

## COMMENTS BY THE SCOTTISH PROPERTY FEDERATION ON THE POTENTIAL EXTENSION OF THE PROVISIONS IN THE SCOTTISH CORONAVIRUS ACTS

### Key Issue

- **The SPF is concerned that our well-respected property legal system could be undermined, which could create a barrier to investment. It is therefore critical that any extensions of the provisions in the Coronavirus Acts that create an unbalanced relationship between landlords and tenants are not continued for any longer than necessary.**

### General Comments

- The real estate sector is a key catalyst for jobs, investment and creating places to support the economic recovery and we note the six key action themes in the Scottish Government's Economic Recovery Implementation Plan. The Scottish real estate sector is by its nature wide-ranging and not all development projects or sectors have been eligible for the Government's fiscal support through the various funds and programmes. We are also concerned that the knock-on effects of the development industry being locked down will last far longer than just the emergency period.

### Commercial Leases

- The SPF does not support the extension to the period when tenants can be evicted for non-payment of rent. The provision for the extension to 14 weeks before tenants can currently be evicted has not been used to any meaningful extent, as a landlord is unlikely to irritate a lease when there is no tenant to fill the vacancy. The landlord would be liable to pay empty property rates, as there is no exemption for COVID related reasons, as explained below.
- As stated above the Scottish real estate sector is by its nature wide-ranging and not all development projects or sectors have been eligible for the Government's fiscal support through the various funds and programmes.
- Our landlord members have worked hard to engage with tenants and in the main tenants/landlords should be clear on rent concessions etc. It would be helpful if the Code of Practice was updated to draw on all the good practice that now exists in terms of agreements reached between property owners and tenants.
- In [response to the UK Government's call for views on Commercial Rents & Covid-19](#), our colleagues in the British Property Federation (BPF) called for the various restrictions currently in place on property owners' contractual rights to be lifted in full on 30<sup>th</sup> June, for similar reasons to those set out above. However, the BPF agrees with the principles set out in [a proposal](#) by two of our members; namely that:
  - Outstanding rent arrears of leisure, hospitality and non-essential retail businesses relating to the period March 2020 to June 2021 are ringfenced and continue to benefit from existing protections until 31<sup>st</sup> December 2021;

- An enhanced Code of Practice be provided as a framework for landlords and tenants to negotiate a solution to those arrears; and
- Binding adjudication (preferably using existing mechanisms like the courts) as a backstop measure to resolve any outstanding discussions at 31<sup>st</sup> December 2021.
- Our members are clear that those tenants who can pay rent should do so, and those tenants who need support should be helped where a property owner has the means to do so.

#### **Student Residential Tenancy Agreements: Notice Periods and Council Tax**

- Our members are firmly of the view that the current 7-day and 28-day notice periods for students to terminate their tenancies early for COVID-19 specific reasons should terminate as planned. The vaccination programme means that the virus is hopefully now in retreat with a diminishing risk to public health, and current sentiment is positive with greater external socialisation and the re-opening of hospitality. The vaccination programme is also to be extended to newly arriving international students.
- Since the early lockdown in 2020 Purpose Built Student Accommodation (PBSA) providers have put appropriate processes in place, and students are now fully aware of arrangements.
- While the lifting of restrictions comes late in the academic year, students are being welcomed back to campus in greater numbers for in-person teaching and learning, and Unipol report that many students have already returned to their term-time accommodation.
- If it is decided that the provisions should be continued, it is critical that COVID-19 specific reasons are very narrowly defined and that those reasons should be stated in notices to leave to avoid potential misuse. One member reports having received over 1,000 notices for early termination to date and in spite of the diminishing risk and easing restrictions, they expect this to continue with students looking to leave their accommodation early as their studies come to an end, rather than staying until the end of their tenancy contracts (i.e. not for a coronavirus reason as the legislation intended).
- Continuation of the provisions would also impact on the exemption to pay council tax and it would therefore be necessary to continue the exemption from paying council tax on a property until it is occupied, or the provisions in the Act come to an end.
- If required, we are happy to provide further detailed information on how the notice to leave provisions have had a significant negative impact on PBSA providers in Scotland and are perceived as a barrier to further investment in Scotland.

#### **Residential Tenancies**

- As stated above the SPF is firmly of the view that provisions which create an unbalanced relationship between landlords and tenants should not be continued for any longer than is necessary.

- On current timescales it may be that the Scottish Government will be able to reduce to Level Zero Covid-19 restrictions from around the end of June.
- Our members are of the view that the provision giving increased protection from eviction should expire as planned.

#### **Non-domestic Rates Relief**

- We remain concerned about the impact of empty rates on properties left vacant by the pandemic. As the UK and Scottish governments begin to withdraw their coronavirus support measures, we expect to see more high street casualties and further vacant properties.
- The current system is acting as a tax on distressed assets and deters much-needed investment in struggling high streets across Scotland. In addition to empty rates, property owners face a number of other significant costs and it is therefore in their interests to find an occupier as soon as possible. However, with current economic conditions leading to low demand, especially in the retail sector, securing a new tenant is extremely challenging.
- We would like to see any new emergency legislation take account of this impact and remove the empty rates burden on properties left vacant by the pandemic.

#### **Digital Submission to the Registers**

- The Coronavirus Acts provide for digital submission to the Land Register, Register of Sasines, Register of Judgments and Register of Inhibitions. Registers of Scotland (RoS) have consulted on whether to provide a permanent statutory footing for digital submission. We understand from the [analysis of responses to the consultation](#) that there was overwhelming support for this to continue into the future, and that RoS would be taking this forward. Our members have therefore questioned whether the provision in the emergency legislation needs to be extended to allow digital submission to be continued in the meantime, pending the permanent introduction of the system.

**We would be pleased to discuss our comments at the Scottish Government's convenience and would be happy to provide further detailed information as required.**

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