



Coronavirus (Recovery and Reform) (Scotland) Bill

Written Evidence to the Local Government and Housing Committee

18th March 2022

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: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities. Our members are significant providers of private rented homes throughout Scotland and will be adversely affected by the provisions contained within this Bill.

Introduction

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 Four 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 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. As an industry that is already facing ever increasing legislation, we believe that these proposals will cause a large number of landlords to sell their properties, severely reducing the number of affordable properties available to rent across Scotland, particularly in rural areas. Others will review lettings policies, such as more stringent checks on tenants for fear of non-payment, making it harder for young people or those on lower income to find suitable 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 knockon impact in terms of mortgages or other borrowings. 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. Attitudes and 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.

Purpose of the Bill

The purpose of the Bill, as stated in the Scottish Government's 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 Four of the Bill fits within these aims. Making all grounds for eviction temporary 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 recently published 2020 Scottish Household Survey, which showed that 94% of households in the PRS were satisfied with it. 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 has stated that including the provisions in this legislation rather than forthcoming housing legislation is to avoid confusion, & that it is the simplest and cleanest way to achieve continuation. We disagree and believe that including them within the Covid Recovery Bill is disproportionate, arguably outwith the scope of the Bill and prevents them being considered alongside other changes to housing legislation. In terms of the confusion claim, other 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 purpose of the Bill and, as such, we believe that it should be removed. Given the recent publication of the SG’s *New Deal for Tenants*, 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 on the Private Rented Sector

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.

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 being there is less housing available at

a time where there is a shortage of good quality accommodation available in rural areas. This 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.

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”. This would seem to underline the lack of evidence and policy rational for such a sweeping change to the private rental sector. 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.

We do not agree 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 rational 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 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.

The Scottish Government does not appear to have considered the scale of the impact this would have on rural communities. As well as reducing the availability of homes for local families, 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 2016 Act 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.

Lastly, we have significant concerns that this legislation is non-compliant with ECHR and will be seeking further legal advice on this matter, including the impact of retrospective nature of changes to existing tenancy contractual terms. As indicated earlier, the implementation of the legislation will likely have a negative impact on the capital value of rental properties, which we believe would either breach ECHR or require compensation from the Scottish Government.