



## Coronavirus (Recovery & Reform) (Scotland) Bill

### Stage 2

Joint briefing for MSPs



## Who we are

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### **About Scottish Land & Estates**

At Scottish Land & Estates (SLE) we want to see a prosperous and sustainable future for rural Scotland, delivering benefits for all. We are a membership organisation for landowners, rural businesses, and rural professionals. We support our members in their delivery of a wide range of benefits for society, the economy and the environment, such as homes throughout rural Scotland. 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.

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### **About the Scottish Association of Landlords**

The Scottish Association of Landlords (SAL) is the largest and only dedicated national organisation that represents landlords and letting agents throughout Scotland. We support and represent our members' interests through providing resources and assistance as well as delivering lobbying and campaigning work.

Contact: Caroline Elgar (Policy Manager) – [caroline@scottishlandlords.com](mailto:caroline@scottishlandlords.com)

### **About NFU Scotland**

NFU Scotland (NFUS) is a membership organisation that represents more than 8,500 farmers, growers and crofters. We work to promote and protect the interests of Scottish agriculture by engaging in all aspects of rural policy that impacts on them. Our members are the backbone of rural Scotland, as food producers and as operators of dynamic rural businesses, but also as key providers of private rented accommodation and tied housing.

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### **About the National Trust for Scotland**

The National Trust for Scotland is Scotland's national charity for conserving our historic and natural heritage. Our staff, members and volunteers support the conservation of over a hundred sites, including some of Scotland's finest landscapes, historic buildings, and collections. Providing residential and holiday accommodation is part of our operations, helping ensure buildings are kept in use, providing income for our charity, and supporting communities, particularly in rural areas.

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## Summary

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This is a **joint briefing** from Scottish Land & Estates, the Scottish Association of Landlords, the National Trust for Scotland, and the National Farmers Union, Scotland.

Together, we seek to offer MSPs our views on the amendments laid at Stage 2 of the Coronavirus (Recovery & Reform) Bill. We are limiting our comments to **amendments relating to Part 4 of the Bill which deals with the private rented sector**.

We shared major concerns about the Bill as introduced at Stage 1. We believe that the provisions in Part 4, as things stand, will have negative effects on both tenants and landlords alike (see background, below). **We now therefore ask MSPs to consider a number of amendments to the Bill**. We have done so in the order of the Marshalled List of amendments for convenience to MSPs.

## Background

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The Scottish Government's Coronavirus (Recovery and Reform) (Scotland) Bill, as introduced at Stage 1, contains measures designed to aid public health following the Covid-19 pandemic. Part 4 of the Bill relates to 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, effectively meaning that there are protracted delays in the process of eviction for even the most reasonable cases, and at the end of proceedings, no guarantee of vacant possession for the property owner. Part 4 also introduces measures in relation to pre-action protocols in respect of evictions relating to rent arrears. The bodies signed up to this briefing are not seeking to amend sections relating to these measures which enshrine good practice in statute. However, we strongly believe that the pre-action protocols should sit alongside the retention of the mandatory rent arrears grounds for eviction.

Our organisations are collectively concerned about the impact of these proposals in terms of supply of homes and the impact on property rights and asset value. We know these measures will cause many landlords to withdraw from an already-shrinking private rented sector, and discourage new landlords from entering the sector. The private rented sector accounts for a significant tranche of Scotland's housing mix, so this will lead to a huge shortfall in homes for rent, particularly in rural areas. We know that many MSPs from several parties share our concerns. Our Stage 2 briefing, like our Stage 1 briefing, is based on legal advice received by SLE; research carried out by SAL, SLE and independent organisations, and feedback from property valuers. The private rented sector 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 world"<sup>1</sup>. Landlords who do not leave the sector will be forced to review letting policies to reduce risk, such as introducing more stringent checks on tenants for fear of non-payment,

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<sup>1</sup> <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)

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. Again, the impact on rural areas will be disproportionate.

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, putting some owners in breach of covenants relating to Loan to Value agreements. 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.

According to research by SAL, in the next 10 years 34% of respondents to a recent survey of landlord members<sup>2</sup> planned to reduce the size of their PRS portfolio and just 19% planned to increase the number of PRS properties they own. The remainder are either unsure about their plans or intend to keep their portfolio at the same size. Members planning to reduce their portfolio size were asked the reasons why this was their intention. A clear majority cited increasing regulation in the sector (63% of those planning a reduction in property numbers) and perceived hostility towards landlords from government/politicians (60%) as factors in their plans.

Fundamentally we will lose much needed homes across Scotland. Part 4 of this Bill should concern everyone with an interest in the private rented sector – landlords and tenants alike. We believe it should be amended.

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### **Section 33 – Private residential tenancies: discretionary eviction grounds**

**Amendments 70,71, 72, 73, 74, 75, 77, and 78** would remove the current provisions within the Bill making grounds for eviction discretionary (on a permanent basis). These include evicting a tenant because the landlord intends to sell the property, intends to refurbish the property, intends to live in the property, or plans to use the property for a non-residential purpose – we believe all of these grounds for eviction are legitimate, and should be mandatory.

Without amendment, the provisions within the Bill could affect the ability of a landlord to meet enhanced Energy Performance Certificate requirements through refurbishment, or for NTS and others to meet their charitable obligations to conserve and look after property which at times cannot be done with the tenant in situ. Removal of the mandatory ground when the landlord intends to sell is of particular concern to SAL as it could prevent the sale of an investment property required to fund the owner's retirement leading to financial hardship..

**We strongly support these amendments in the name of Edward Mountain. In particular, we would urge MSPs to vote for amendments 70 (landlord intends to sell), amendment 72 (landlord intends to refurbish) and amendment 73 (landlord intends to live in property).**

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<sup>2</sup> Survey of SAL members in February 2022; 635 responses representing 4,214 properties

**Amendment 76** would allow a landlord to end a tenancy where the landlord is an employer and where he or she wishes to install an employee in the property. This is especially important in rural Scotland, with farm properties being a particularly strong example. Both NFUS and SLE continue to campaign for the reinstatement of this ground as its removal has led to properties being left empty to ensure that they are available for future employees. Other examples may include a need to employ someone as a caretaker for a historical property, for seasonal or year-round work.

The importance of the provision of housing to attract employees is well documented and is key to economic growth, especially in rural Scotland.

**We therefore strongly support amendment 76 in the name of Edward Mountain. As a second choice, we would also support later amendment 147 in the name of Murdo Fraser, which is similar but has a tighter scope on the range of employment for tenants.**

**Amendment 79** deals with rent arrears. We also believe that rent arrears should remain a mandatory eviction ground, both for the tenant (it is not in a tenant's interests to build up significant debts) and for the landlord (losing income). We are in favour of pre-action protocols, designed to help the tenant to pay for their housing or arrange a plan with their landlord, and to help the landlord recover their payment. The protocol should be exhausted well before moves to evict occur. But once the protocol is exhausted, an absolute right to evict must be available.

**We strongly support amendment 79 in the name of Edward Mountain.**

#### **Amendments 80 and 81**

These amendments in turn would leave criminal (80), and antisocial (81), behaviour mandatory grounds for eviction, which seems sensible to us as it protects landlords and others in the community from negative behaviour caused by tenants. While no landlord would hope to ever have to use these mandatory grounds, and would hope that their existence is enough of a deterrent, it is important they exist as a guaranteed but last resort.

**We strongly support amendments 80 and 81 in the name of Edward Mountain.**

#### **Amendment 82**

Amendment 82 strikes out Section 33 of the Bill in its entirety. The organisations who are party to this briefing continue to believe that these proposals should not be included within the Bill and should be considered as part of the forthcoming changes to the PRS.

**We strongly support amendment 82 in the name of Edward Mountain.**

#### **Amendment 146**

Amendment 146 is similar to amendment 76 in its effect; allowing a landlord to evict a sitting tenant to install a tenant who is an employee. A certain burden of evidence is also required that this is indeed the reason for eviction. The reasons for our support mirror those given in relation to amendment 76.

**We therefore support amendment 146 in the name of Edward Mountain.**

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## Section 34 – Assured tenancies: discretionary eviction grounds

### Amendment 147

Murdo Fraser’s amendment 147 has the same effect as amendment 146 in the name of Edward Mountain, only the types of profession allowed for a new tenant in Mr Fraser’s amendment 147 are limited to agricultural work, forestry work, or rural land-based. In the views of those signed up to this joint briefing this is too prescriptive and could preclude some occupations by definition, such as historic property caretakers, which may be rural but are not necessarily rural land-based. NFUS and SLE welcome the recognition of the specific challenges faced by farming, forestry and land-based employers and the need to ensure housing is available for incoming workers.

**We therefore support amendment 147 in the name of Murdo Fraser as a second choice to amendment 146.**

### Amendment 84

This amendment removes all changes to the Housing (Scotland) Act 1988 which sets out the grounds for eviction in assured tenancies (i.e. those pre-existing Private Residential Tenancies from 2017 onwards).

**We strongly support amendment 84. Failing this we support the following individual amendments:**

**Amendment 85** – (Ground 1) landlord intends to live in property – **strongly support**

**Amendment 86** – (Ground 2) lender wishes to sell the property – **strongly support**

**Amendment 87** – (Ground 3) short tenancy duration expires without renewal – **support**

**Amendment 88** – (Ground 4) similar to Ground 3 but for slightly longer tenancies - **support**

**Amendment 89** – (Ground 5) house need for religious or missionary occupation – **support**

**Amendment 90** – (Ground 6) demolition or major refurbishment – **strongly support**

**Amendment 91** – (Ground 7) death of a tenant – **support**

**Amendment 92** – (Ground 8) three months’ rent arrears at time of hearing – **strongly support**

### Amendment 93

Amendment 93 deletes the whole of Section 34 of the Bill. Given our support for all of the preceding amendments 147 and 84-92 –

**We strongly support amendment 93 in the name of Edward Mountain.**

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## Section 35 – Assured tenancies: discretionary eviction grounds

### Amendment 94

Amendment 94 eliminates all the subsection provisions which would alter the Rent (Scotland) Act 1984. It is our understanding that due to the way the Bill is drafted, the committee cannot have an individual vote to retain each mandatory ground. Instead, what is required is to consider the provisions “back to front” i.e. the structure of the 1984 Act is retained and the amendments move on what grounds becomes discretionary instead. In practice, that would mean moving an amendment but voting against it to retain it as a mandatory ground. This would happen in the event that amendment 94 is supported. If it is not, we understand that the rest of the amendments 95-105 would fall.

We would prefer to back amendment 106 before this one. However –

**We strongly support amendment 94 in the name of Edward Mountain. Failing that we would wish to see the following amendments dealt with as such:**

**Amendment 95** – (Case 11) landlord wishes to occupy the property – **strongly support**

**Amendment 96** – (Case 12) landlord occupation upon retirement – **strongly support**

**Amendment 97** – (Case 13) short tenancy duration expires without renewal – **support**

**Amendment 98** – (Case 14) similar to case 13 but slightly longer tenancy duration – **support**

**Amendment 99** – (Case 15) similar to case 13 – **support**

**Amendment 100** – (Case 16) reoccupation for religious worker – **support**

**Amendment 101** – (Case 17) reoccupation for agricultural tenant – **strongly support**

**Amendment 102** – (Case 18) similar to case 17 – **strongly support**

**Amendment 103** – (Case 19) reoccupation upon death of agricultural tenant from widow or other person not directly employed in the same agricultural business – **strongly support**

**Amendment 104** – (Case 20) house has been adapted for someone with special needs and adaptations are no longer required and landlord wishes to occupy – **strongly support**

**Amendment 105** – (Case 21) the owner is or was a member of the armed forces and wishes to occupy – **support**

#### **Amendment 106**

This amendment entirely removes all of the provisions of the Bill under Section 35, which modifies the Rent (Scotland) Act 1984. For the reasons we supported keeping each of the grounds in the 1984 mandatory –

**We strongly support amendment 106 in the name of Edward Mountain.**

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## **Section 36 – Private Residential Tenancies: pre-action protocol**

### **Amendment 107**

It is our position, based on experience, that no reasonable landlord wants to evict a tenant without good reason. Eviction is a last resort. Eviction means a tenant loses their home, and a landlord loses their income for an indeterminate period. We believe that responsible landlords and responsible tenants should engage in multiform types of mediation and compromise long before an eviction order is sought.

We are therefore supportive of the pre-action protocol measures in this Bill. However, this pre eviction action should be tied to the retention of the mandatory rent arrears grounds for eviction as per Mr Mountain's earlier amendments and refer MSPs to our comments on these. We **therefore do not support amendment 107** which seeks to eliminate the pre-action protocol obligations on landlords in Private Residential Tenancies, but fully appreciate the policy rationale behind them.

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## **Section 37 – Assured tenancies: pre-action protocol**

### **Amendment 108**

As with amendment 107, **we do not support amendment 108**, which removes a duty of landlords to engage in a pre-action protocol before evicting a tenant in pre-2017 tenancies. Again we believe that retaining a mandatory ground for eviction – rent arrears – would be a preferable compromise to this amendment.

### **Amendment 64 and 65**

Amendments 64 and 65 ensure the existing arrangements (as provided in the 2020 Acts) will continue to apply to existing eviction proceedings, while the new arrangements (as provided for in the Bill) will apply to prospective eviction proceedings. This avoids a hypothetical situation previously warned about by the Scottish Association of Landlords that an appeal to the tribunal could be made now based on a certain ground for eviction, then after months of waiting, the case is heard by tribunal but the ground no longer exists. Eviction proceedings being taken as meaning the eviction notice and the Tribunal proceedings which flow from that notice. The Scottish Government assumes the date on which the eviction proceedings were raised, as the date on which the initial eviction notice was served on the tenant.

**We therefore strongly support amendments 64 and 65 in the name of John Swinney.**

We would like to see a further amendment to retain rent arrears ground 8 from the 1988 Act. This will avoid a scenario where a landlord serves notice on this ground without realising that it has been withdrawn (which would result in an eviction application being rejected at tribunal stage). Other provisions in this Bill, if approved by Parliament, would mean that ground 8 would become a discretionary ground rather than a mandatory one.

### **Amendment 66**

Amendment 66 proposes an immediate rent freeze in the private rented sector. We believe that there is no policy rationale for a rent freeze. We believe that this is beyond the scope of this Bill and if it is to be

considered then would be more appropriately placed in any future Housing Bill discussion, which is already likely to include provisions in relation to rent. **We do not support amendment 66 in the name of Mercedes Villalba.**

### **Amendments 109 and 110**

With these amendments, Mark Griffin intends to seek a broad base of evidence for future legislative revision or assessment. As all the organisations party to this briefing have repeatedly said, and as highlighted by SPICe, evidence has been sorely lacking in the policy rationale behind Part 4 of this Bill and on the sectoral impact.

**We strongly support amendments 109 and 110 in the name of Mark Griffin.**

### **Amendment 111**

While we understand the policy rationale, and agree that housing provisions would best be dealt with in a forthcoming Housing Bill, **we do not take a position on amendment 111 in the name of Edward Mountain.**

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**For more detailed information**

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