

Local Government, Housing and Planning Committee

8th Meeting, 2022 (Session 6)

Tuesday 8 March 2022

Part 4 of the Coronavirus (Recovery and Reform) (Scotland) Bill

Introduction

1. The Coronavirus (Recovery and Reform) (Scotland) Bill (“the Bill”) ([link here for Bill and all accompanying documents](#)), was introduced on 25 January 2022. The lead Committee for the Bill is the Covid-19 Recovery Committee, and the Bill has been referred to this Committee as one of a number of secondary committees

2. At its meeting on 1 February 2022 this committee agreed its approach to scrutiny, of Part 4 of the Bill, which makes provision to strengthen the protections from eviction for private rented tenants. It also agreed to hold this evidence session, hearing from organisations representing both landlords and tenants, as well as engaging in a joint call for views.

Call for views

3. To ensure a joined-up approach and efficient use of resources, the policy committees published a joint call for views.

4. The joint call for views was launched on 3 February 2022. There were two options for those who wished to comment, a long-form survey and a short-form. The long-form survey closed on 25 February and the [short survey remains open till 18 March 2022](#).

5. The short survey has received 3,548 responses to date, and will remain open until Friday, 18th March. The detailed response option for the call for views closed on 25 February 2022. The Committees has received 78 completed responses to date, of which four responses were removed due to being incomplete and one completed response was rejected for publication. The remaining [submissions have been published](#). The Committees have also received requests for extensions and these late submissions will be published in due course.

6. The Covid-19 Recovery Committee also wrote to subject committees on 8 February, inviting them to contribute any evidence gathered which could be relevant to their scrutiny of the Bill. Responses from the Equalities, Human Rights and Civil Justice Committee and the Health, Social Care and Sport Committee can be found at Annex B at the following [link](#).
7. A summary of the responses to the consultation relevant to the work of this Committee are included in the Annex to this paper.

Background

Overview of the Bill

8. The effect of the Bill is to make permanent some of the reforms to the delivery of public services that were introduced in response to the COVID-19 pandemic. The Scottish Government consulted on the proposals in its consultation paper entitled “Covid recovery: a consultation on public health, public services and justice system reforms”, which was open for nearly 12 weeks from 17 August 2021 to 9 November 2021.¹

9. The long title states that the Bill is–

“An Act of the Scottish Parliament to make provision about public health protection powers; to make provision about educational establishments and school consultations; to make miscellaneous public service reforms; to modify the law on tenancies; to make temporary modifications to the law in relation to the justice system; and for connected purposes.”

10. The provisions in the Bill cover a wide range of policy areas. The Bill is divided into 6 Parts, as follows–

Part 1: Public health protections (sections 1 – 4)

Part 2: Education (sections 5 – 14)

Part 3: Public service reform (sections 15 – 32)

Part 4: Tenancies (sections 33 – 37)

Part 5: Temporary justice measures (sections 38 – 44)

Part 6: Final provisions (sections 45 – 47)

11. As noted, earlier, the Committee’s focus will be on Part 4 of the Bill.

12. Part 4 relates to eviction of tenants from properties in the private rented sector. Normally, some circumstances result in Housing and Property Chamber – First-tier Tribunal for Scotland (‘the Tribunal’) having to grant an eviction order. The Bill will change this. It proposes that, in relation to the tenancy types set out in the Bill, the Tribunal will not have to grant an eviction order. The Tribunal will, however, still be able to grant an eviction order if it considers it reasonable. Part 4 also sets up a “pre-action protocol”. This protocol is something landlords have to follow before starting

eviction proceedings for rent arrears cases. Whether landlords have or have not followed this protocol will be considered by the Tribunal in deciding whether to order an eviction in such cases.

13. Part 4 of the Bill makes provision to protect private rented tenants from being evicted unreasonably from their homes. These are discrete provisions unrelated to other aspects of the Bill, and, as such, fall within the remit of this Committee.

14. The provisions present issues that were considered by this Committee's predecessor committee (the Local Government and Communities Committee). In particular, [that committee looked at the role of the First-tier Tribunal](#) for Scotland in the context of disputes between tenants and landlords, but it also more generally looked at issues impacting housing during the pandemic.

15. The Social Justice and Social Security Committee also have an interest in Part 4 of the Bill, particularly insofar as they relate to issues of homelessness. In the interests of making effective use of parliamentary time, the Committee wrote to the Social Justice and Social Security Committee inviting its members to participate in the Committee's consideration of the Bill. In its response, the Committee detailed the work carried out on homelessness and child poverty, and the convener, Elena Whitham will join this Committee for this evidence session.

Today's evidence session

16. The Committee agreed to hearing from four witnesses as well as from the Minister for Carbon Zero Buildings, Active Travel and Tenants' Rights, Patrick Harvie. He will be accompanied by Scottish Government officials.

Panel 1

Scottish Association of Landlords – who have provided the following submission to the call for views: https://yourviews.parliament.scot/covid19/recovery-bill-detailed/consultation/view_respondent?uuld=794975448

Andrew Watson – researcher at the University of Glasgow, Author of "[The pandemic arrears crisis: Private landlord perspectives on the temporary legislation impacting the Private Rented Sector](#)"

Crisis – who made the following submission to the Scottish Government's consultation [Response 315484805 to Covid recovery: a consultation on public health, public services and justice system reforms - Scottish Government - Citizen Space](#)

Legal Services Agency – who made the following submission to the Scottish Government's consultation https://consult.gov.scot/constitution-and-cabinet/covid-recovery/consultation/view_respondent?sort=excerpt&order=ascending&b_index=300&uuld=409040292

Panel 2

Minister for Carbon Zero Buildings, Active Travel and Tenants' Rights, Patrick Harvie

Yvonne Gavan

Craig McGuffie

Greig Walker

Summary of the Scottish Parliament's call for views on the Coronavirus (Recovery and Reform) (Scotland) Bill: Detailed survey - tenancy provisions.

The Scottish Parliament launched a call for views on the bill on 3 February 2022. A detailed survey was launched with a closing date of 25 February 2022 and a short survey was also launched with a closing date of 18 March 2022.

This paper provides a summary of the responses to the detailed survey on the tenancy provisions of the Bill. Members will be provided with a summary of responses to the short survey following its closing date.

Removal of mandatory eviction grounds (sections 33 to 35 of the Bill)

Thirty-five responses were received to the question about the proposed removal of mandatory eviction grounds. Respondents were asked if they disagreed, agreed with the proposal or did not know. Respondents were also given the opportunity to make additional comments.

Thirty-four respondents expressed a specific view. Of these, 62% (21), disagreed with the proposal to remove the mandatory eviction grounds, 29% (10) supported the proposal and 9% (3) did not know. One respondent did not express an opinion but provided further comments.

Thirteen organisations responded. Of these who expressed an opinion, seven organisations supported the proposal and five organisations did not support the proposal.

Twenty-two individuals responded and the majority of these, sixteen, did not support the proposal, 3 supported the proposal and 3 did not know.

The main reason respondents gave for disagreeing with the removal of mandatory eviction grounds was the perception that it would affect investor confidence in the private rented sector and affect the supply of privately rented accommodation. For example, the Scottish Property Federation said that it could fuel a perception of regulation and risk for investors that will undermine efforts to attract capital investment to the sector. West Lothian Council said that it would lead to uncertainty both amongst landlords and tenants.

The Scottish Association of Landlords also said that it could lead to landlords being more reluctant to let to tenants whose circumstances might in any way be considered to influence a tribunal conducting a reasonableness test, for example tenants who are elderly or have young children enrolled in local schools/nurseries. The Scottish Property Federation also suggested that the proposal may be "exploited by tenants who wish to draw out their tenancy despite having no reasonable chance

of winning. This could place a significant burden on a vital housing tenure by potentially denying other tenants the chance of a home.”

A couple of respondents did not think that the proposals would help to deliver a recovery from the pandemic. For example, the Scottish Association of Landlords thought that the market is buoyant with many tenants choosing to move despite the pandemic. Propertymark also stated that it is generally considered that the sector and the wider economy have returned to pre-pandemic operational levels. Landlords and tenants took a pragmatic response to the temporary measures on the understanding that they were temporary.

The Scottish Association of Landlords also cited statistics that showed that:

“Making mandatory grounds discretionary during the pandemic has affected the outcome of only around 0.7% of tribunal evictions. Of the 423 competent eviction applications considered by the tribunal during 2021, there were only 5 cases where an eviction order was refused on the grounds of reasonableness. Of these 5 cases only 3 were on grounds that would previously have been mandatory.”

Some respondents also expressed the view that the proposals should be considered in the wider context of the Scottish Government’s current consultation on A New Deal for Tenant’s Rights and argued that there is insufficient time for parliamentary scrutiny of the proposal or consideration of the impact on the wider policies relevant to private rented housing.

The main reason respondents gave for supporting the proposal was that it would provide an extra level for protection for tenants and offer greater security of tenure.

Shelter Scotland pointed to the damage to mental and physical health that eviction can cause to tenants and their children. It argued that the Tribunal would be able to take these negative impacts into account balancing the needs of tenants and landlords in each individual case. The Community Help & Advice Initiative considered that additional security of tenure would make a significant contribution to a well-being economy and protect against ‘revenge’ evictions.

Pre-action protocol in respect of evictions relating to rent arrears (sections 36 to 37 of the bill)

Thirty-five responses were received to the question about the pre-action protocol for rent arrears cases. Respondents were asked if they disagreed, agreed with the proposal or did not know. Respondents were also given the opportunity to make additional comments.

Of the thirty-four respondents expressing an opinion, just over half of respondents, 56% (19), disagreed with the proposal to make pre-action protocols permanent, 36% agreed (12) and 9% (3) did not know.

Of the thirteen organisations stating a view, eight supported the proposal and five did not. Twenty-one individuals responded. Of these, fourteen did not support the proposal, four supported the proposal and three did not know.

The main reason given for supporting the proposal was that it would help to address any rent arrears and potential homelessness. The Scottish Association of Landlords considered that this should already be considered good practice. As Citizens Advice Scotland stated:

“We believe these measures have had a positive impact and provided opportunities to sustain tenancies through improved communications. The pre-action process requirements are a valuable opportunity for people to be linked up with independent advice and support services, who can help to ensure that households are accessing all monies they are entitled to, which may help to address any arrears.”

A few respondents also outlined that it would bring the private rented sector in line with the social rented sector. Shelter Scotland thought that the pre-action requirements should be evaluated to ensure that they are robust, cover all reasonable steps landlords should take and that they are working in practice with the Tribunal ensuring that they are upheld.

A variety of reasons were given for not supporting the proposal. Propertymark and made the point that the temporary measure was also introduced alongside a package of financial support to tenants and it was not clear what financial support might be available to tenants in the future should the protocols become permanent.

Propertymark suggested that the Scottish Government must be transparent and provide evidence that led to the decision to make pre-action protocols permanent, e.g. how many payment plans were entered into. Similarly, Homeless Action Scotland said that it had, “Yet to see any evidence which suggests that the Pre-Action Requirements stopped or had any effect on evictions within the PRS” and it expressed concerns that legislation which was implemented during a national emergency is being introduced without any consultation. It thought that there must be strengthening of the current pre-action requirements within the social rented sector while at the same time starting a consultation on adopting pre-action requirements within the private rented sector.

A point made, including by a couple of respondents supporting the proposal, was that there was no mandatory requirement for the landlord to undertake the actions in the pre-action protocol. The Community Help and Advice Initiative was supportive to the proposals but argued that it should be mandatory:

“As drafted, clauses 36 & 37 will make steps set out on the pre-action requirements nothing more than guidance. In our experience, the best conscientious landlords and letting agents will incur the additional costs of following that guidance, while others will instead take the shortcut open to them and will be rewarded for doing so. That undermines progress of a wellbeing economy. It also impacts more severely on disadvantaged tenants less likely to engage with the tribunal process.”