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18 May 2020

**Briefing by Scottish Property Federation for Stage 2 of the Coronavirus (Scotland) No.2 Bill**

**Background**

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. We also include within our members major operators and investors in purpose-built student accommodation.

**Overview**

2. The SPF broadly welcomes the measures taken in the Bill to address issues such as extending the period in which to claim Additional Dwelling Supplement and extending the duration of listed building consents. We restrict our detailed comments therefore to the proposals on student tenancies.

3. We are not writing to oppose the introduction of a minimum legal right for students to exit their tenancy for coronavirus related reasons. Our briefing highlights that considerable effort has been made by major providers of student accommodation to support students to be released from contracts. But we do support the suggestion by Graham Simpson to clarify the wording of the 7-day notice period to terminate, to ensure this pertains only to student tenancies for the remainder of this (i.e. the 2019/20) academic year.

4. Our reading of the statement and policy memorandum behind the introduction of the two notice periods is that the 7-day period is shorter because it relates to tenancies for this academic year. The second notice period, of 28-days relates to tenancies for the next academic year (2020/21) and again for coronavirus related reasons. Currently the legislation (as drafted) risks the 7-day notice period catching bookings and tenancies for the next academic year.

5. Our second key issue is that currently both students and providers of student accommodation are exempt from paying council tax charges, although in the case of providers, this exemption is restricted to four months (to cover the summer vacation period). We believe it is only fair therefore that where related to coronavirus reasons, that exemption is extended for providers who have done the right thing to support students by releasing them early fromcontracts and/or who are unable to let rooms for coronavirus related reasons. This is not a cost to local authorities because council tax is not normally paid for these properties to the extent that they are let to full time students, or only empty during the summer period for no longer than 4 months.

**Minimum notice to end tenancy**

**Amendment 15 (Graham Simpson MSP)**

1. Student tenancies are based on academic years – often for 42 or 51 weeks depending on the student’s requirements. These tenancies are not subject to the regular PRS 2016 Act legislation because the university or private provider absolutely needs accommodation it can guarantee for incoming students, and it could not do this if existing student tenants had unlimited security of tenure. The PRS 2016 legislation would also contradict existing planning restrictions for these buildings. PBSA accommodation is usually distinctive in its use and on its occupancy. In general, is not usually available to non-students and therefore unlike regular PRS tenancies, it is not open to the wider residential market.

2. Private student accommodation providers have already supported large numbers of students to be released from their contracts this academic year to return home for coronavirus related reasons. We welcome the Minister’s acknowledgement of this as stated at Stage 1. This support has allowed students to leave tenancies without any need for legal processes. Indeed, many providers of purpose-built student accommodation have also gone beyond the proposals in this legislation and offered release from contracts for next year, where courses are terminated or run online, or amending agreements if courses are delayed.

3. In all, research provided to SPF estimates private providers in Scotland have waived some £59m of student rent because of coronavirus related reasons, whereas universities have waived some £38.5m. This is even though private providers have slightly fewer beds than their university accommodation counterparts (28,315 compared to 30,552), although we believe all universities in Scotland have released their students from tenancy contracts.

4. We have questioned the government’s drafting of the 7-day notice period because we believe it is loosely drafted. The intention appears to be to provide a statutory 7-day notice for students to leave tenancies in this academic year, with a 28-day notice period for the next academic year, which would be analogous to the PRS tenancy notice period in the regular market. We understand that the government argues that because students entered a contract before coronavirus then they are happy for the 7-day notice period to co-exist alongside the 28-day notice period. However, not only is the argument bizarre, because there will be at least 3 months still to run until the next academic year after this Bill is expected to come into effect, it is also deeply unfair to both purpose-built student accommodation operators, students seeking accommodation next year and universities themselves. This is because the government drafting effectively allows students to not decide whether to terminate a tenancy until there is little or no chance of that room being re-let and made available to students whose courses may still be on next year.

5. We ask the committee to therefore support Graham Simpson’s re-worded 7-day notice clause which we believe is better framed than the current drafting and will avoid confusion and unfairness in the next academic year.

**Amendments 46 & 47 (Graham Simpson MSP)**

**Council Tax – vacant property charges for student accommodation**

1. Students do not usually pay council tax and in Scotland there is a specific exemption for council tax charges. This exemption also extends to providers, albeit that is however limited to four months, which would normally cover the summer months.

2. However, many private providers of student accommodation have released students from their contracts to enable them to get home due to coronavirus reasons. This has led to growing concern among these providers that they could become subject – accidentally – to vacant council tax charges because their period of vacancy will inevitably now far exceed four months. Thus, private providers of student accommodation are now concerned that having done the right thing, they will become liable for a tax penalty. We believe this would be fundamentally unfair, a point heightened by the fact that even in normal times it would not ordinarily be permissible for this accommodation to be re-let privately unless there was an easing of planning restrictions for the use of these properties.

3. We do believe that this potential for vacant council tax charges is an unintended consequence of the coronavirus lockdown and landlords responding fairly and responsibly, to enable students to be released from their contracts so that they can get home. The amendment proposed by Graham Simpson specifically relates this exemption to rooms which are vacant due to coronavirus related reasons.

4. We ask the Committee to support this amendment. This amendment will avoid significant unpredicted charges being levied against landlords, will not cause costs for local authorities because council tax is not ordinarily paid by students, and it will avoid penalties on landlords for doing the right thing and enabling their student tenants to be released from contracts.

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