

Minister for Housing and Welfare
Margaret Burgess MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot



Jim Eadie MSP
Convener
Infrastructure and Capital Investment Committee

ici.committee@scottish.parliament.uk

3 February 2016

Dear Jim

Thank you for the Infrastructure and Capital Investment Committee's Stage 1 report on the Private Housing (Tenancies) (Scotland) Bill. Ahead of the Stage 2 consideration of the Bill by the Committee on Wednesday 10th February, I enclose details in the annex of the Scottish Government's response to the recommendations made in the report.

I look forward to continuing to work with the Committee and the wider Parliament in delivering through the Bill a new, modern tenancy for the private rented sector.

I hope this is helpful.

Kind regards



MARGARET BURGESS

SG Response to Infrastructure and Capital Investment Committee Stage 1 Report Recommendations

(For ease of reference, the Committee's comments are shown in **bold** and paragraph numbers have been retained for ease of reference)

22. The Committee supports the Scottish Government's intention of creating a clearer and simpler tenancy regime for the modern private rented sector which is fit for purpose.

The Scottish Government welcomes this endorsement.

41. While the majority of the Committee agrees that the no-fault ground should be removed, it calls on the Scottish Government to continue to work with landlords and letting agents during the Bill's passage through the Parliament to help ensure that the 16 new grounds provide an appropriate and proportionate balance between tenants and landlords.

The Scottish Government welcomes the widespread support for not including a 'no-fault ground' under the new tenancy, which it considers to be central to achieving its key aim of improving tenants' security of tenure. The Scottish Government has had extensive and lengthy engagement with landlords and letting agents during the development of the Bill and considers that the repossession grounds are comprehensive and robust.

56. The majority of the Committee calls on the Scottish Government to give further thought as to which of the grounds for repossession should be mandatory and which discretionary, as well as the degree of flexibility the first-tier Tribunal might have in its decision making process.

The Scottish Government notes the concerns raised by stakeholders on the mandatory and discretionary grounds for repossession. 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.

The Scottish Government is giving this matter further thought and will bring forward amendments at stage 2 to change the 'legal impediment to let continuing' repossession grounds (part 4 of schedule 3 to the Bill) from mandatory to discretionary. The specific grounds are landlord has ceased to be registered; HMO licence has been revoked; and overcrowding statutory notice has been served.

86. The Committee recommends that the Scottish Government consider options for enabling tenancies to be set for agreed terms in the Purpose Built Student Accommodation sector.

The Scottish Government has listened carefully to the concerns of stakeholders and the Committee on this matter. The Scottish Government recognises that the recent growth of Purpose Built Student Accommodation (PBSA) has provided much needed new accommodation for students. PBSA has been developed for the specific purpose of providing bespoke accommodation that is similar in character to the accommodation Higher and Further Education

Institutions provide, which is exempt from the provisions of the Bill. Indeed, some of it is used by the operators of PBSA to meet nomination agreements with Higher and Further Education Institutions to ensure that first-year students are guaranteed satisfactory accommodation when they arrive at university. The Scottish Government has concluded that such accommodation is not part of the mainstream PRS, and should not be treated as such for the purposes of the Bill. Therefore, it will bring forward an amendment that will have the effect of exempting PBSA premises from the Bill in the same way as applies already to accommodation provided by Higher and Further Education Institutions. Among other things, this will ensure that PBSAs can continue to provide accommodation for students through nomination agreements.

87. The Committee recommends that the Scottish Government give further thought to whether having a uniform private residential tenancy for all tenants suitably takes into account the needs of students and the requirement of appropriate accommodation for that sector.

The Scottish Government has listened carefully to and understood the arguments for and against how the new tenancy will work for students. The Government wants to ensure all tenants in the private rented sector have the same rights and protections. The Government considers there to be significant risk associated with seeking to provide for different tenancies for specific tenant groups, including practical challenges in enforcing the regulation of these. As Shelter Scotland note in their recent [briefing](#), “a single tenancy for the private rented sector is vitally important as to set down a different tenancy type for specific tenant groups risks creating unhelpful loopholes which could undermine security of tenure for all private tenants”. Therefore, the Government is not persuaded that students who rent in the mainstream PRS should be treated any differently to other tenants under the new tenancy.

88. The Committee further recommends that the Scottish Government give further investigation to the particular needs of the tourism sector in areas such as Edinburgh and whether the proposed changes in the Bill might have unintended consequences in reducing the availability of accommodation during peak periods, such as the Edinburgh International Festival.

The basic principle of the new tenancy is that when a landlord rents out their property to a tenant it becomes the tenant’s home, over which they must have security. Where a landlord looks to rent their property as a holiday let, for example during the summer months, they will only be able to do this under the new tenancy if one of the repossession grounds apply or the sitting tenant has provided their notice to leave. The Bill sets out the statutory minimum period for a tenant’s notice that he or she is leaving. Such notice can be given at any point after the tenancy has begun, to give the landlord more notice

The impact on ‘holiday-lets’ was assessed in the Bill’s [Business and Regulatory Impact Assessment](#), which is available on the Scottish Government’s website.

100. The Committee therefore calls on the Scottish Government to ensure that the anti-social behaviour and all other grounds for repossession are reviewed post-implementation so that they might be improved, with appropriate parliamentary oversight, should they prove ineffectual or impractical in practice, or have unintended consequences.

The Scottish Government agrees with the Committee that the grounds should be reviewed post-implementation as a matter of good practice. The Scottish Government will undertake a post-implementation review within 5 years of commencement.

104. The Committee agrees that the approach taken in the Bill with regard to the death of a tenant should mirror that already in place in the social rented sector. The Committee also supports the Scottish Government's intention to lodge an amendment at Stage 2 to ensure that if there is no one to succeed the tenant, the tenancy can be ended without the need to appoint an executor.

The Scottish Government will bring forward an amendment at stage 2 to ensure that if there is no one to succeed the tenant, the tenancy can be ended without the need to appoint an executor.

113. The Committee recommends 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 Bill as introduced provides a ground for repossession where a tenant has been in rent arrears for 3 consecutive months. Where the arrears have been for 1 month or more during this period, the ground is mandatory. For example, a tenant could have up to 3 months' full rent arrears over the 3 consecutive months. However, if the arrears are caused by a delay in payment of benefits that is not the fault of the tenant, the mandatory ground for eviction is not met.

The Scottish Government considers that the three month period is sufficient and has struck the right balance. Landlords need to be confident in letting out their property that they will receive rent, and should not have to wait any longer before referring a case to the Tribunal. But it is recognised that rent arrears can also be a problem for tenants who might be suffering financial hardship. That is why tenants will be provided with information on their rights and where to get money advice, as part of the notice to leave.

The Scottish Government considers that more time should be provided for tenants to pay off their rent arrears and will bring forward an amendment at stage 2. The amendment will make eviction for rent arrears mandatory only if the tenant is still in arrears by one month's rent, or more, at the beginning of the day on which the Tribunal considers the application for an eviction order. If, by then, the tenant has paid off his or her rent arrears in full or the amount outstanding is less than one month's full rent, the repossession ground which will apply will be discretionary instead of mandatory.

114. The Committee nevertheless asks the Scottish Government to ensure that the tribunal process is as efficient and transparent as possible to help provide clarity and certainty for both the tenant and the landlord.

The Scottish Government accepts this recommendation, which is consistent with its objectives for the Tribunal. It will ensure that the secondary legislation enabling the Tribunal achieves the aim of the recommendation.

121. The Committee recommends that the Scottish Government should work closely with representatives of those representing the interests of landlords in rural areas to ensure that the Bill takes into account their particular needs whilst keeping within the overall aims of the Bill in relation to security of tenure.

The Scottish Government intends to continue working closely with representatives of those representing the interests of landlords in rural areas, to ensure that the tenancy is fit for all communities. Officials met with representatives of Scottish Land and Estates on Monday 18 January, following the publication of the Committee's report, to discuss the Bill and the Committee's recommendations.

136. The Committee therefore calls on the Scottish Government to consider bringing forward suitable amendments at Stage 2 which would enable those in abusive relationships to leave a tenancy without facing financial penalties from their landlords.

The Scottish Government shares the Committee's concern and has considered carefully how to address it. It has concluded that the existence of an initial tenancy period could make it difficult for someone in an abusive relationship to leave a tenancy without incurring financial penalties. In light of that it will bring forward an amendment at stage 2 to remove the initial period from the new tenancy.

140. The Committee notes and is content with the proposed powers which will allow the Tribunal to take action where a landlord fails to provide the required tenancy information.

143. The Committee notes and endorses the view of the Delegated Powers and Law Reform Committee on this matter.

159. The Committee notes, however, that there were strong views expressed in evidence that the sanctions for wrongful termination were not strong enough. It therefore calls on the Scottish Government to reflect on whether the level of the three months' rental penalty payment sufficiently reflects the financial burden elsewhere, including the costs to local authorities for homeless applications, the cost of paying a new deposit (particularly where the original deposit has yet to be recovered) and emotional distress.

The Bill sets the level of compensation that the Tribunal may impose on a landlord for wrongful eviction of the former tenant at a maximum of 3 months' rent. The Government has also recently consulted on a possible fine of up to £10,000 or up to 12 months in prison where a false statement is made to the Tribunal. The landlord may be found guilty of an offence under section 22 of the Rent (Scotland) Act 1984 for an illegal eviction (the penalty is a fine of up to £10,000 or imprisonment).

The Scottish Government will bring forward an amendment at stage 2 to ensure that relevant local authorities receive a copy of any wrongful termination orders issued by the Tribunal. This will enable authorities, who have responsibility for administering landlord registration, to take account of the Tribunal's findings when considering whether a landlord is a fit and proper person.

The Scottish Government considers that the full range of the sanctions that could apply to a landlord that wrongfully terminates a tenancy are sufficient.

161. The Committee would welcome clarity on how the Scottish Government will ensure that the provisions in the Bill are drafted to complement existing legislation and how it will ensure that in cases handled by the Tribunal where criminal activity has been identified, these are passed to the Procurator Fiscal to ensure they are punishable under the law.

The provisions in the Bill are drafted to complement existing legislation. Where a wrongful termination order is granted by the Tribunal, the eviction may be the subject of a separate report to the Police in terms of section 22 of the Rent (Scotland) Act 1984.

162. The Committee would also welcome clarity as to whether the Scottish Government intends to ensure that if a landlord is persistently in receipt of wrongful termination orders this would result in the removal of their landlord registration status.

The Scottish Government will bring forward an amendment at stage 2 to ensure that relevant local authorities receive a copy of any wrongful termination orders issued by the Tribunal.

In the new statutory guidance on landlord registration for local authorities, due to be published later this year, the Government will make it clear that local authorities should consider any wrongful termination orders when determining landlord registration. This will enable authorities, who have responsibility for administering landlord registration, to take account of the Tribunal's findings when considering whether a landlord is a fit and proper person.

166. Given the concerns raised by witnesses, the Committee calls on the Scottish Government to provide further information and guidance on how it would expect determinations on how wrongful termination to be evidenced. For example, how can the correct balance be struck between applying sanctions to those landlords with ill-intentions, but not to those who intended to evict for a specific purpose, and where that purpose could not be fulfilled due to a genuine and reasonable change in circumstances.

167. The Committee would also welcome an indicative timeline for when any such guidance on this matter will be available.

As outlined in the Financial Memorandum which accompanied the Bill on introduction, the Scottish Government will undertake a large scale marketing campaign to make tenants and landlords aware of their rights and responsibilities under the new tenancy. This will provide the guidance that the Committee wishes to see. The Government expects to commence work on this in Spring 2017.

The Tribunals (Scotland) Act 2014 places a duty on Scottish Ministers to uphold the independence of the members of tribunals and the Scottish Government cannot seek to influence the decisions of the Tribunal nor issue instructions or statutory guidance to Tribunal members on how they are to reach their decisions. This would be a matter for the Lord President or Tribunal President.

175. The Committee would welcome clarity on when the Scottish Government expects to consult on the functions and operation of the Tribunal, together with an anticipated timeline for developing and putting in place the Tribunal system up to the point when it becomes operational.

The Minister for Housing and Welfare wrote to the Committee regarding this matter on 19 January. The Government is still intending to introduce the First-tier Tribunal Housing and Property Chamber in late 2016. The Chamber will hear cases transferred from the private rented housing panel and homeowner housing panel. Letting agent and PRS cases are now expected to be heard from December 2017. The Government will consult on the functions and operation of the Tribunal with regard to letting agent and PRS cases, later this year.

The Government still intends to commence the new tenancy at the end of 2017 and will ensure that the commencement date coincides with the date on which the Tribunal commences hearing PRS cases.

176. The Committee also calls on the Scottish Government to provide it with a response to the specific concerns raised by the Scottish Association of Landlords with respect to the timings associated with rent arrears and an application to the Tribunal.

The Bill as drafted allows a landlord to serve a Notice to Leave on a tenant as soon as the tenant falls into rent arrears. The Notice to Leave will include signposting to sources of money advice. The landlord cannot make a referral to the Tribunal until the tenant has been in rent arrears for three continuous months. However, if the arrears are caused by a delay in payment of benefits that is not the fault of the tenant, the mandatory ground for eviction is not met.

This will allow landlords to take action right away. Tenants will receive a notice which provides sources of money advice and information, allowing the tenant to use the time available to get help with any financial issues and repay arrears.

187. The Committee would welcome clarification of support which will be available to those wishing to access the Tribunal and specifically whether legal aid will be available.

The Scottish Government's policy is for a Tribunal system where legal representation is not the norm and where most people can engage directly with the Tribunal. However, the Government recognises that some of the cases which will be heard may benefit from legal or other forms of representation and is considering what form of support might be most appropriate for parties bringing cases in the Tribunal. The Scottish Government will include proposals for representation as part of its consultation on how the Tribunal will operate. Representation policy is part of the operational detail of the Tribunal, which will be subject to a full public consultation with all interested parties later this year.

188. The Committee also notes the Finance Committee’s recommendations that indicative figures, setting out different scenarios depending on future ministerial decisions in respect of Tribunal fees and legal aid, should have been provided in the Financial Memorandum. The Committee calls on the Scottish Government to provide a more accurate reflection of the costs involved.

The Scottish Government has provided a full assessment of the costs in the Financial Memorandum, where this was possible. A more detailed assessment of costs will be provided as the operational detail of the Tribunal is developed, including representation and fees. This will form part of a consultation later this year.

Representation and fees policy will be set in place by secondary legislation and the Parliament will have the chance to scrutinise the details of such proposals, including costs, when these are brought forward.

190. The Committee notes COSLA’s comments that the legislation could place an extra burden on the resources of local authorities and it would welcome a response from the Scottish Government to COSLA’s concerns.

The Bill does not place new duties on Local Authorities. As outlined in the Financial Memorandum, the Scottish Government does not expect there to be any additional costs for local authorities from the private residential tenancy. The Scottish Government will however continue to work with Local Authorities and if they want to raise matters around implementation and present a good case to Government for providing more help and assistance, we would be happy to discuss this further with them.

The Scottish Government will also support advice and representative bodies in the sector to train landlords, tenants and other interested parties on how the new tenancy will operate.

200. The Committee calls on the Scottish Government to indicate whether appropriate third parties could be empowered to take forward cases against landlords to the Tribunal on behalf of the tenant, with the full agreement and involvement of the tenant and, if so, how this could be done.

There is nothing to stop third parties advising and assisting tenants in preparing an application for the Tribunal. The Tribunal will be a more accessible, less adversarial form of redress than currently exists through the Sherriff Courts and this should allow tenants to feel more confident in making a case to the Tribunal.

206. The Committee notes the various comments made on the potential for the Tribunal to adjourn cases. It would welcome an update from the Scottish Government on how it will assess whether the Tribunal will have the ability to do so.

The Scottish Government can confirm that section 72 of the Tribunals (Scotland) Act (2014) gives Tribunals the power to adjourn cases.

221. The Committee would welcome clarity from the Scottish Government on how the rent increase mechanism will work in practice. In particular, it calls on the Scottish Government to respond to comments made by the Association of Residential Landlords on the adequacy of the 3 months' notice period for increasing rents.

Rents can only be increased once a year, with three months' notice, designed so tenants have advance notice of changes in their rent to enable them to budget accordingly.

Tenants will also be able to seek adjudication from Rent Service Scotland for unjustified rent rises that take their rent beyond the open market rate.

The Scottish Government considers that three months' notice of a rent increase is sensible and reasonable and gives tenants sufficient time to budget for any changes.

72% of the stakeholders who responded to the Scottish Government's second consultation agreed that a tenant should receive 12 weeks' notice in advance of a rent increase. This included the majority of landlords and the Scottish Association of Landlords.

222. The Committee would also welcome the Scottish Government's response to comments made by Crisis regarding the liability for the payment of rent increases and whether it would consider if the Tribunal should have discretion to allow the period to pay unpaid rent increases to be longer than 28 days on receipt of appeal and how this could be achieved, given that this time period is prescribed in section 26 of the Bill.

The Scottish Government notes the Committee's recommendation and is considering this matter further.

223. The Committee also calls on the Scottish Government to indicate how it will address the issue of sitting tenants currently paying excessive rents who may not have recourse to the Rent Officer and Tribunal.

Section 25 of the Housing (Scotland) Act 1988 currently enables a tenant with a statutory assured tenancy, and who has received a rent increase notice from the landlord, to refer a case to the Private Rented Housing Committee for a ruling on the rent level.

For those tenants with a Short Assured Tenancy, section 34 of the 1988 Act enables them to apply to the Private Rented Housing Committee for a ruling on the rent, which, in the Committee's opinion the landlord might reasonably be expected to charge under the tenancy agreement.

238. The Committee notes that the rent-pressure zone measures are intended to be a discretionary tool for local authorities to target issues of rent affordability in their area. However it would welcome more information on why the Scottish Government considers the measures are necessary given that it is looking to increase supply.

Our evidence suggests that rents generally are not increasing significantly and in most of Scotland average private rents have actually been falling in real terms over recent years. Where they occur, increases vary in the light of local market conditions, with areas of robust economic activity and income growth seeing high levels of demand reflected in higher-than-average increases.

The Scottish Government is not proposing general regulation of rents, it is proposing specific measures that are justified to protect tenants from excessive increases in hot-spot areas.

The Scottish Government wants to see supply grow to meet demand in areas where rent increases have been limited. But this needs to be inclusive, sustainable growth. These provisions respond to calls that rents in the private rented sector are increasing excessively in some areas, in particular as this may be pushing many tenants in these areas into poverty. During the second consultation, over half of Local Authorities that responded were supportive of these new discretionary powers.

239. The Committee, however, welcomes the Minister's commitment to increasing housing supply across all tenures and would welcome an update on the Scottish Government's action plan for increasing supply.

The Scottish Government is determined to increase and accelerate housing supply across all tenures and support the industry and local authorities to deliver their housing priorities with quality homes in mixed communities that fit local needs. Scotland is at the forefront of innovative housing delivery, and will continue to be creative with the powers and levers available. Guarantees, loans and new sources of private funding have complemented the more traditional ways of funding affordable housing.

In terms of what the Scottish Government has achieved and seeks to achieve, it has invested £1.7 billion in affordable housing over the lifetime of this Parliament and has met and exceeded its target to deliver 30,000 affordable homes. This includes the 20,000 social rented homes target and within that the 5,000 council homes target. The target for the next five years will be to deliver at least 50,000 affordable homes. These additional homes will be backed by a £3 billion investment.

Further, on 21 January the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights announced £160m of funding for 2016/2017 to help support up to 5,000 households to buy their own home. This includes £80 million for our established open market shared equity scheme to help up to 2,000 first time buyers on low to moderate incomes, and £80 million for the Help to Buy (Scotland) Affordable New Build Scheme to help up to 3,000 households buy a new build home.

The Minister for Housing and Welfare announced on 25 January that housing subsidies are being increased for affordable homes for rent being delivered by councils and registered social landlords (RSLs) over the next three years. Grant subsidies have been increased by up to £14,000 for each new home with incentives being offered for those homes achieving the higher greener standard. This means for RSLs in city and urban areas subsidy goes up from £58,000 to £70,000, and for council homes from £46,000 to £57,000.

The Scottish Government is aware that to deliver new housing supply at the pace it would like to it needs a responsive planning system to support these ambitions. Therefore it has launched an independent review of the planning system with a focus on delivering a quicker, more accessible and efficient planning process with the emphasis on increasing the delivery of high quality homes across the country.

The Scottish Government's comprehensive housing strategy means it ensures its policy covers all tenures of housing. So as well as delivering new social rented homes and helping people to get a foot on to the property ladder, it is also delivering mid-market rental homes, and transforming the private rented sector through this Bill.

251. The Committee calls on the Scottish Government to provide further information on whether it has evidence to show that local authorities are likely to use the rent-pressure zone measures.

Of the 17 local authorities that responded to the second consultation, which set out the measures, over half were supportive. As the City of Edinburgh Council noted to Committee, these are welcome 'new tools in the toolbox'.

253. The Committee would welcome further information on proposals to encourage private sector investment. The Committee also notes concerns that investors may choose not to invest in rent control zones, or potential zones and calls on the Scottish Government to provide information on how this will be monitored and prevented.

The Scottish Government recognises the need to increase housing supply across all tenures. As set out in the PRS Strategy, the Scottish Government wants to attract new institutional led investment to build more new homes for private rent. However, this needs to be inclusive, sustainable growth.

The Scottish Government has engaged extensively on rent pressure zones, and responded to concerns raised by some investors by clarifying in the Bill the criteria for any rent pressure zone designation, as well as the minimum cap on rent that may be set. This will help investors assess and plan their investment. The Scottish Government is also working in partnership with the industry to attract further new investment. This includes the Homes for Scotland PRS Champion's Working Party, which is considering what can be done to attract more institutional investment. The PRS Working Party will provide a timetable as their plans develop and they engage further with the industry.

The Scottish Government will continue to engage with investors to mitigate their concerns and address any issues should they arise.

262. The Committee calls on the Scottish Government to provide an update on how it will improve the collection of data on the rental market and how it will make this information available.

Section 29 of the Bill in relation to rent adjudication places a duty on Rent Service Scotland to publish both the rents they determine and those rents they have taken into account reaching that determination. This increased activity on the collection of rent data and the duty to publish this information will improve the rental market data available to the public.

In order to meet this responsibility, Rent Service Scotland will increase engagement with landlords and letting agents to provide Rent Officers with data about the properties they let. Increased collection activities on rent data will start 12 months in advance of the commencement of the provisions in the Bill, in preparation for the new scheme.

Local Authorities will be able to use a range of evidence in support of their Rent Pressure Zone application to Scottish Ministers. This will include data on rents and how these high rent rises are having a detrimental impact on tenants and on increased housing pressure in the area.

269. The Committee notes comments received in evidence regarding the suitability of using CPI in the calculation of rent caps. It calls on the Scottish Government to respond to these concerns and whether it would consider alternative methods for calculating the rent caps as provided for in Section 34 of the Bill.

CPI is the standard inflation measure that is reported by the Bank of England. It is also a widely used and recognised official statistic.

The Bill provides for Ministers, if they consider it necessary, to bring forward regulations to change the reference from CPI to another prices index. At present, Ministers consider that CPI is the most suitable index.

273. The Committee notes that the measures, as drafted, only apply to sitting tenants in areas which are designated as rent-pressure zones. The Committee is not minded, based on the evidence received, to call for these to be extended beyond sitting tenants. However it would welcome further information from the Scottish Government on how inflated rent increases might be prevented in situations where tenants move between tenancies.

The Scottish Government welcomes the Committee's support and agrees that the measures should not be extended past sitting tenants, and that initial rents should remain market led. To intervene in rent-setting between tenancies would mean intervening in initial rents and that would be extending the measures significantly. The Scottish Government believes that these measures are proportionate and balanced, and avoid harming supply – which is ultimately the key to addressing affordability of initial rents.