my name, provides that if on first consideration by the tribunal the tenant has paid off their rent arrears in full or reduced them to less than one month's rent, the tribunal will not be obliged to grant an order for eviction. With that further amendment, the bill will strike the right balance on the rent arrears ground, so I do not support amendments 183, 185 and 186, and ask David Stewart not to move them.

I move amendment 53.

Alex Johnstone: The purpose of amendments 172 and 173 is to ensure that a landlord is in a relatively strong position and can implement the law effectively on his behalf. A landlord should be able to go back to the tribunal for support in certain circumstances for which the legislation should provide.

I will speak more generally about the other amendments in the group, given that they have the same objective, which is to deal with the concept of

"three or more consecutive months".

There have been difficulties in the past when considerable rent arrears have built up over a period but not over consecutive months. There is a danger that, as has happened in the past, landlords will find that tenants pay off a small amount of their arrears, to reduce the period of missed payments and prevent their case from progressing. The policy memorandum said:

> "the Scottish Government recognised that landlords must have confidence that they can remove a tenant swiftly in cases of non-payment of rent".

The ground of rent arrears will be used often, so it is critical for both parties that it is clear and fair. Amendments 172 and 173 will bring clarity and fairness to the relationship between landlord and tenant in the context of rent arrears.

David Stewart: I note that the Scottish Government lodged amendment 111, which will

amend the rent arrears ground in the bill. Amendment 111 will go some way towards allaying the concerns of organisations such as Shelter Scotland, and I welcome it. However, there is still a concern that a tenant could be evicted for as little as one month's rent arrears. That is too low an amount for someone to be evicted, especially if the tenant can show that they are likely to be able to pay off the arrears in a reasonable timeframe.

The three amendments that I have lodged would simplify what is in the bill and prevent tenants from facing the risk of eviction because of a relatively low amount of rent arrears. I propose that, when a tenant accrued three months of rent arrears, the landlord would be able to seek a mandatory order for eviction. If the arrears were below that amount, the tribunal would be able to consider what was reasonable in the circumstances before granting the order. That would include the circumstances of the landlord as well as those of the tenant.

10:30

The Convener: Would you like to continue?

David Stewart: I am finished. If you had been paying attention, convener, you would have noticed.

The Convener: Thank you, Mr Stewart—helpful as always.

Amendment 53 agreed to.

Amendments 54 and 55 moved—[Margaret Burgess]—and agreed to.

Section 26, as amended, agreed to.

Section 27—Determination of open market rent

Amendment 56 moved—[Margaret Burgess]—and agreed to.

The Convener: We move to grounds for eviction: property required for another purpose. I welcome Patrick Harvie, who has joined us. Amendment 57, in the name of the minister, is grouped with amendments 88 to 94, 177, 178, 95 to 99 and 179.

Margaret Burgess: Amendment 57 is a minor consequential amendment. Section 27 sets out how rent officers and the first-tier tribunal are to determine the open market rent for a rented property. In doing so, it makes reference to the eviction grounds, which currently require or include a pre-tenancy notice. Amendments 90 and 98 propose to remove the requirement for those notices, meaning that the reference to them in section 27 will no longer be appropriate.

The bill contains repossession grounds that enable a landlord to regain possession of a let property if he or she intends to sell it, live in it, refurbish it or change its use. Amendment 88 strengthens the "landlord intends to sell" repossession ground by ensuring that a landlord cannot give his property away or sell it for a nominal sum in order to evict a tenant. Instead, a landlord will be able to apply to the tribunal for an eviction order only when they are looking to sell their property on the open market.

When a repossession ground refers to a landlord's intention, the landlord must provide evidence to the first-tier tribunal of his or her intention and the tribunal must be satisfied that the ground is met before granting recovery of possession to the landlord. The issue of the robustness of the grounds was raised during the stage 1 debate—in particular, mention was made of those grounds that include the landlord's intention. Some stakeholders are concerned that those grounds may be open to misuse, which is why I have lodged amendments 89, 91, 94 and 95.

Amendment 89 provides examples of the type of evidence that the first-tier tribunal may consider when determining whether the landlord genuinely wants to sell, including a letter of engagement from an estate agent or a recently prepared document such as a home report. For refurbishment of the property, amendment 91 includes examples of evidence such as planning permission or a contract between the landlord and an architect. When the landlord or a family member intends to live in the property, amendment 94 provides that an example of evidence that might be used is an affidavit stating that the person has that intention. If the use of the property is to be changed, amendment 95 provides that an example of evidence that might be used is the planning permission that would be required. That responds to calls from stakeholders for examples of the types of evidence that may be required to demonstrate that ground to be on the face of the bill. Deciding on whether the ground is met is entirely up to the tribunal; it will be for the tribunal to consider whether the evidence that is presented to it during any repossession case is sufficient.

I move on to amendment 90. Schedule 3 provides a mandatory ground for eviction when a property has been repossessed by the lender. The tribunal must order repossession of a property if a mortgage lender intends to sell the let property and certain specified conditions are met. One of those conditions is that the tenant was given notice before the tenancy began that the tenancy might be ended on that ground. If the tenant was not made aware of that fact before the tenancy begins, the tribunal will have discretion on whether to evict the tenant.

Amendment 90 removes the requirement for the tenant to be given notice before the tenancy began and therefore removes the discretionary strand of that repossession ground. In its evidence to the Infrastructure and Capital Investment Committee, the Council of Mortgage Lenders outlined that lenders do not need to be notified when tenants change and new tenancies are entered into. Therefore, they have no involvement in the tenancy contract that is entered into between the landlord and tenant and have no way of ensuring that a landlord issues a pre-notice to the tenant to advise them that that ground for eviction might be used.

I fully appreciate that lenders require certainty that they can obtain vacant possession in the event of a mortgage default. Having reconsidered this ground, I agree that lenders must continue to have the confidence in their lending under the new tenancy. Amendment 90 will achieve that, by removing the discretionary element of the ground.

Amendments 92 and 93 will mean that beneficiaries who have property held in trust for them can make use of the eviction ground that the landlord or a family member intends to live in the property if the beneficiary wishes to use the property as his or her home. That eviction ground is provided for in schedule 3. Amendments 92 and 93 provide that, where property is held in trust, the reference to a landlord in that eviction ground is to be read as a reference to those with certain rights under the trust—essentially the trust beneficiaries.

The amendments recognise that a trust beneficiary is the one with the true interest in the property, so the idea of the landlord intending to occupy needs to be modified accordingly. That will enable the trustees to recover a let property for a person for whom that property is held in trust if that person wishes to live in the property.

I move on to amendments 96 to 99. Schedule 3 currently contains an eviction ground that enables a landlord to regain possession of a property if it is required for use in connection with the purposes of a religion, as a residence from which a religious worker's duties are performed. The ground in the bill has a requirement to notify the tenant, before the tenancy begins, that that ground may be used to repossess.

Amendments 96, 97 and 99 amend the ground by providing that the property must have been used for that purpose previously. The effect is that a landlord may repossess a property on the ground that it is required to house a religious worker as a residence from which their duties are performed only if it had previously been used for that purpose.

During stage 1 some stakeholders expressed concern that the ground continues the use of pre-tenancy notices, which are currently used in the assured tenancies regime. Amendment 98 removes the requirement for the tenant to be given notice, before the tenancy begins, that the tenancy might be ended on that ground. Amendments 96 to 99 reaffirm my position that pre-tenancy notices are not required under the new tenancy and make the eviction ground narrower by ensuring that a landlord may regain possession of a property under those circumstances only if it has been previously used for that purpose.

The purpose of amendment 177 is to add an eviction ground that would apply when the landlord is a company that intends to let the property to a shareholder. The effect would be to add another mandatory ground whereby a tenant may be evicted from his or her home. I have sought to strike a fair balance in setting the grounds for repossession in schedule 3 by carefully considering rights of landlords to own and use their property and the rights of tenants to have a home. For example, when a landlord wants to recover possession to live there themselves or to house a family member, they have the right to recover the property. I have also lodged amendments 92 and 93 to ensure that this eviction ground works when the property is held in trust so that a beneficiary may be housed. However, I do not consider it fair that a tenant can be evicted from his or her home when the landlord is purely a limited company that wants to let the property to one of its shareholders. That ground may also be open to abuse, as there is no limit on the number of shares that a shareholder must have in order for the ground to apply.

Amendment 178 would insert an eviction ground when the landlord is a trust and the intention is to let the property to a beneficiary of that trust. I understand why Mr Johnstone has lodged the amendment and thank him for doing so but, as he will just have heard, amendment 93 deals with the situation when a property is held by trustees. Rather than inserting that as a separate eviction ground, I propose inserting it as a variation in the application of the existing eviction ground that applies when a landlord or family member wishes to occupy the property. I suggest that that is more appropriate, as the amendment is not really about adding a new eviction ground but is rather about modifying the application of the existing one to accommodate trust ownership. I therefore urge Mr Johnstone not to move amendment 178 but to support amendment 93 instead.

Amendment 179 would enable a landlord to evict a tenant so that the landlord could let the property to an employee or retired employee. I have concerns about the amendment, as it could result in a family being evicted from their home so that an employee or a retired employee of the landlord could move in. I think that it would be

unfair to allow a family to be moved out in those circumstances. Indeed, such a result would be counter to the purpose of the bill, which is to give people security of tenure in their home in the private sector. For that reason, I cannot support the amendment. I believe that we have got the balance of the grounds right and that we have now captured the reasonable circumstances that a landlord would need to evidence in order to recover possession of their property. There is nothing in the bill that would stop landlords retaining particular properties as tied housing for employees.

I move amendment 57 and ask Alex Johnstone not to move his amendments.

Alex Johnstone: The purpose of amendments 177, 178 and 179 is to better reflect practice, particularly in rural areas, in how businesses utilise housing. Housing is often scarce in marginal rural areas, and it is essential that housing is available for businesses that operate in those areas. Consequently, a number of different business models exist to ensure that housing is available for those who work for such businesses. The three amendments deal with difficult circumstances surrounding that and reflect practice in many areas.

To enable the committee to better understand why I have lodged the amendments, I almost have to stand the minister's argument on its head. The need to have housing available is so vital to businesses that the alternative to getting involved in leases is simply to leave unused properties empty. In marginal rural areas where housing is already in short supply, we desperately need to avoid businesses leaving houses empty rather than letting them. Consequently, it is necessary to include provisions in the bill that give rural businesses confidence that they can let property that is not currently being utilised and contribute towards the provision of local housing knowing that, should they require that property to house someone associated or formerly associated with their business at a later point, they can regain possession of it. My concern is that, if we do not provide adequately within the bill for that need, rural properties will lie empty rather than being let under the terms of the bill. That is why I was motivated to lodge my three amendments.

I have an issue with one of the minister's amendments. A number of correspondents have said that the wording "on the open market" in the relatively simple amendment 88 is too broad and might give them difficulties in the future. I would like to hear the minister's comments on that.

10:45

Margaret Burgess: I will respond first to Alex Johnstone's comment on the wording "on the open market". We believe that it is clear what the open market is and we do not agree that the wording is too broad, so I am not minded to change it.

On Alex Johnstone's amendments and his arguments about retired employees and employees in rural businesses, we are working hard with the rural sector. It has to look at how it manages its stock, but there is a shortage of housing for families in rural areas. If a family is in a home and the children are at a school in the area, that is their home, and I do not think that it would be right for them to be moved out, so I do not accept his amendments.

Amendment 57 agreed to.

Section 27, as amended, agreed to.

Sections 28 and 29 agreed to.

Section 30—Power to designate a zone

The Convener: The next group is on the procedure for designating a rent pressure zone. Amendment 154, in the name of Patrick Harvie, is grouped with amendments 155, 64 to 69, 135 and 138.

Patrick Harvie (Glasgow) (Green): Good morning. I am happy to have the opportunity to speak to my amendments. As someone who is not a member of the committee but a guest, I will restrict my remarks to my amendments and leave members of the committee to consider the others.

The bill sets out the ability for local authorities to make an application to Scottish ministers, asking them to designate an area or part of an area as a rent pressure zone. My instinct is to welcome the move towards a measure to address rent prices when they have gone out of control, which is a problem in many parts of the country that needs to be addressed.

Initially, I feel slightly uncomfortable that local authorities cannot simply be given the power to do that but need to be asked to make an application to Scottish ministers. In addition, section 30, as I read it, does not place any particular requirements on Scottish ministers on how they should handle an application.

My amendments 154 and 155 set out a time limit for Scottish ministers to give a response—I have suggested three months, which is a reasonable time limit for ministers to respond—and provide that they must either agree to the local authority's request and designate the area or set out reasons why they will not do so, and it seems to me that the reasons must be related to

the criteria under which the designation would otherwise have been made.

I hope that the minister will be willing to agree that a reasonable period should be required and that, if the Scottish Government intends to overrule the stated intention and priority of a local authority that a rent pressure zone should be declared, the Scottish ministers should set out clear reasons within that time limit. Otherwise, I fear that the lobbying power that would no doubt be brought to bear in the initial stages at local level will simply have another crack at the whip, by taking the opportunity to lobby at national level against necessary action being taken.

I move amendment 154.

Margaret Burgess: The amendments in my name in this group—amendments 64 to 69, 135 and 138—will ensure that the Scottish Government can act quickly to change or revoke a rent pressure zone designation in response to changing economic circumstances. They will also broaden out the range of landlords' and tenants' representatives with whom the Government is to consult before designating a rent pressure zone, to include representatives not just in the proposed zone but in the whole of the local authority area in which the proposed zone lies.

Regulations that designate a rent pressure zone will be subject to the affirmative parliamentary procedure. Amendments 64, 65 and 68 provide that the duties on the Scottish ministers to consult landlords and tenants in the proposed rent pressure zone and present supporting evidence to the Scottish Parliament, along with a summary of the consultation responses, will be limited to the making of regulations to designate an area as a rent pressure zone.

Amendments 135 and 138 provide that regulations that amend or revoke a designation will be subject to the negative parliamentary procedure. That means that if ministers need to amend or revoke a designation, for example because of increasing mortgage interest rates, they will be able to use the negative procedure, which is usually quicker than the affirmative procedure and does not prevent regulations from being made when the Parliament is dissolved or in recess.

Section 33 requires the Scottish ministers to consult persons who represent the interests of landlords and tenants in the area that is described in the application before they lay regulations in the Scottish Parliament to designate an area as a rent pressure zone. Amendments 66, 67 and 69 expand the consultation duty on ministers in that regard, by providing that ministers must consult representatives of landlords and tenants in the whole of the local authority area in which the proposed zone would be located.

The effect of amendments 154 and 155, in the name of Patrick Harvie, would be to give the Scottish ministers three months from receiving a local authority's application in which to designate a zone or lay before the Parliament a document that explained why they had not done so, with reference to the factors in section 33(2)(a).

Section 30 provides that the Scottish ministers may, by regulation, designate a rent pressure zone and prescribe the cap for rent increases in that zone, after receiving an application from a local authority. The level of cap would be at least consumer price index plus 1. Section 60(3) requires the designation of a zone to be subject to the affirmative procedure. Section 33 provides that before laying a draft instrument before Parliament, the Scottish ministers must consult on whether to designate a zone. When laying a draft instrument, the Scottish ministers must also lay before Parliament a document that sets out the evidence that a rent pressure zone is required.

Rent pressure zones are a proportionate and balanced response to the problem of rents that have been rising too much in some parts of the private rented sector. Our approach will confer on the Scottish ministers the power to designate an area and set a rent cap for sitting tenants.

When that needs to be done, and a local authority has made an application that sets out the case for a rent pressure zone, of course the Scottish Government will respond in good time. I am happy to commit to providing for that in the bill. I agree with the principle behind amendments 154 and 155, which is that there should be a timeframe for Scottish ministers in the context of designating a rent pressure zone or informing the Parliament why they have not done so.

However, it is important to ensure that a decision on whether to designate a zone is made properly. I want to consider further how best to achieve that in the bill. Also, it is not possible to give assurances in the bill that a zone will be designated. Ministers can bind themselves only to the laying of regulations; it will be for the Parliament to decide whether to approve the regulations. I therefore ask Mr Harvie not to press amendment 154 or move amendment 155. I commit to working with him to lodge an acceptable amendment at stage 3.

I ask the committee to support the amendments in my name.

The Convener: I invite Patrick Harvie to wind and to indicate whether he wants to press or withdraw his amendment.

Patrick Harvie: I have to admit that that was a better response than I get to most of my amendments when I come to committees. I am glad that the minister agrees that there should be a requirement for the Government to respond in a timely manner, and to do so on the face of the bill. I am happy to have some discussions with her about what amounts to a timely manner. When an application is made, it will inevitably be on the back of an already significant time period, over which people will have argued the case for it, having experienced a sustained period of rent increases. It is very important that, when we get to that point, action is taken quickly, rather than it dragging on for six months or a year or what have you. When the problem is present to such an extent that an application has been made, that application clearly needs to be dealt with quickly.

Given the minister's comments about willingness to discuss how best to frame this—

The Convener: The suspense is killing us. [*Laughter*.]

Patrick Harvie: I am happy to seek leave to withdraw amendment 154.

Amendment 154, by agreement, withdrawn.

Amendment 155 not moved.

The Convener: The next group is entitled "Rent pressure zones: restrictions on rent increases". Amendment 58, in the name of the minister, is grouped with amendments 59, 156, 60 to 63, 157, 158, 70, 71 and 136. I point out that amendment 59 pre-empts amendment 156 and that amendment 156 pre-empts amendments 60 and 61.

Margaret Burgess: I will speak to my amendments 58 to 63, 70, 71 and 136 and Patrick Harvie's amendments 156 to 158.

Amendments 58 to 63, 70, 71 and 136 set out a process for assessing how much can be charged in respect of improvements that a landlord may have made to a let property in a rent pressure zone, so that the costs can be recouped. The process ensures that landlords will not be put off from making improvements to such properties.

Section 30 provides that a local authority may make an application to Scottish ministers to designate a rent pressure zone, where rents for sitting tenants would be capped for up to five years. Any rent cap that ministers set for the zone would have to be at least CPI plus 1 per cent. Amendments 58 to 63 amend the formula that must be used to calculate how much a tenant's rent can be increased within a rent pressure zone, and the amended formula allows an amount for property improvement costs, which would be determined by a rent officer.

Amendments 70 and 71 set out how rent officers are to consider applications for improvements to a property. Any improvements that are paid for by the tenant, whether in whole or in part, will be disregarded, as will repairs, maintenance and decoration.

Amendment 136 makes the regulations that prescribe the application form subject to the negative procedure.

Amendments 156 to 158 would remove the formula that is used to calculate the rent cap for a rent pressure zone and replace it with an ability to prescribe a set number of percentage points in the regulations to designate the zone. The Scottish Government has given careful consideration to how a rent cap may be set, and section 31 provides the formula for the minimum cap, which is CPI plus per 1 cent, together with an additional percentage if appropriate and a sum in relation to a landlord's improvements.

It is important to be clear in the bill about what the minimum rent cap may be, as that will enable landlords and investors to continue managing their business effectively, including planning any future investment. We have consulted on that approach to working with the sector, and I consider it to be the right one. Therefore, I cannot support Patrick Harvie's amendments 156 to 158 and I ask him not to move them.

I move amendment 58.

11:00

Patrick Harvie: I did not know that the minister intended to lodge amendments in the area, and I lodged amendments 156 and 157, which is consequential to amendment 156, simply to allow us to discuss the issue. It seemed odd to me for a complex formula to be required in the legislation rather than simply a power for rent pressure zones to be created with the inclusion of a simple percentage.

Given the minister's comments, I would like to give the issue further thought and consider again whether it needs to be addressed at all. One objective that we ought to share is for tenants in a local authority area to be able to make a clear and simple argument for action to be taken. That simplicity would be attractive, but I will give further thought to the minister's comments about my amendments.

Amendment 158, which is in the same group, addresses a slightly different aspect. Under section 33, one of the requirements is for the document that must be laid to show evidence that leads ministers to believe that

"rents payable within the proposed ... zone are rising by too much".

It seems to me that that will restrict the ability to use the new mechanism to address the issues in parts of the country that are the precise reason why we are having this debate. People have argued for action on rent levels for a significant time. It seems to me that, if we pass legislation that requires ministers to set out evidence that rent levels are rising, we will close off the possibility of using the mechanism in places where we already have the problem of rents having risen.

Amendment 158 simply allows ministers the option—it does not say that it has to be used—of setting out evidence that rents are rising or have risen. I would find it disappointing if the minister was not able to reconsider and accept the amendment.

David Stewart: The minister will know that I have raised the issue of indexation before when we have debated the matter. I notice that the minister sets out in amendment 59 a formula for the cap on indexation, which contains "CPI+1+X". Let me give an example. If Edinburgh was a rent pressure zone, the increase would be 1.3 per cent, because CPI inflation is running at 0.3 per cent, and plus 1 gives 1.3 per cent. Any further increase would be due to any property improvements by landlords. Is that a correct analysis of the formula, minister?

Margaret Burgess: I am sorry, but will you repeat that?

David Stewart: I am trying to help the minister out rather than asking her to explain the formula, although if she insists, I will ask her to do that. The formula is CPI+1+X. In January's figures, the current consumer price index inflation rate is 0.3 per cent, and plus 1 gives 1.3 per cent. That would be the cap unless there were any property improvements by landlords. Is that a correct understanding of the formula?

Margaret Burgess: Yes.

The Convener: Excuse me, David, but we are not questioning the minister. This is a debate, so I have to give other members the opportunity to speak before the minister winds up.

David Stewart: The point that I am making—through you, convener—is about my understanding of the formula. We know the current consumer price index inflation figure. If 1 is added, the rate is 1.3 per cent. I am trying to verify that any additional costs would be due to property improvements by landlords. If that is the case, how would we independently verify what additional costs that would give? That would affect the cap on rents.

The Convener: As there are no other comments from members, I invite the minister to wind up.

Margaret Burgess: David Stewart's assumption about the CPI+1 formula is correct. The additional costs due to property improvements by landlords will be determined by the rent assessment committee, which will have to be absolutely clear that property improvements have taken place within the timeframe and that their costs have been demonstrated.

I would have concerns about supporting Patrick Harvie's amendments because he is talking not about recent rent rises but about past ones.

Amendment 58 agreed to.

Section 30, as amended, agreed to.

Section 31—Restriction on rent increases within a zone

Amendments 59 to 63 moved—[Margaret Burgess]—and agreed to.

Amendment 157 not moved.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Procedure for designating a zone: consultation and information

Amendments 64 to 68 moved—[Margaret Burgess]—and agreed to.

The Convener: I invite Patrick Harvie to move or not move amendment 158.

Patrick Harvie: The minister stated that she has concerns about my amendment, but she did not say what they are. I move amendment 158.

The Convener: The question is, that amendment 158 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against
Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 158 disagreed to.

Amendment 69 moved—[Margaret Burgess]—and agreed to.

Section 33, as amended, agreed to.

Section 34 agreed to.

After section 34

Amendments 70 and 71 moved—[Margaret Burgess]—and agreed to.

Section 35—No termination by parties except in accordance with this Part

The Convener: The next group is entitled "Termination by agreement or by end of tenancy". Amendment 159, in the name of Alex Johnstone, is grouped with amendments 160, 169 and 176.

Alex Johnstone: The primary function of amendment 159 is to facilitate the introduction of the relatively simple amendment 160, which introduces the concept that a tenancy may be ended by mutual agreement. It is important that, if both parties are in agreement, there is flexibility for the tenancy to be ended. That is most likely to be initiated by the tenant—if, for example, they want to leave a tenancy quickly. If the landlord has a waiting list, they may well be able to replace the tenant fairly quickly. The amendment contains a practical, commonsense provision that allows for mutual agreement between the parties.

The function of amendment 169 is to allow amendment 176, on termination due to the end of a tenancy. It is sensible to provide that, if a tenancy is agreed for a fixed period but is not renewed or further extended, it should be possible to end the tenancy. Amendment 176 sets out the ground on which that may be achieved, and a reasonable notice period for such a termination of tenancy to take place.

I move amendment 159.

Margaret Burgess: The overall aim of the private residential tenancy is to improve security of tenure for tenants, balanced with appropriate safeguards for landlords, lenders and investors. The bill provides that the new tenancy is open ended and may be terminated only by the tenant giving notice to the landlord or by the landlord serving on the tenant a notice to leave on the basis of one of the eviction grounds in schedule 3.

We cannot accept amendments 159 and 160 as they would insert provision that would allow the landlord and tenant to agree a termination date at the start of the tenancy. It is highly likely that the landlord would have an unfair bargaining position in setting the date when granting the tenancy, and that would wholly undermine one of the fundamental principles of the new tenancy.

If the tenant wishes to leave during the tenancy, he can serve notice to that effect, and it will then be within the landlord's gift to waive the tenant's notice requirement if he or she wishes to do so. The parties can come to a mutual agreement, but it must be instigated by the tenant and made freely and without coercion, and it can only be done after the tenancy has started, so that the granting of the tenancy can no longer be used as a bargaining chip.

Amendments 169 and 176, which enable the tribunal to grant an eviction order, are consequential to the provisions that would allow the landlord and tenant to agree a termination date at the start of the tenancy. That is equivalent to the no-fault ground in the short assured tenancy regime, which we have deliberately excluded from the bill in order to create a more secure tenancy.

I cannot support Alex Johnstone's amendments.

Alex Johnstone: I thank the minister for her comments. She is correct in her interpretation of the purpose of my amendments. Nevertheless, it is my view that the objectives are worthy of pursuit. Consequently, I press amendment 159.

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 159 disagreed to.

Amendment 160 not moved—[Alex Johnstone].

Section 35 agreed to.

The Convener: I propose a 10-minute suspension to allow members to have a short break. We will resume at 11.25 or thereabouts.

11:14

Meeting suspended.

11:25

On resuming—

Section 36—Protection for sub-tenants

The Convener: We resume our consideration of the Private Housing (Tenancies) (Scotland) Bill at stage 2 and move to the group on sub-tenant protection. Amendment 72, in the name of the minister, is grouped with amendments 73 to 79 and 82.

Margaret Burgess: Section 36 makes provision to protect the security of tenure for those who have sub-tenancies. I do not envisage that sub-tenancies will be common in the private rented sector, but section 36 is intended to ensure that, when they are granted, the sub-tenants receive certain protections.

Amendment 72 extends the meaning of lawfully granted sub-tenancy to include a case in which the sub-tenancy has been granted in breach of the head tenant's lease or the lease of someone further up a chain of sub-tenancies but the sub-tenancy has been tolerated by the person who could have taken action as a result of the breach of agreement. In short, if the head landlord has allowed the sub-tenancy to carry on, he or she should not later be able to treat it as an unlawful sub-tenancy so as to deny the sub-tenant the protections that the bill provides.

Amendments 73 to 79 and 82 are minor amendments to ensure that the references to the eviction grounds in section 37 match the names that are given to them in schedule 3.

I move amendment 72.

Amendment 72 agreed to.

Section 36, as amended, agreed to.

Section 37—Qualification of sub-tenant protection

Amendments 73 to 80 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is entitled "Grounds for eviction: tenant's status". Amendment 81, in the name of the minister, is grouped with amendments 100, 101 and 103.

Margaret Burgess: These amendments make changes to the grounds for eviction that apply on the basis of the tenant's status.

I will deal with amendments 81 and 103 first. Supported accommodation is offered in both the social and the private sector. Where that support is provided by charities and other groups in the private rented sector, they often use short assured tenancies. The Richmond Fellowship Scotland raised the open-ended nature of the new tenancy with the Scottish Government as a concern. The charity currently uses short assured tenancies, which enables it to recover possession if a tenant no longer requires the care on offer so that the tenancy can be offered to someone else who requires it.

Supported accommodation providers play an important part in helping local authorities to deliver community care, and I would not want to hamper their ability to do that. Therefore, amendment 103 adds a new repossession ground that will enable the providers of supported accommodation to recover possession of a property when the tenancy was granted to meet an assessed need for community care and the tenant has since been assessed, under section 12A of the Social Work (Scotland) Act 1968, as no longer having that need.

Section 37 provides that, when the private residential tenancy of the person who was the sub-tenant's landlord is brought to an end on any of the grounds other than those that relate to a tenant's conduct, the sub-tenant's tenancy will also come to an end. Amendment 81 provides that that should also include the ground of "supported accommodation".

I turn to amendments 100 and 101. Paragraph 7 of schedule 3 enables a landlord to regain possession of the let property when the tenancy was entered into to provide an employee of the landlord with a home as part of his or her employment and the tenant is no longer a qualifying employee or did not become one. That is a mandatory repossession ground, which means that, if the ground is established, the tribunal must issue an order for eviction.

11:30

Amendment 100 provides that, if an application for eviction on that ground is submitted within 12 months of the tenant ceasing to be, or not becoming, an employee of the landlord, the repossession ground remains mandatory; otherwise, the ground is discretionary. The effect of amendment 100 will be to ensure that the mandatory aspect is available only for a limited period of time and the landlord cannot hold that over the tenant in perpetuity.

Amendment 101 is a technical amendment that amends paragraph numbers.

I move amendment 81.

Amendment 81 agreed to.

Amendment 82 moved—[Margaret Burgess]—and agreed to.

Section 37, as amended, agreed to.

Section 38—Tenant's ability to bring tenancy to an end

The Convener: We move on to notice of termination. Amendment 161, in the name of Alex Johnstone, is grouped with amendments 162, 84, 163 to 165, 86, 166 and 167.

Alex Johnstone: The purpose of my amendments 161, 162, 164 and 165 is to facilitate the regaining of a property by a landlord who has had a tenant leave the let property. Tenants often have to leave at short notice; consequently, it is

vital to ensure that properties are not left unattended and unlooked-after in those circumstances. The function of the amendments is to ensure that, when a tenant chooses to leave a property, the landlord can regain access.

Amendment 165 requires that written notification be received by landlords before they can act. That would reassure landlords and create the opportunity to bring properties back into use as quickly as possible after a tenant chooses to leave. The amendments are practical ones that will facilitate the management of properties and ensure that they do not sit empty unnecessarily or without care.

I move amendment 161.

Margaret Burgess: I will speak first to my amendment 84. A tenant will be able to end a tenancy by giving notice to the landlord. There is a concern that this flexible path to termination might be exploited by unscrupulous landlords to reintroduce the no-fault eviction ground by the back door. A landlord might insist that notice be given as a condition of granting a tenancy, so that, six months after it begins, the tenancy ends without the landlord having to get an eviction order. To tackle that problem, amendment 84 will allow tenants to dispute the validity of a notice they have given on the basis that they were coerced into giving it or gave it when they were in the weak negotiating position of trying to secure a tenancy.

If a landlord gives a tenant notice to leave, section 40 dictates when the tenancy ends but the parties might want it to end earlier. The bill already allows for that, because, under section 38, the tenant can give notice to end the tenancy on a day of his or her choosing and the landlord can accept that by waiving the notice period. Amendment 86 simply adds a flag to section 40, so that nobody overlooks that route to ending the tenancy earlier than section 40 would.

Section 38 provides that a tenancy comes to an end on the day that is specified in the tenant's notice to his or her landlord. Amendments 161 and 162 provide that the tenancy could end on the day that is specified in the notice or on the day on which the tenant ceases to occupy the let property—whichever date is later. The effect of the amendments is that, if a tenant notified his or her landlord in writing that they were moving out on 30 January but he or she remained in the property until 14 February, the tenancy would come to an end on 14 February. If we accept the amendments, we will end up with a messy position in cases in which the landlord has already granted a new tenancy to someone else on the basis of the current tenant having given notice. There would then be two people who had competing rights to live in the property at the same time.

The bill's provisions are clear. Once the date of notice that has been given by the tenant passes, his or her tenancy is at an end. If he or she stayed on, they could be ejected as having no right to occupy. The simple fact is that the tenancy is ended, so the tenant has no right to be there. I therefore ask members not to support amendments 161 and 162.

The default notice period to be given by tenants to landlords when ending a private residential tenancy is currently set at 28 days when the tenancy has lasted for six months or less and 56 days when the tenancy has lasted for six months or more. Amendment 163 would remove the second limb of that so that the period would be 28 days in every case. The original intention was that tenants who had been in a property for longer would be required to give a longer notice period. Likewise, landlords will be required to give tenants longer notice if the tenant has been in the tenancy for more than six months, except when the eviction is because of the tenant's conduct.

I listened carefully to all the evidence that was presented to the committee and note that some tenants might need to end their tenancy within four weeks—for example, to take up a social tenancy. I would not want to disadvantage tenants simply because they have been in their tenancy for more than six months. I am, therefore, minded to endorse that change to the default minimum notice period to be given by tenants, and I urge the committee to support that.

Section 40 provides that, when the tenant has received a notice to leave from the landlord and moves out without requiring the landlord to obtain an eviction order, the tenancy comes to an end on the later of either the day that the tenant ceases to occupy the property or the day specified in the notice to leave. Amendments 164 and 165 provide that a tenancy can come to an end on the day on which the tenant notifies the landlord in writing that he or she has ceased to occupy the property or the day on which the tenant ceases to occupy the property if that day is later than the date specified in the notice to leave. That would not assist the parties, and I am not entirely sure what Alex Johnstone is trying to achieve. It would overcomplicate a relatively simple process for consensual termination at the landlord's instigation, so I cannot support the amendments.

Amendment 166 would apply sections 22, 23 and 23A of the Rent (Scotland) Act 1984 to the private residential tenancy. However, those sections will apply as a matter of law and nothing more needs to be done to achieve that. That is not limited to specific tenancy types. It is also not quite the case that the landlord would need to comply with a particular set of rules; rather, there are

provisions that apply. I therefore urge Mr Stewart not to move amendment 166.

I recognise that it might be helpful to revisit the use of the term "court proceedings" in section 23 of the 1984 act. I do not think that amendment 167 necessarily addresses what we need to do in that regard, but I welcome the point that Mr Stewart has raised. I ask him not to move the amendment on the understanding that we will look into the matter and take steps to address it through a consequential modification if that is required.

Accordingly, I ask the committee to support my amendments. I ask Alex Johnstone not to press amendment 161 and David Stewart not to move his amendments. I support Patrick Harvie's amendment 163.

Patrick Harvie: My hit rate is going up dramatically today. I am grateful for the minister's comments. I will briefly set out the case in favour of amendment 163, which was suggested by Citizens Advice Scotland.

I understand why some people might instinctively feel that a landlord should be able to expect a longer notice period from long-term tenants, but six months is by no means a long-term tenancy. I was in the private rented sector for about a dozen years, and I think that I stayed in every place that I lived in for a longer period than six months. The bill as it stands would have meant that, in every instance of trying to find a new place to live, I would have been locked in for that two-month longer period.

The practical consequences of that notice period could leave people vulnerable either to having to pay two months' rent if they have to acquire a new place to live before the two-month notice period has been served or, potentially, to facing the risk that they may not be able to get a new flat before the period has been wound up. In the latter case, there could be a risk of an in-limbo homeless situation.

A case has also been made—particularly in relation to those who have to leave an unsafe home and an abusive partner—that people may end up having to pay the extra cost that housing benefit will not cover when they have to move immediately but are able to claim only four weeks' support for the second property.

For all those reasons, I am pleased that the minister has accepted amendment 163 and hope that the committee will agree to it.

David Stewart: Like Patrick Harvie, I am positive about the minister's comments and hope that it is the start of a roll for our later amendments.

My amendments 166 and 167 would make it crystal clear that the provisions of the Rent (Scotland) Act 1984, which make it a criminal offence to illegally evict a tenant, would apply to the new private rented tenancy. The minister has made it clear that the provisions of the 1984 act that relate to illegal eviction will apply to the new private rented tenancy without any need to reference them on the face of the bill. However, I am concerned that the provisions in the bill that relate to consensual termination could leave some tenants in a vulnerable situation. A landlord may assert that a tenant has left the property and has accepted the eviction notice when, in fact, the tenant wishes to remain in the property and challenge the eviction action. I lodged amendments 166 and 167 to ensure that it is crystal clear that, in the process of seeking an eviction, landlords must adhere to the provisions of the 1984 act as they relate to illegal eviction.

However, I have listened to the minister's comments and, on the basis that the minister will look at the issue again before stage 3, I will not move amendments 166 and 167.

Alex Johnstone: Patrick Harvie is enjoying a much better strike rate than I am today.

I will respond briefly to the minister's comments. The minister is often suspicious of my motives, but I assure her that my motivation for amendment 165 is purely practical: it is essential that property is not left vulnerable. When a tenant has confirmed that they have vacated a property, it is important that a landlord can access that property to take precautions in relation to heating in the winter months, for example, or against flooding, which is a contemporary issue. It is, therefore, my view that the issue should be addressed in the bill.

I have listened carefully to what the minister has said about amendments 161 and 162 and, consequently, I have decided that I will seek leave to withdraw amendment 161.

Amendment 161, by agreement, withdrawn.

Amendment 83 moved—[Margaret Burgess]—and agreed to.

Amendment 162 not moved.

Section 38, as amended, agreed to.

Section 39—Requirements for notice to be given by tenant

Amendment 84 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is on the initial period. Amendment 85, in the name of the minister, is grouped with amendments 87, 123, 128, 130 and 137.

11:45

Margaret Burgess: Currently, the bill provides for an initial period of a tenancy during which tenants are tied to the tenancy and landlords can use only limited grounds for repossession. The initial period was intended to provide landlords with certainty about the initial length of the tenancy, and tenants with security that the landlord could use only limited grounds for repossession during the tenancy's early stages. However, I have concluded that having an initial period is likely to cause problems for various groups of tenant, and I judge that those problems are best avoided.

I noted the committee's concerns in relation to the impact that the initial period could have in domestic abuse cases. I concluded that the initial period could make it difficult for someone in an abusive relationship to terminate a tenancy without incurring financial penalties. I do not think that we should create a situation in which someone suffering from domestic abuse would have to worry about the financial penalties that they might incur by seeking to escape their predicament. That is, perhaps, the most compelling reason for thinking again about retaining the initial period in the bill, but there are other reasons. For example, a tenant who entered into a tenancy in good faith could suddenly find that they have to move quickly to provide care and support to a family member who lives elsewhere or if they accept a new job; indeed, they could have to move as part of their current job.

Those sorts of reasons have persuaded me that the initial period could prove unreasonably restrictive and inflexible for tenants, and the same is true for landlords. They might offer a tenancy in good faith and then find that they need the property urgently and unexpectedly to house a member of their family, or that they suddenly have to sell the property.

In light of those considerations, I have brought forward the amendments in this group to remove the initial period from the bill. The amendments will make the tenancy completely open-ended, with tenants able to give notice at any time and landlords able to use all grounds for repossession from the beginning of the tenancy. I believe that that is a simpler and more straightforward approach that will benefit tenants and landlords.

I move amendment 85.

Alex Johnstone: I have received mixed views when consulting on the initial tenancy, but, on balance, I believe that many of the landlords who let property on a regular or professional basis see the initial period as being of some value. As a consequence, I will oppose amendment 85 at this stage.

The Convener: I see that no other members wish to make a contribution. I invite the minister to wind up.

Margaret Burgess: I have nothing further to add.

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

Against

Johnstone, Alex (North East Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 85 agreed to.

Amendment 163 moved—[Patrick Harvie]—and agreed to.

Section 39, as amended, agreed to.

Section 40—Termination by notice to leave and tenant leaving

Amendment 164 moved—[Alex Johnstone].

The Convener: The question is, that amendment 164 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 164 disagreed to.

Amendment 165 not moved.

Amendment 86 moved—[Margaret Burgess]—and agreed to.

Amendments 166 and 167 not moved.

Section 40, as amended, agreed to.

Section 41—First-tier Tribunal's power to issue an eviction order

The Convener: The next group of amendments concerns the first-tier tribunal: application of reasonableness test. Amendment 168, in the name of David Stewart, is grouped with amendment 170.

David Stewart: In my view, this is the most significant amendment that I have lodged to date. I welcome the Scottish Government's amendments that will ensure that more evidence must be provided by landlords, although I am still concerned that the legislation will not enable the tribunal to take all the factors relating to the case into consideration, including whether it is reasonable in the circumstances to grant an eviction order.

As we all know, evicting a tenant from their home is a serious sanction that will affect not only the tenant but, potentially, their family and any children in the household. Therefore, it is vital to ensure that the situations of both the tenant and the landlord are fully examined by the tribunal before a decision is made either way. The tribunal should, therefore, be able to take all the circumstances fully into account and make an assessment of whether it is reasonable in all the circumstances to grant an eviction order. If a tenant has failed to pay rent over a number of months and the landlord is struggling to meet other financial commitments because of that, of course the tribunal will be able to consider that when deciding whether to grant an eviction order. On the other hand, if a tenant has made efforts to pay rent and is continuing on a payment plan but technically fails the test concerning the threshold for rent arrears before eviction, the tribunal will be able to take that into account too.

I cannot see any reason not to enable the tribunal to take reasonableness into account when deciding whether to grant an eviction order. I am sure that the committee would not wish eviction orders to be granted in circumstances that are unreasonable.

Amendment 168 would also address concerns that were raised with the committee that, by not enabling the first-tier tribunal to take into account whether an eviction order is reasonable, the bill might not sufficiently take into account human rights considerations. The principal such consideration is article 8 of the European Convention on Human Rights, which states:

"everyone has the right to respect for his private and family life, his home and his correspondence."

I am interested to hear the minister's view on my amendments, which I hope she will be able to support, thereby ensuring that there is a holistic, reasonable and balanced approach to deciding whether tenants should be evicted.

I move amendment 168.

Margaret Burgess: I say at the outset that I cannot support these amendments.

As we have heard, amendment 168 would introduce a reasonableness test into every ground for eviction. The effect of that would be for all mandatory grounds to become discretionary. The Scottish Government has given careful consideration to the discretionary and mandatory balance in the grounds in schedule 3. In my response to the stage 1 report, I said:

"It is clearly important to get the grounds right so that tenants can be treated fairly and landlords can be confident in regaining possession of their property."

With the lodging of my amendments 117 to 122, I believe that we have now struck the right balance—one that protects tenants and provides landlords with confidence that they can manage their property effectively and recover possession where necessary.

The amendments that I have lodged move a further four eviction grounds from mandatory to discretionary, which will allow the tribunal to consider all the circumstances of the case. I hope that that will provide some reassurance to Mr Stewart.

However, there remain some instances in which we need to assure landlords that they will get their property back, otherwise we risk deterring them from remaining in the rental sector altogether, and any reduction in supply would only disadvantage tenants.

Amendment 170 proposes the addition of directions to the tribunal to have regard to certain evidence in relation to the grounds for eviction where a landlord is to show intention, and to have regard to certain factors when considering whether the tenant's behaviour is sufficient to warrant eviction.

My amendments 88, 89, 91, 94 and 95 strengthen the grounds on which a landlord is to show intent by providing in the bill examples that the tribunal may consider when making a determination on whether the ground is met, to emphasise that the tribunal will need to be satisfied that a ground applies before an eviction order can be granted, which will require evidence to be provided to it. I thank Mr Stewart for bringing forward amendment 168, but I urge him to accept my amendments instead, as I believe that the use of concrete examples will be helpful.

As I say, I have lodged the amendments that relate to the landlord's intention because I want people to be absolutely clear that the onus is on

the landlord to prove that the ground is made out. However, with regard to proposed new subsections (1A) to (1D) that amendment 170 would insert in section 41, I am confident that the tribunal does not need to be directed as to what to consider. This issues mentioned in the proposed new subsections are already ones that the tribunal can consider, and I believe that the tribunal, as a specialist forum, can be trusted to have regard to all relevant facts and circumstances.

David Stewart: As I said, these amendments are important. However, I hear what the minister says. If she would agree to meet me to discuss the matter further, I will seek leave to withdraw amendment 168 and will not move amendment 170.

Margaret Burgess: I am happy to meet Mr Stewart to discuss the matter.

Amendment 168, by agreement, withdrawn.

Amendment 169 moved—[Alex Johnstone].

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 169 disagreed to.

Amendment 170 not moved.

The Convener: The next group of amendments concerns the first-tier tribunal: general discretion of eviction. Amendment 171, in the name of Alex Johnstone, is the only amendment in the group.

Alex Johnstone: I will speak briefly to amendment 171, which follows on largely from the previous debate. Although amendment 171 shares some words with amendment 170, it is much shorter. It does not seek to direct the tribunal with regard to what it should consider; rather, it seeks to direct the tribunal to make a clear and decisive decision once it has considered the evidence. That is why it contains the words:

"it is reasonable in all of the circumstances to issue such an order".

I hope that that will simplify the tribunal process.

I move amendment 171.

Margaret Burgess: Amendment 171 essentially has the effect of inserting an additional eviction ground into the bill to cover any other circumstances under which the tribunal considers it reasonable to evict the tenant.

We have consulted extensively on the eviction grounds and I think that we have got them right. The eviction grounds must be transparent. Tenants have a right to know the grounds under which they could be evicted. The amendment introduces a general catch-all eviction ground that could cover absolutely anything, and I do not think that that is right. I therefore cannot support it.

Alex Johnstone: As I said, I think that the minister has understood my intentions and that we have different policy intentions. I will therefore press amendment 171.

12:00

The Convener: The question is, that amendment 171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 171 disagreed to.

Amendment 172 moved—[Alex Johnstone].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 172 disagreed to.

Amendment 87 moved—[Margaret Burgess]—and agreed to.

Amendment 173 not moved.

The Convener: The next group is on suspension of execution of order. Amendment 174, in the name of David Stewart, is grouped with amendment 175.

David Stewart: Amendment 174 would make clear that the first-tier tribunal has the power to postpone an eviction order if it is of the view that granting the order and enabling its immediate execution would cause undue hardship to the tenant. The provision could play an important role in giving tenants enough time to seek alternative accommodation if a landlord seeks eviction under one of the mandatory grounds. That is a key plank in preventing homelessness.

I move amendment 174.

James Kelly: I support amendment 174. The granting of an eviction order is a serious matter, with serious consequences for the tenant. As Mr Stewart said, there could be mitigating factors, and amendment 174 would make the approach in the bill more reasonable.

The Convener: I apologise to Mr Ingram. I should have called him to speak to amendment 175 before I brought in other members.

Adam Ingram: Thank you, convener. Amendment 175 was suggested by Homeless Action Scotland, and its purpose is to ensure that a tribunal can sist, delay or postpone action if doing so is in the best interests of all parties. In disputes between tenant and landlord, agreement can often be reached about arrangements to pay arrears or modify behaviour. To avoid unnecessary evictions, the proposed new provision, which replicates powers that are available in the assured and short assured tenancy regime, would allow the affected tenant to demonstrate a pattern of amended behaviour over an agreed period, which should satisfy both tenant and landlord.

Advice agencies report that such a mechanism is used frequently and successfully, and it would be logical to replicate it in the new tenancy regime. The ability to delay or sist can benefit tenants and landlords and fits with the tribunal ethos of seeking mutually acceptable solutions to problems, where possible, rather than taking an overly legalistic and adversarial approach.

Margaret Burgess: I thank the members for lodging their amendments. I am not persuaded of the need for Mr Stewart's amendment 174. First, the tribunal will already have the power to adjourn under tribunal rules if it sees fit to do so. It will not be obliged to dispose of an application immediately if there is a reason why more time would be appropriate. It also has the power to select an eviction date, rather than the date needing to be the date of the eviction order, as well as a power under the Tribunals (Scotland) Act 2014 to review its own orders.

What is appropriate will vary, based on individual circumstances, and the tribunal has the flexibility to deal with that. If the tenant would face hardship, that could be taken into consideration and addressed as appropriate. Questions of hardship may of course equally apply to landlords. We do not want landlords being forced into mortgage arrears, which might bring about the forced sale of the property. I am content that the tribunal already has the necessary power to take into account potential hardship for both parties when deciding when an eviction order should take effect, which is the fair balance that the bill is seeking to achieve.

Mr Ingram's amendment 175 seeks to give additional discretionary powers to the first-tier tribunal under the new tenancy. Specifically, it would allow the tribunal to adjourn proceedings in an application for an eviction order, to sist or suspend an order and to impose conditions on the tenant, for example in relation to payment of rent arrears. If the conditions were complied with, the tribunal would be able to recall the order. The tribunal would also be given discretion to postpone the date on which an order for eviction was to take effect.

I thank Mr Ingram for lodging amendment 175, as it relates to an important point that we have been examining closely ourselves. I whole-heartedly endorse his desire to ensure that the tribunal has all the powers it will need. However, I would need to hear more about why the amendment is necessary and how it would operate in practice, as I am not sure that anything more is required.

The tribunal will have its own tribunal rules, and it will be able to adjourn proceedings without any bespoke provision needing to be made to that effect in the bill.

The tribunal already has the power to choose the date on which an eviction order will bring a tenancy to an end. Section 41(9) provides for that. A tenancy does not have to be ended on the date on which the eviction order is granted. As regards subsequent postponement, section 43 of the Tribunals (Scotland) Act 2014 gives the tribunal the power to review its own decisions. Those aspects of the policy are therefore already addressed, and they are addressed in the most appropriate forum, namely across all tribunal functions, and not just for the purpose of the bill.

That leaves the question of conditions being imposed. I am wary of going down the route of

allowing the tribunal to impose conditions in the way that the Housing (Scotland) Act 1988 does. There are no reported cases on the effect of that provision. If a rent payment plan is put in place by the imposition of conditions, what would be the consequences? Would a tenant who fails to pay be held in contempt? There seems to be a risk of adverse consequences here, and I am not sure that there is necessarily any benefit.

I reassure Mr Ingram that there is nothing to prevent the tribunal from adjourning a case to see if a tenant has paid rent arrears and then making a decision at the adjourned hearing in light of what has happened in the intervening period. That seems to be a cleaner and less problematic way of achieving the same result. I do not know that the imposition of conditions would add anything, unless it is intended that there should be a consequence other than eviction, and eviction is already something that the tribunal would have the power to order.

If there is anything that Mr Ingram considers cannot be addressed through those existing mechanisms, I would wish to sit down with him and talk about it. However, even if it was felt appropriate to provide for the imposition of conditions, there are some technical difficulties with amendment 175 that would need to be addressed. I would be happy to work with Mr Ingram on the issue in advance of stage 3, and I would welcome comments from stakeholders who have practical experience of having used the equivalent 1988 act provision. Until we know that Mr Ingram's proposals offer something more, and in a way that we would wish to replicate, I cannot support including them in the bill at this stage. I therefore ask Mr Ingram not to move his amendment, and we can discuss further what additional powers, if any, are needed.

I ask both David Stewart and Adam Ingram not to press their amendments.

David Stewart: I will press amendment 174.

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kelly, James (Rutherglen) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 174 disagreed to.

Section 41, as amended, agreed to.

Schedule 3—Eviction grounds

Amendments 88 to 94 moved—[Margaret Burgess]—and agreed to.

Amendment 177 moved—[Alex Johnstone].

The Convener: The question is, that amendment 177 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 177 disagreed to.

Amendment 178 moved—[Alex Johnstone].

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 178 disagreed to.

Amendments 95 to 99 moved—[Margaret Burgess]—and agreed to.

The Convener: I call amendment 179, in the name of Alex Johnstone, already debated with amendment 57.

Alex Johnstone: I am going for the hat trick.

Amendment 179 moved—[Alex Johnstone].

The Convener: The question is, that amendment 179 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 179 disagreed to.

Amendments 100 to 103 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is on grounds for eviction: tenant's conduct other than rent arrears. Amendment 180, in the name of David Stewart, is grouped with amendments 181, 182 and 104 to 110. I point out that amendment 182 pre-empts amendments 104 and 105.

David Stewart: Amendments 180 to 182, which seek to amend the not occupying let property ground for eviction in schedule 3, are required to clarify the processes that must take place before a landlord can establish whether a property is abandoned.

I am concerned that, under the bill as drafted, the process that a landlord must follow to prove that a tenant has left the property is too weak. That is not ideal, as it could lead to tenants who intend to remain in the property becoming homeless.

12:15

My amendments are in line with the provisions of the Housing (Scotland) Act 2001, which sets out a process for landlords to follow in order to regain possession of a property that has been abandoned, and ensure that tenants cannot be evicted unless it is clear that they no longer intend to occupy the property. They will ensure that, should a tenant be away from their property for an extended period due to illness, work, holidays et cetera, the landlord cannot evict them. I fear that, if the ground is not changed, a tenant could return from an extended absence and find that they had been evicted. I feel that my amendments are also strongly in line with the ECHR, particularly in their aim of avoiding the harassment of tenants.

I move amendment 180.

Margaret Burgess: On amendments 104 to 106, it is an eviction ground under the bill if the tenant is not occupying the let property as his or her only or principal home, but a tenant might not be living in the property because he has lawfully sublet it. If a landlord has not prohibited the tenant from subletting, he or she should not be able to evict the tenant for doing so, and amendments 104 to 106 narrow the eviction ground so that it cannot be used if the let property is being occupied as the only or principal home of a lawful subtenant rather than that of the tenant.

If neither the tenant nor the subtenant is making a home in the let property, the eviction ground will still allow the landlord to bring the tenancy to an end, which means that landlords will have a way of tackling properties that have been completely abandoned. They will also be able to use the ground if the person occupying the property does not have a lawful subtenancy.

On amendments 107 to 110, the bill provides for a repossession ground that enables a landlord to regain possession of a property when a tenant has failed to comply with a term of the tenancy agreement. During stage 1, some stakeholders including Shelter expressed concern that the tribunal should not have to grant repossession for a breach of a statutory term of the tenancy and should be able to consider the circumstances in each case.

Amendment 107 removes the mandatory element of the eviction ground so that a breach of any term of a tenancy agreement will give rise to a discretionary ground for eviction, and amendments 108 to 110 are consequential on that change. I think that the provisions are proportionate and balance the rights of landlords and tenants, as they ensure that the tribunal will evict a tenant only when it considers such a decision to be reasonable, given the breach.

On amendment 180, in the name of David Stewart, which amends the not occupying let property eviction ground so that it refers to the tenant's "only or principal" home rather than the "tenant's home", I have to say that it is not necessary. Every eviction ground in schedule 3 begins with a sentence that gives it a name or label—no more than that. Section 41(7) makes it clear that amending the name, as amendment 180 seeks to do, makes no difference in law to the circumstances in which the eviction ground applies or does not apply. All it does is to make the label longer.

The tribunal will need to be convinced that the tenant is not occupying a property as his or her only or principal home. The law is already generous in how it interprets occupation of this type, and a long holiday or even a stay in prison would not be viewed as a failure to occupy a property as an only or principal home. I am grateful to Mr Stewart for bringing the issue to my attention and I hope that I have reassured him somewhat.

On amendment 181, which sets out a requirement for a particular form of notice to be served on the tenant, the bill already contains a power to prescribe the form of notices, and the Government will use that power to ensure that every notice sets out clearly what grounds for eviction might apply, what the tenant needs to do and what the timescales are. As a result, the detail specified in paragraph 9(1A) of schedule 3, as proposed in the amendment, is not needed; not only that, but the form of notice appears to be misleading. It states that if, at the end of the notice period, it appears to the landlord that the tenant does not intend to occupy the property,

"the tenancy will be terminated with immediate effect",

but it then goes on to provide for the tribunal to terminate the tenancy. The tribunal will not be in a position to consider the eviction case if the tenancy has already been terminated.

In addition, amendment 181 requires the landlord to make inquiries. However, a landlord who had not made inquiries would have no reason to have sent an eviction notice on the basis of that ground.

Finally, the amendment allows the eviction ground to be met only if the landlord would suffer harm as a result of

"the tenants failure to occupy the property as the tenant's only or principal home".

However, the private residential tenancy regime is designed to protect people's homes; it is not designed to protect houses that have ended up being used only occasionally. Indeed, holiday lets are specifically exempted under schedule 1 to the bill, and the existing assured tenancy regime under the Housing (Scotland) Act 1988 applies only if and for so long as a property is used as a tenant's only or principal home. Our system similarly focuses on protecting people's homes. Where that eviction ground applies, we are not talking about someone's home. A landlord might be perfectly happy for the tenant to stay on, of course, but that would be for the parties to agree between themselves.

For those reasons, I urge members not to support amendments 181 and 182.

Alex Johnstone: The minister's amendments largely fine tune things and are largely reasonable, but I think that amendment 107 stands out in seeking to remove the provision that the first-tier tribunal

"must find that the ground named by sub-paragraph (1) applies if the tenant has materially failed to comply with a statutory term of the tenancy".

I would have thought that a tenant's failure to comply with a statutory term of the tenancy would be a reasonable ground for the tribunal to find in favour of the landlord. As I cannot see why that provision would be removed from the bill, I will oppose its removal.

Margaret Burgess: We do not know what the statutory terms of the tenancy will be, as that will be laid out in regulations, but we think that giving the tribunal that power is a fair and proportionate move. Indeed, it is fairer than what Alex Johnstone suggests and what we had originally proposed.

David Stewart: I have heard what the minister has had to say. She has previously agreed to meet me to discuss the reasonableness ground; if she will also agree to meet me to discuss amendments 180 to 182, I will not press amendment 180 or move my other two amendments.

Margaret Burgess: I am happy to meet the member.

Amendment 180, by agreement, withdrawn.

Amendment 181 not moved.

The Convener: I remind members that amendment 182 pre-empts amendments 104 and 105.

Amendment 182 not moved.

Amendments 104 and 105 moved—[Margaret Burgess]—and agreed to.

The Convener: I call amendments 106 to 110, all in the name of the minister and all previously debated. Does any member object to a single question being put on the amendments?

Alex Johnstone: I object.

The Convener: In that case, we will put the question on each amendment.

Amendment 106 moved—[Margaret Burgess]—agreed to.

Amendment 107 moved—[Margaret Burgess].

The Convener: The question is, that amendment 107 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

Against

Johnstone, Alex (North East Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 107 agreed to.

Amendments 108 to 110 moved—[Margaret Burgess]—and agreed to.

Amendment 183 moved—[David Stewart].

The Convener: I remind members that amendment 183 pre-empts amendment 104.

The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kelly, James (Rutherglen) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 183 disagreed to.

Amendment 184 moved—[Alex Johnstone].

The Convener: The question is, that amendment 184 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alex (North East Scotland) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 184 disagreed to.

Amendment 111 moved—[Margaret Burgess].

Amendments 111A and 111B not moved.

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stewart, David (Highlands and Islands) (Lab)

Against

Johnstone, Alex (North East Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 111 agreed to.

Amendment 185 moved—[David Stewart].

The Convener: The question is, that amendment 185 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kelly, James (Rutherglen) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 185 disagreed to.

Amendment 186 moved—[David Stewart].

The Convener: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Kelly, James (Rutherglen) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 186 disagreed to.

Amendment 187 not moved.

The Convener: We move to the group on grounds for eviction: criminal and antisocial behaviour. Amendment 112, in the name of the minister, is grouped with amendments 113 to 116 and 124.

12:30

Margaret Burgess: On amendment 112, schedule 3 provides for the grounds on which a landlord can regain possession of the let property, one of which is when, after the tenancy has

begun, the tenant is convicted of an offence in connection with the immoral or illegal use of the let property or an imprisonable offence committed in the vicinity of the let property. At present, that is framed in the bill as a mandatory repossession ground, which means that if the ground is established, the tribunal must grant an eviction order.

Amendment 112 provides that, if an application for eviction on that ground is submitted more than 12 months from the date of the tenant's conviction, the repossession ground is discretionary. The effect is that, after a year has elapsed since the relevant conviction, the tribunal must consider whether the landlord has a reasonable excuse for not bringing the eviction case forward sooner. That change will ensure that a landlord cannot hold the mandatory repossession ground over the tenant's head indefinitely, to be used at a later date.

On amendments 113 to 115, antisocial behaviour that causes alarm, distress, nuisance or annoyance is simply unacceptable, and the current antisocial behaviour ground covers a tenant acting in an antisocial manner towards people who live in the let property as well as antisocial behaviour committed within, or in the locality of, the property. On reflection, the Government has concluded that that repossession ground does not go far enough. As a result, I have lodged amendments 113 and 115, which define "relevant anti-social behaviour" as encompassing any antisocial behaviour for which it would be reasonable for the tribunal to issue an eviction order, given the nature of that behaviour, to whom it related and where it occurred.

Given that antisocial behaviour is subjective in nature and given that evicting a person from their home is a serious penalty, the amendments also introduce a test of reasonableness that the tribunal must consider before issuing any eviction order. In addition, an application for eviction on that ground must be made within 12 months of the behaviour occurring, unless the landlord has a reasonable excuse.

To ensure consistency, amendment 114 makes a minor amendment to the language used in that ground by changing the word "acting" in the phrase

"acting in an anti-social manner"

to "behaving". Antisocial behaviour will not be tolerated and we must ensure that when serious antisocial behaviour occurs, a landlord can take the ultimate action of evicting the tenant. The tribunal will consider all the evidence presented to it, including where the behaviour took place, before deciding whether eviction is reasonable.

Amendment 116 provides the landlord with a further course of redress if another person living in or frequenting the property has acted in a criminal or antisocial manner. The antisocial behaviour and criminal conviction grounds in the bill as introduced relate solely to the behaviour of the tenant, but amendment 116 introduces another ground that enables a landlord to regain possession where a tenant associates in the let property with a person who has a relevant conviction or who has engaged in relevant antisocial behaviour. A "relevant conviction" is one in which, after a tenancy has begun, the person in question is convicted of using or allowing the use of the let property for an immoral or illegal purpose or has been convicted of an offence committed in, or in the locality of, the let property that is punishable by imprisonment. The phrase "relevant anti-social behaviour" refers to any behaviour that, had it been engaged in by the tenant, might have resulted in the tenant's eviction.

As this is a discretionary repossession ground, the tribunal must also be satisfied that is reasonable to evict the tenant. If the tribunal is considering the case more than 12 months after the relevant conviction or incident of antisocial behaviour, it must also consider whether there is a reasonable excuse for the landlord's delay in making an application to it. In a case involving joint tenants, the ground applies to any one of them.

Amendment 124 is a technical amendment that joins amendment 116 with the ability of a landlord to provide the shorter notice period of 28 days when seeking an eviction order on the basis of certain grounds. It ensures that a landlord can move swiftly in order to address antisocial behaviour.

I move amendment 112

Amendment 112 agreed to.

Amendments 113 to 116 moved—[Margaret Burgess]—and agreed to.

The Convener: We move on to the next group, "Grounds for eviction: legal impediment to let continuing". Amendment 188, in the name of Patrick Harvie, is grouped with amendments 117 to 122. Agreement to amendment 188 will pre-empt amendment 117.

Patrick Harvie: Again, I will limit my remarks to the amendment in my name—amendment 188—and leave members of the committee to discuss the other amendments in the group.

In part 4 of schedule 3, paragraph 14 provides that a ground for eviction is that

"the landlord is not registered by the relevant local authority"

under the landlord registration scheme. Two triggers will bring that ground into effect: the local authority must have either refused to enter the

landlord in the register or have removed the landlord from it. The triggers will apply in relation only to something that the landlord has done; they will not apply in relation to something that the tenant has done. It seems to be unjust that a tenant would be subject to eviction when they had done nothing wrong, and that they would lose their home on the basis of the landlord's behaviour. Let us remember that the fit-and-proper-person test in the landlord registration scheme is not a high bar, by any means. A landlord's being in as serious a situation as it would take for them to be removed from the register should not impact on the tenant and lead to an eviction.

In such circumstances, it would be far more appropriate to make available a management order, to ensure that the tenancy could be managed by a social landlord or other responsible body and to enable the tenant to remain in the property. I acknowledge that amendment 188 would not achieve that—I lodged it so that we could have a debate on the point of principle.

I hope that the minister will engage directly in the question of what the proper response should be when a landlord has behaved so badly that they have been kicked off the register. Is it really the proper response that the tenant should suffer eviction?

As well as that question of justice, the current approach has a practical consequence. For example, if a local authority responded to a serious criminal offence by a landlord who had a significant number of properties in a community, the authority would be faced with the prospect of either removing the landlord from the register and leaving a large number of tenants facing almost immediate eviction or delaying action and allowing the landlord to continue to let to new tenants.

If we cannot come up with an alternative approach, there could be serious consequences. I have no doubt that the Scottish Government's many excellent lawyers will be able to craft a better alternative approach. It seems to me that the bill as it stands is wrong, and I hope that the minister agrees that we should seek an alternative approach.

I move amendment 188.

Margaret Burgess: I will speak first to amendments 117 to 122. We want to ensure that the eviction grounds strike an appropriate balance between tenants' right to respect for their home and the rights of private landlords. The

"legal impediment to let continuing"

repossession grounds in the bill are refusal or revocation of the landlord's registration by the local authority, revocation of their HMO licence, and an overcrowding statutory notice being served on the landlord. Those grounds are mandatory, which means that, if the tribunal establishes that they exist, it must issue an eviction order.

Having considered the evidence that has been presented to the committee, I think that it would be disproportionate to mandatorily evict a tenant from his or her home simply because their landlord has failed in some way to comply with duties in legislation. For example, it might not be fair if a tenant was evicted just because their landlord's registration was revoked by the local authority.

In such cases, the tribunal should have the power to consider all the evidence that is presented to it and should make a decision based on whether it is reasonable to issue an eviction order. I lodged amendments 117 to 122 to change the nature of the

"legal impediment to let continuing"

grounds from mandatory to discretionary. That will mean that, even where the tribunal establishes that the necessary facts to make the eviction ground exist, the tribunal will still have discretion about whether to evict the tenant and will do so only if that is considered to be reasonable.

I turn to Patrick Harvie's amendment 188. As he said, it is an offence for a landlord to operate without being registered with the local authority. Under the current assured tenancy system, most landlords use short assured tenancy agreements, which can be terminated on a particular date. If a landlord ceases to be registered with the local authority, he or she can terminate the short assured tenancy to avoid committing the offence of letting property while unregistered.

Given the open-ended nature of the new private residential tenancy, the landlord requires some way of bringing a tenancy to an end when she or he has been refused registration or has had it revoked. The eviction ground in the bill provides the means by which the landlord can bring a tenancy to an end. To exclude it would undermine the system of landlord registration and could lead to a landlord being found guilty of an offence for continuing to let the property.

Accordingly, I ask the committee to support my amendments 117 to 122 and I ask Patrick Harvie not to press his amendment 188.

The Convener: As no other member has indicated that they wish to speak, I invite Patrick Harvie to wind up and say whether he wishes to press or withdraw amendment 188.

Patrick Harvie: I acknowledge that the minister's amendments in the group will improve the bill. However, I feel that we are in danger of imagining that there is a binary choice here—that we have either to allow a landlord to continue to be registered and therefore potentially, even after

being guilty of some infringement, able to continue to let to new tenants, or to remove them from the register, which would lead to the potential for eviction, in order to protect them from committing a subsequent criminal offence.

I am still not convinced that the option of a compulsory management order is not the right way to go. I encourage the minister to give further thought to that before stage 3 and to consider whether, in such circumstances, allowing the tenancy to continue to operate but be managed by another fit and proper body would be the appropriate response to the situation. Having said that, and with the possibility of perhaps communicating with the minister ahead of stage 3, I seek to withdraw amendment 188.

The Convener: Minister, do you want to say whether you will be willing to meet Mr Harvie?

Margaret Burgess: I am happy to meet Mr Harvie and other members of the committee.

Amendment 188, by agreement, withdrawn.

Amendments 117 to 122 moved—[Margaret Burgess]—and agreed to.

Schedule 3, as amended, agreed to.

After section 41

Amendments 175 and 176 not moved.

Section 42 agreed to.

Section 43—Restriction on applying during the initial period

Amendment 123 moved—[Margaret Burgess]—and agreed to.

Section 44—Restriction on applying during the notice period

Amendment 124 moved—[Margaret Burgess]—and agreed to.

Section 44, as amended, agreed to.

Sections 45 and 46 agreed to.

Section 47—Wrongful termination by eviction order

The Convener: The next group is on wrongful termination. Amendment 189, in the name of Patrick Harvie, is grouped with amendments 125, 190, 191, 126, 192, 127 and 193.

Patrick Harvie: My amendments in this group will be my last go today. Sections 47 and 48 deal with wrongful termination. The fact that there is a provision to address a situation in which either a tribunal has issued an eviction order after having been misled, or a tenant has been persuaded to give up a property after having been misled, is very welcome. I cannot be the only MSP who has had constituents raising situations not unlike that, in which misleading information or attempts to mislead have been used to persuade or require a tenant to leave a property that they are otherwise happy to continue to rent.

It is really important that there is a provision for dealing with such situations. However, in both sections, the action that can be taken requires to be initiated by the former tenant. It is not difficult to understand that a tenant who has lost their home in that way will have a great deal of other things to be getting on with in finding and settling into a new place. There are very few situations in which the tenant will have the information that they need or in which it will be easy for them to challenge their former landlord in that way and have appropriate action taken.

My amendments in the group concern sections 47 and 48. They would allow a person providing independent advocacy services on the tenant's or the joint tenants' behalf to initiate that kind of action. That might include a housing charity or a welfare rights adviser. I am sure that we can imagine a range of organisations being able to take that action on a tenant's behalf.

Amendment 191 is a consequential amendment that also concerns both sections. It provides a definition of the terms "advocacy services" and "independent".

I hope that the minister will be open to this argument.

I move amendment 189.

Margaret Burgess: I will speak to my amendments 125 to 127 and respond to Patrick Harvie's amendments 189 to 191 and Clare Adamson's amendments 192 and 193.

The purpose of amendments 126 and 127 is to place the tribunal under a duty to issue a copy of any wrongful termination order to the local authorities with which the landlord is registered. The effect of the amendments is to further join up decisions made against a landlord by the tribunal with the broader regulation of landlords. Local authorities will be able to take those orders into account when considering a landlord's fit-and-proper-person status under landlord registration.

Amendment 125 is a minor technical amendment to clarify the drafting of section 47(4) so that it reads "immediately before".

I turn to Patrick Harvie's amendments 189 to 191. At present, there is absolutely nothing to stop a former tenant seeking assistance from persons providing independent advocacy services when the former tenant is making an application for wrongful termination. Those organisations, as Patrick Harvie outlined, provide an excellent

service, but they can do that without specific provision allowing third-party applications. They can already provide as much help as they wish and they can even represent the tenant at the tribunal.

However, given the nature of the application, it is unrealistic to think that an application can be made without detailed input from the former tenant. If the tenant is to be involved, I see no reason for the application not to be in his or her name, albeit made with as much or as little assistance as a third-party organisation wishes to provide. Otherwise, we could end up in a situation in which an application could be made against the tenant's wishes. The application relates to the tenancy that a particular person had and it should surely be his or her choice whether that tenancy is referred to in a tribunal application.

In addition, wrongful termination orders are about compensating a former tenant for losing his or her home. Under the bill, the payment is made to the person who makes the wrongful termination application. The amendments would have the effect of allowing third parties to receive any compensatory payment and I do not think that that would be appropriate.

I turn to Clare Adamson's amendments 192 and 193. At stage 1 we heard from a number of tenants representative organisations, which voiced concern that the proposed maximum payment to tenants for wrongful termination is not sufficient to reflect the upheaval, removal costs and emotional distress that the tenant is likely to have incurred—and incurred needlessly.

Although most landlords operate within the parameters of legislation and comply with their obligations, I know that not all of them do. I want the wrongful termination order to act as a disincentive to landlords; I do not want landlords misleading tenants or the tribunal in a way that leads to tenants having to leave their homes.

Accordingly, I ask the committee to support my amendments. I endorse Clare Adamson's amendments 192 and 193 and I ask Patrick Harvie not to press his amendments 189 to 191.

Clare Adamson (Central Scotland) (SNP): This is a complex area as the amount of compensation can vary across the country, depending on the value of the rent that is involved.

All our deliberations over the bill have been about achieving balance and fairness for both landlords and tenants. Mr Harvie has already eloquently laid out the difficulties of a tenant who is facing a wrongful termination and the other pressures that are on tenants at the time. We need to have a level of compensation that makes it worth while for tenants to pursue their rights under the bill and acts as an encouragement for the very best behaviour from landlords.

Patrick Harvie: I was a little disappointed that the minister did not see the merit in my amendments. No one would dispute that actions seeking recognition of a wrongful termination must be well informed by the experience of the tenant, but I take issue with the argument that that means there is no reason why it should not be done in the tenant's name.

An issue that the committee has been aware of in scrutinising the bill is the vulnerability that people may feel in challenging a landlord. Let us remember that, in some places, particularly where there are large commercial landlords, that landlord might be someone's next landlord as well as their former landlord. For a tenant to challenge their landlord in their own name is very different from an organisation doing that on their behalf.

I also question whether the issue is purely one of compensation. Clearly, that is a core part of section 47, which is an important part of the bill, but surely we should also expect, for example in looking at the fit-and-proper-person test under the landlord registration scheme, that other factors be taken into account, such as whether a landlord has a track record of misleading the tribunal or their tenants.

There is a longer-term and a wider public interest involved; it is not purely a private interest on the part of a tenant seeking compensation. It may be that that in itself raises the potential for other changes that might be proposed at stage 3.

I press amendment 189.

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Adamson, Clare (Central Scotland) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 189 disagreed to.

Amendment 125 moved—[Margaret Burgess]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Wrongful termination without eviction order

Amendments 190 and 191 not moved.

The Convener: I thank Patrick Harvie for his attendance.

Patrick Harvie: Good afternoon.

Section 48 agreed to.

Section 49—Wrongful-termination order

Amendment 126 moved—[Margaret Burgess]—and agreed to.

Amendment 192 moved—[Clare Adamson]—and agreed to.

Section 49, as amended, agreed to.

After section 49

Amendment 127 moved—[Margaret Burgess]—and agreed to.

Section 50 agreed to.

Section 51—Meaning of initial period

Amendment 128 moved—[Margaret Burgess]—and agreed to.

Section 52—Meaning of notice to leave and stated eviction ground

Amendments 129 and 130 moved—[Margaret Burgess]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Six month periods

Amendment 193 moved—[Clare Adamson]—and agreed to.

Section 53, as amended, agreed to.

13:00

Section 54—Tenancy continues after tenant's death

The Convener: We move on to death of tenant. Amendment 142, in the name of the minister, is grouped with amendments 143, 143A, 144, 194, 145, 146, 195 to 198, and 147 to 149. I point out that amendment 194 pre-empts amendment 145.

Margaret Burgess: The bill currently provides that, when a sole tenant dies, either a bereaved partner may inherit the tenancy or an executor of the tenant's estate must bring the tenancy to an end. The amendments in this group would ensure that, if there is no one to succeed the tenant, the tenancy will end without the need to appoint an executor. The effect is that the tenancy is terminated on the death of the tenant, unless there is a partner with a succession right to inherit the tenancy.

I listened closely to stakeholders' evidence on this during stage 1, and during my own appearance at committee I stated my intention to bring forward an amendment at stage 2 to ensure that, if there is no one to succeed the tenant, the tenancy will end.

That was because, on considering the issue further, it became clear that not ending the tenancy on the death of the tenant may disadvantage both the landlord and the deceased tenant's family. Any moneys left in the deceased's estate could be considerably reduced if it took the executor a while to terminate the tenancy. Also, if the tenant died intestate, the landlord would be sitting with an empty property that could not be re-let until such time that the sheriff appointed an executor and the executor subsequently terminated the tenancy.

Amending the bill is still my intention, but having considered my amendments further I will not press them at this stage, so that I can consider further the process by which succession will work. That means asking Clare Adamson not to press her amendments at this stage as well.

I move amendment 142.

Clare Adamson: I thank the minister for her commitment to take the matter forward to stage 3. It is a very important principle that we should take forward. In all of this we have been keen to emphasise that it is someone's home—a family home—that we are talking about. In circumstances in which there is a sibling, carer or younger person in the family—a child who could succeed to the tenancy—it is important that their rights are respected.

I will choose not to move my amendments today, given the minister's commitment to look at the matter at stage 3.

Margaret Burgess: I seek to withdraw amendment 142 and will not move my other amendments at this stage, but the policy intention is clear and we will come back with a process for succession rights.

Amendment 142, by agreement, withdrawn.

Section 54 agreed to.

After section 54

Amendment 143 not moved.

Section 55—Partner's entitlement to inherit tenancy

Amendments 144, 194, 145 and 146 not moved.

Section 55 agreed to.

After section 55

Amendments 195 to 198 not moved.

Section 56—Executor's duty to terminate tenancy

Amendment 147 not moved.

Section 56 agreed to.

After section 56

The Convener: We now move to tribunal powers. Amendment 131, in the name of the minister, is grouped with amendment 132.

Margaret Burgess: Amendment 131 gives the tribunal the same jurisdiction that the sheriff courts would otherwise have had to deal with civil cases arising from a private residential tenancy. The effect will be to ensure that the tribunal has jurisdiction for all civil disputes arising from the new tenancy that would otherwise have fallen on the sheriff. That puts the private residential tenancy in the same position as existing tenancy types, and it allows the parties to use the more accessible forum of the tribunal.

Criminal cases will continue to be dealt with by the sheriff courts as usual, and amendment 131 does not affect the Court of Session's jurisdiction in relation to landlord and tenant matters, such as judicial review.

On amendment 132, all private landlords are required to register with the local authority in whose area the let property is situated under part 8 of the Antisocial Behaviour etc (Scotland) Act 2004, to ensure that they are fit and proper to be letting houses. Amendment 132 provides that, where as a result of proceedings before it, it comes to the tribunal's attention that a landlord is not registered with the relevant local authority, the tribunal will be under a duty to notify the local authority. The tribunal must tell the authority the landlord's name and address and the address of the property for which he or she is the landlord.

The effect of the amendment will be to enable local authorities that have responsibility for administering landlord registration to take enforcement action against a landlord who is unregistered.

I move amendment 131.

Amendment 131 agreed to.

Amendment 132 moved—[Margaret Burgess]—and agreed to.

The Convener: We move on to overlooking minor errors in documents. Amendment 133, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 133 inserts a new section into the bill that provides that any minor errors in the documents specified will not invalidate the document, unless the error materially affects the effect of the document. The effect will be to ensure that the new tenancy works well in practice, as we do not want tenants and landlords to be penalised for minor errors that do not distort the effect of a document. We want a system that is user-friendly and capable of taking a common-sense approach.

I move amendment 133.

Amendment 133 agreed to.

Section 57 agreed to.

Schedule 4—Consequential modifications

The Convener: Amendment 148, in the name of the minister, was debated with amendment 142. I invite the minister to move the amendment.

Margaret Burgess: Moved.

The Convener: The question is, that amendment 148 be agreed to. Are we agreed?

Clare Adamson: On a point of order, it was indicated earlier that the minister was not going to move these amendments.

The Convener: Minister, can I confirm that you are not moving amendment 148?

Margaret Burgess: That is right. It is consequential to the previous amendments.

Amendments 148 and 149 not moved.

Schedule 4 agreed to.

Section 58 agreed to.

Schedule 5—Transition from regimes under earlier enactments

Amendment 134 moved—[Margaret Burgess]—and agreed to.

Schedule 5, as amended, agreed to.

Section 59 agreed to.

Section 60—Regulation-making powers

Amendments 135 to 138 moved—[Margaret Burgess]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Interpretation

Amendment 139 and 140 moved—[Margaret Burgess]—and agreed to.

Section 61, as amended, agreed to.

Section 62—Commencement

Amendment 141 moved—[Margaret Burgess]—and agreed to.

Section 62, as amended, agreed to.

Section 63 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

Meeting closed at 13:13.

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