

Coronavirus (Recovery & Reform) (Scotland) Bill

Stage 1 debate

Briefing for MSPs



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About Scottish Land & Estates

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: housing, employment, environmental benefits and thriving rural communities. We represent the interests of our members and wider rural Scotland to the UK- and Scottish Government to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.

At a glance

- We are limiting our comments to Part 4 of the Bill (grounds for eviction and pre-eviction protocol in the private rented sector (PRS))
- We fully support the need for tenants in the private rented sector to have safe, well-maintained, warm homes and security of tenure
- The **rights of tenants and the rights of landlords should be balanced** to provide benefits for both parties; Part 4 of this Bill does not strike the right balance
- 15% of Scotland's homes (340,000) are in the private rented sector¹ and **94% of tenants in the private rented sector are satisfied** with their housing²
- **Part 4 of the Bill is an anomaly** that does not fit with rest of the Bill, or the Policy Memorandum, which have an overarching focus on resilience in future public health crises.
- Many of the grounds for eviction being made discretionary have **nothing to do with Covid or public health emergencies** – meaning the Part 4 provisions are wrongly placed in this public health focussed Bill.
- We agreed with the measures to protect tenants in the public health emergency of Covid-19 pandemic. However, **there is no justification for making these emergency changes permanent outwith an emergency setting**, which is what Part 4 of this Bill does.
- Tenants have undoubtedly faced hardship during the pandemic and it is right to protect them. But **landlords have also been seriously impacted by the pandemic** and no consideration or even acknowledgement has been given to that in the policy rationale for this Bill.
- The **Scottish Government has provided differing policy rationales** for the inclusion of these provisions in the policy memorandum and Ministerial statements. We believe that this reinforces the lack of policy justification.
- We think Part 4 will have **severe consequences on the provision of much needed homes in rural Scotland**; our landlord members have told us they will **withdraw up to 22% of their housing stock³ from the PRS** if the Scottish Government's plans in this Bill and the *New Deal for Tenants* strategy go ahead – which would be disastrous when there is a nationwide acute shortage of housing
- We believe **Part 4 could see PRS property values plummet by 50%⁴** if landlords, of all types and sizes, who are crucial in providing affordable housing across rural Scotland as part of their business model, **cannot be guaranteed vacant repossession** in the event of a tenancy breach. That is what removing mandatory grounds for eviction does. This issue will also affect tenant farmers who sublet properties.
- Banks have security over many rental properties. **If there is a significant change in the value of these properties due to legislation, then an immediate crisis may be provoked.**

¹ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/5/14/Overview-of-private-rented-housing-reforms-in-Scotland>

² <https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/pages/2/>

³ SLE internal survey of landlord members with combined ownership of over 3000 PRS properties

⁴ Advice from land agents received by SLE

Landlords may well find themselves outwith the Loan to Value range acceptable to banks, and immediately in breach of covenants.

- There is **no clarity on retrospectivity of these proposals and how they relate to existing SAT or PRT tenancies.**
- The consultation on significant changes to the Private Rented Sector, including changes to grounds for repossession, has just closed. We think **Part 4 of the Bill should be removed from this Bill** and that the Scottish Government should **await its planned Housing Bill**, which was promised after its consultation on *A New Deal for Tenants* strategy, to consider such sweeping changes to the private rented sector.

Background

The Scottish Government has published its Coronavirus (Recovery and Reform) (Scotland) Bill, which introduces measures designed to aid public health following the Covid-19 pandemic. Part 4 of the Bill relates to the grounds for eviction, and seeks to make permanent the changes that were brought in during the Covid-19 pandemic. These changes made all grounds for eviction discretionary, meaning that, if the case is presented to a tribunal, they will not have to automatically evict the tenants.

SLE is gravely concerned about the impact of these proposals in terms of supply of homes and the impact on property rights and asset value. SLE has sought legal advice on this Bill and this briefing is based on the legal advice we have received. As an industry that is already facing ever increasing legislation (the *New Deal for Tenants* consultation document acknowledges that Scotland already has some of the strongest [housing] rights in the world⁵) we believe that these proposals will cause a large number of landlords to sell their properties or remove them from the private rental sector. This will severely reduce the number of affordable properties available to rent across Scotland, particularly in rural areas. Others will be forced to review letting policies, such as introducing more stringent checks on tenants for fear of non-payment, making it harder for young people or those on lower income to find suitable rented accommodation. Current landlords may also consider alternative uses such as holiday lets, again impacting on the supply of much needed affordable rented housing.

Landlords will also be affected in terms of the capital asset of their properties which may have a knock-on impact in terms of mortgages or other borrowing. The reduction in value of a property which cannot be sold with vacant possession does not seem to have been taken into consideration during the development of these proposals. No consultation appears to have been carried out with lenders; the views of lenders should also be sought as this could have significant impacts on their willingness to lend and also the viability of existing lending.

⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2021/12/new-deal-tenants-draft-strategy-consultation-paper/documents/new-deal-tenants-draft-strategy-consultation-paper/new-deal-tenants-draft-strategy-consultation-paper/govscot%3Adocument/new-deal-tenants-draft-strategy-consultation-paper.pdf> (pages 11 and 12)

The stated purpose of the Bill

The purpose of the Bill, as stated in the accompanying Policy Memorandum, is to:

“embed reforms in Scotland’s public services and justice system that, though necessitated by the Covid pandemic, have delivered improvements for service users and improved efficiency. The Bill will also help build resilience against future public health threats. Furthermore, the Bill will continue certain temporary justice system provisions on a longer extension basis as part of the Recover, Renew, Transform (“RRT”) programme and as a response to the impact of Covid on Scotland’s justice system, most particularly where backlogs have unavoidably built up.”

SLE cannot see how Part 4 of the Bill fits within these aims. Making all grounds for eviction discretionary will bring further work to the justice system, as any case brought to the First-Tier Tribunal will have to be thoroughly assessed in order for a decision to be made, creating further backlogs rather than reducing them. SLE members have reported up to 8 month waiting times for tribunal outcomes prior to Covid-19, and this will exacerbate this problem. The benefit of the mandatory grounds for eviction are that when the tenant fails to comply with the conditions set out in their tenancy agreement, the landlord can apply for eviction with the knowledge that they will be able to reclaim possession of the property. Most of the mandatory clauses are for instances where there has been a serious breach of tenancy, and they benefit the Tribunal by streamlining the eviction process. It should also be noted that, in most instances, putting an application into the Tribunal is done as a last resort, and is usually done when efforts between the landlord and tenant to meet a mutually beneficial outcome have failed.

Part 4 has been introduced despite the findings of the 2020 Scottish Household Survey, which showed that 94% of households in the PRS were satisfied with their housing, compared to 87% satisfaction in the social rented sector. In addition, an analysis of the consultation that preceded the introduction of the Bill shows that most responders opposed the proposals. This poses the obvious question as to why such drastic changes are being proposed when tenants themselves are happy, and there has been major opposition to their implementation.

There is very little policy rationale provided as to why these changes should be made permanent. In addition, no indication is given as to whether the temporary measures that were put in place had any benefit to tenants. The Minister for Zero Carbon Buildings, Active Travel and Tenants’ Rights Patrick Harvie MSP has stated that including the provisions in this legislation rather than forthcoming housing legislation is to avoid confusion and “bewilderment”, & that it is the simplest and cleanest way to achieve continuation.⁶ We disagree and believe that including them within the Covid Recovery Bill is disproportionate, arguably outwith the legitimate scope of the Bill, and prevents them being considered alongside other changes to housing legislation. In terms of the confusion claim, other

⁶ <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/LGHP-08-03-2022?meeting=13630&iob=123743> (LGHP Committee, evidence session, 8 March 2022)

temporary coronavirus legislation provisions are not being introduced on a permanent basis and as with the removal of other Covid related restrictions across all aspects of our lives, we can understand a return to pre covid arrangements without any sense of confusion. The Minister in his evidence also stated that ‘having that in-out, in-out approach of letting them lapse and then bringing them back in again would, I think, cause far more confusion than any additional clarity that could come from consultation’. This suggests that the current consultation process and subsequent Parliamentary scrutiny of the Scottish Government proposals are a foregone conclusion. This is disappointing but unsurprising given the lack of regard given to views from those providing homes across Scotland.

In conclusion, Part 4 does not fit within the stated purpose of the Bill and, as such, we believe that it should be removed. Given the ongoing work in developing the *New Deal for Tenants* strategy, which will lead to a Housing Bill, we would have thought that these proposed changes to the eviction process would be better suited to be considered with other legislation relating to the Private Rented Sector. Our major concern is that this Bill is being used as a vehicle to pursue policy agendas beyond its stated scope.

Impact of the Bill on the private rented sector (PRS)

Part 4 of the Bill will have a significant impact on the Private Rented Sector, and we believe that many private landlords will feel compelled to remove their properties from the sector, severely reducing the number of available let properties. Currently, renting out rural property is a low-reward venture, albeit one with relatively low risk. This legislation will drastically increase this risk, thus outweighing the reward and forcing many to exit the sector.

While consideration has rightly been given to hardship faced by tenants as a result of the Covid-19 pandemic, no assessment seems to have been made of the impact of the pandemic on those letting out properties. Indeed there seems to be an assumption that landlords have not been impacted by the pandemic at all, which is far from the truth.

Given the restrictive legislation facing landlords, and the uncertainty it will create regarding regaining control of their properties in the specifically prescribed experiences, many will feel obligated to remove their houses from the Private Rented Sector, with the consequence of less housing available at a time where there is a shortage of good quality accommodation available in rural areas.

While these emergency legislative changes were brought in response to a public health emergency, to reduce the movement of people to a minimum as well as offset the impact of reduced income and job losses due to the inability to work. Our current situation has changed, meaning these issues have largely settled down or been removed. Given these powers have been in place for almost 2 years, according to the SPICe:

“The Policy Memorandum does not provide any specific evidence about what impact the temporary change to make all eviction grounds discretionary has had”.⁷

⁷ (SPICe briefing, CRR Bill, page 36)<https://sp-bpr-en-prod-cdneq.azureedge.net/published/2022/2/24/dc28b983-cae0-49bc-9129-1ce44268864c/SB%2022-13.pdf>

This would seem to underline the lack of evidence and policy rationale for such a sweeping change to the PRS. The removal of the mandatory ground that grants a landlord repossession of the property if they are intending to sell it will have knock-on impact on the capital value of properties. We are seeking further advice from lenders to see the impact this legislation will have on their willingness to grant buy-to-let mortgages. Anecdotal evidence from land agents suggest property values will be reduced by up to 50% if vacant possession cannot be obtained. This will have a major impact on lenders and borrowing secured against property. Indeed, banks have security over many rental properties. If there is a significant change in the value of these properties due to legislation, then an immediate crisis may be provoked. Many estates will be able to cope with this as land values are high but landlords of individual urban properties will possibly be outwith the Loan to Value range acceptable to banks and immediately in breach of covenants.

We firmly disagree with the Financial Memorandum which states that it is unlikely that there will be any significant loss of landlords as a result of the legislation. This is contrary to what those in the sector have repeatedly told the Scottish Government. Similarly, the tribunal costs are assumed to return to 2019/20 levels. However, given that a large majority of evictions will now require to go to a tribunal on discretionary grounds it is inevitable that the cases will rise and times will lengthen. This will add cost to the tribunal, but more significantly to landlords, particularly if rent is not being paid or damage is being incurred.

Similarly, the rationale for landlord costs being reasonable are based on an average rental income of £8,300 for a two bedroom property. In a rural context rental income is considerably lower, meaning the costs as a percentage of income are higher. This also does not take into account the costs of letting, which will vary significantly and will take up a large part of this income.

Unfortunately the Financial Memorandums provided for legislation continue to be flawed – an issue we have repeatedly raised.

Impact on rural communities

The Scottish Government does not appear to have considered the scale of the impact Part 4 of the Bill would have on rural communities.

As well as reducing the availability of homes for local families at a time where there is a shortage of good quality accommodation available in rural areas, Part 4 will in turn place greater pressure on already stretched local authorities to provide housing. Similarly, this will have a knock-on effect on those seeking employment in rural areas, where a lack of housing is already a concern.

Any decrease in housing supply will cause issues for businesses as it could force workers to relocate to other areas with greater housing supplies or cause issues in attracting employees to rural areas, decimating local economies and businesses.

We would like to see further evidence and research into the far-reaching impacts of this legislation, including the policy rationale as we do not feel this has been clearly stated. The impact should be considered as part of the wider changes in the sector rather than just this specific piece of legislation.

The Private Housing (Tenancies) (Scotland) Act 2016, and the introduction of the private residential tenancy, was designed to give greater security of tenure for tenants and also safeguard landlords in terms of grounds for possession. We are seeing a continued erosion of these safeguards. The removal of certainty for a landlord – whether in terms of getting a property back after a fixed period of arrears, or to sell to fund retirement or investment elsewhere in a business or indeed to live in themselves – is a significant shift in the balance of rights between landlord and tenant. Any such consideration should be considered alongside other housing changes and not as part of a Covid recovery Bill.

Conclusion

We believe that the provisions in Part 4 of the Bill are not justified as part of this Bill, whose main policy rationale is public health resilience. Such sweeping changes to the private rented sector would be more appropriately contained in separate housing legislation, where they could be fully scrutinised and consulted upon. A Year 2 Housing Bill is planned to follow on from the *New Deal for Tenants* strategy, and will provide a vehicle for legislative change. We strongly oppose Part 4 of this Bill and believe it should be removed.