

May 2022



SPF POSITION STATEMENT STAGE ONE

THE CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) BILL PRIVATE TENANCIES AND EVICTION PROVISIONS

Introduction

The Scottish Property Federation (SPF) is the voice for the real estate 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. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore central to the Scottish economy.

Key Concern

- It is our firm view that the introduction of the proposals in Part 4 of the Coronavirus (Recovery and Reform) (Scotland) Bill is premature, does not take account of the wider Private Rented Sector (PRS), and pre-empts the outcome of a future Bill that may be introduced to Parliament at a later date. Consideration of single aspects of the private rented sector in complete isolation from the wider PRS market does not allow for the proper parliamentary scrutiny of the proposals, or consideration of the impact on the wider interconnected policies, costs, and issues that are relevant to the PRS and the unintended consequences they bring.

Key Issues

General

- We firmly agree with and appreciate the statement in the recent Scottish Government's [*A New Deal for Tenants - draft strategy: consultation*](#), which was closed on 22 April: *'Recognising the significant change represented by these proposals, this consultation is seeking to explore a wide range of interconnected policies and issues, enabling us to gather input and views from a wide range of stakeholders - including tenants and landlords as well as investors in the sector – so that we can identify the best actions, whilst also working to mitigate the challenges that will co-exist.*
- We are concerned that the Bill's accompanying policy and financial memoranda fail to appreciate that a tenant in possession of a property, but not contributing rental payments, is not just an issue for the landlord. Other tenants may have to subsume costs associated with wider charges and services.
- We also question the robustness of the information included in the Financial Memorandum. There are no costs identified, which have the potential to have a significant negative impact on the sector. Cumulative costs to a small to medium sized company can become very overwhelming. Our members have suggested that the Scottish Government should consider providing support to SMEs and landlords that face dealing with rent arrears through no fault of their own.

Removal of mandatory eviction grounds (Part 4, Clauses 33-35)

- We believe that the overall impact of the provisions could be to weaken the PRS by fuelling a perception of regulation and risk for investors that will undermine efforts to attract capital investment to the sector. For the embryonic build-to-rent PRS sector in Scotland this is a crucial time as we see the first beginnings of a potential institutional asset class in PRS in Scotland that needs to be encouraged, not deterred.
- There is also a risk that some tenants may abuse the process and landlords who are reasonably seeking repossession will experience further delays. This scenario clearly indicates additional and unacceptable levels of risk for investors.
- If all the grounds for eviction become discretionary, many more cases will inevitably go to the First Tier Tribunal, which would not have the resources to cope with the expected additional workload and cases.
- Any increase in the number of referrals (relative to current volumes going to court) and any increase in the time involved (relative to cases going through court) will also increase costs in time and effort for landlords, their agents and/or managers. The government should remember that at times landlords will be acting subject to concerns raised by other tenants. By making it harder for landlords to address situations of anti-social behaviour by a tenant, the government is in effect undermining the interests of other, concerned tenants.
- Our members have raised concerns about how the tenant can assess properly whether landlord is being genuine in a case of repossession for a family member. It seems likely that this would lead to many cases being challenged, and because it is going to Tribunal, the landlord would be required to make clear their intent to house a family member meaning that the tenant has very little risk.
- PRS property owners who have a mortgage and rely on the rental for paying the mortgage or as their personal pension or income could also be adversely affected if there is a long delay in evicting a tenant for non-payment of rent. This could lead to undue hardship for the landlord, and it is therefore important in any changes to the legislation that any non-payment of rental is dealt with quickly and as a priority. Without adequate protection for landlords in these circumstances a lot of individual investors could exit the PRS market leading to a reduction of supply in the number of homes being available for rent and increasing the burden on the Affordable & Social Housing Sector.

Pre-action protocol in respect of evictions relating to rent arrears (Part 4, Clauses 36-37)

- We regret that a balance has not been achieved in the relationship between landlords and tenants. The application of lengthy periods of rent arrears before repossession action can be initiated by a landlord will further transfer the balance of risk heavily onto the landlord. This is likely to make landlords more cautious about their potential tenants with additional due diligence on potential tenants ahead of letting agreements.
- Our members have raised concerns about the lengthy process of initiating repossession grounds based on rent arrears, whereby it may be up to 3 months before these grounds can be initiated. This lengthy and uncertain processes for landlord repossession will add unacceptable risk for existing and prospective investors, as well as a decrease in asset value.

- Our members are concerned about the system being overloaded and the potential for lengthy waits before a ruling is made, which could also further incentivise ‘rogue’ tenants. This could significantly affect a landlord’s financial position by being unable to remove a tenant who has defaulted on rental payments, meanwhile also incurring legal costs. In addition to the possibility of significant costs to the PRS sector in Scotland, members are also concerned about the demand on Scottish Government resources that tenuous claims could have. It also has the potential to add significantly to the backlogs in the delivery of public services.
- Our members have strong concerns that the system might be exploited by tenants who wish to draw out their tenancy despite having no reasonable chance of winning. This could place a significant burden on a vital housing tenure by potentially denying other tenants the chance of a home.

Background and Key Statistics

1. The Scottish Government’s consultation on *A New Deal for Tenants* was a wide-ranging consultation, which considered bolstering tenant rights, rent controls and reforms to the PBSA. The proposals have been made as the market continues to adjust to the landmark Scottish Private Rented Tenancy, introduced by the Private Housing (Tenancies) (Scotland) Act 2016 (brought into force in 2017) and as private landlords adapt to changed taxation policies.
2. The Scottish Association of Landlords reported in February that some 36,000 homes (nearly 10%) have been lost in the rented market, a huge number in a short period of time. It is not expected that current proposals for tenure reform in England will go so far as the 2016 Act and therefore from an investor perspective Scotland is likely to be at a disadvantage. Any loss of investment will either continue or even exacerbate the crisis in housing supply and would represent a missed opportunity for Scotland if international and UK capital is located elsewhere. Sentiment and perception are major drivers in determining investor capital flows. We should be under no illusion that we are competing for not just UK capital but international capital in order to get investment into our nascent build to rent sector.
3. The purpose built rented residential developments, the build to rent model, is now making ground in Scotland with some 9,000 units in the planning system, under construction, or in operation. The opportunity of this new market sector to supply much needed new communities, quality homes and flexible residential choice is vitally needed in Scotland. It is important that its potential is not cut off by planning burdens or undue regulatory restrictions.
4. There has been no recognition of the risks for landlords in the wider PRS. Those landlords are the bedrock of the private rented sector and if the risk presented is too great, they will simply leave the market, as they have done already. The SPF and other representative bodies have addressed this blind spot head on, indeed meeting the Minister for Tenants’ Rights twice in recent months. The response to *A New Deal for Tenants* will without any doubt be a crucial moment for the industry and the market. We, along with everyone who is doing their best to deliver quality rental homes in Scotland, await its outcome later this year with interest.
5. The reality is that it is not in the interest of most landlords to evict tenants and thus reduce their own income. This is why eviction rates in the professionally managed PRS are very low and the vast majority of those are due to rent arrears or antisocial behaviour. Indeed, the vast majority of tenancies are ended by tenants themselves.

6. [The Summary of Work of the Housing and Property Chamber 1 April 2020 to 31 March 2021](#) indicates that the emergency arrangements have not actually protected tenants. The statistics show that 86% of evictions progressed, which is in line with previous years without the emergency legislation. The new proposed Bill does, however, provide a means for certain tenants to exploit it. This is likely to lead to hardship for some unfortunate landlords and a risk that landlords would leave the market through fear of the negative impacts of the changes.
7. It is also worth noting that the Housing and Property Chamber's role generally ends with the tribunal issuing a final determination and /or an order, unless a review request, application for recall or permission to appeal request is then received. As with the courts, the Housing and Property Chamber has no role in enforcement of payment or eviction orders, which would be the responsibility of the landlord.
8. The current proposals would mean that 'rogue' tenants have nothing to lose by referring their case to the Housing and Property Chamber. The statistics mentioned above show that of the 2720 applications closed during the year, a total of 381 (14%) were rejected. A breakdown of the reasons why the applications were rejected is as follows:

Reason for rejection	Number
Frivolous or vexatious	101
Not appropriate to accept	127
Made for a purpose other than that specified in the application	144
The dispute has been resolved	9
Total	381

9. In total, 23% of applications closed during the year were withdrawn by the applicant at some stage of the proceedings, mostly after they were referred to a tribunal. There is no requirement to state the reason for withdrawing an application.

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