

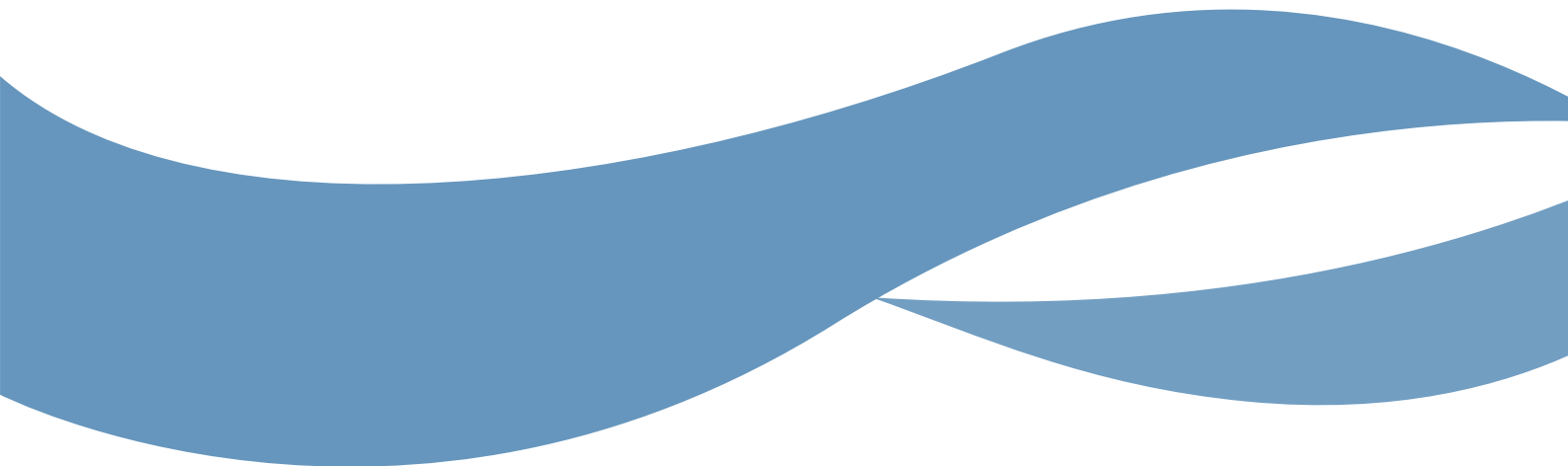


## **Coronavirus (Recovery & Reform) (Scotland)**

**Bill**

**Stage 3**

**Joint briefing for MSPs**



## Who we are

---

### **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.

Contact: Simon Ritchie (Press & Public Affairs Manager) – [simon.ritchie@scottishlandandestates.co.uk](mailto:simon.ritchie@scottishlandandestates.co.uk)

### **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 in campaigning for a well-functioning and sustainable private rented sector by 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 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.

Contact: Diarmid Hearn (Head of Public Policy) - [dhearns@nts.org.uk](mailto:dhearns@nts.org.uk)

## Summary

---

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

Together, we seek to offer MSPs our views ahead of Stage 3 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.**

Following Stage 2, we remain hugely concerned about the both the short and long-term impact this legislation will have on both tenants and landlords.

With several of our organisations heavily involved in rural business, we also have grave concerns regarding the effect this legislation may have on the ability to provide accommodation to workers, which could have secondary impacts for Scotland's food and drink production sector.

We do not believe that a Bill designed to legislate on public health matters should be introducing sweeping changes to the Private Rented Sector.

**Our organisations jointly request that Part Four of the Bill is removed and does not enter law.**

With a Housing Bill expected imminently, these substantive changes could be revisited and be properly scrutinised by parliamentarians and stakeholders during that process rather than through unevidenced, snap reform as part of a public health bill.

Alternatively, amendments proposed by Edward Mountain MSP would remove Sections 33, 34 and 35 whilst also amending Section 37B and would be supported by our organisations.

**Should Part 4 proceed, we would request that binding commitments are secured on increasing resources available to the tribunal system and also conducting an impact study on what effect the legislation has had on the sector.**

We would also draw the attention of parliamentarians to recent findings by [RentBetter](#), a three year research programme funded by the [Nationwide Foundation](#) on private renting in Scotland. In their Wave 2 - Final Report, published in April 2022, Rent Better stated:

*“In relation to the PRS supply, there are clearly unintended consequences of layer on layer of regulation from different legislators on different things – tax, tenancy law, climate change, Coronavirus legislation. As legislators in Scotland plan to introduce more regulation, they should consider the findings of this research and the potential negative impact on supply and access to the PRS. **Reduced supply and access to the PRS will have a disproportionate impact on lower income and other demand groups in housing need, compared to the general PRS population.** Strong and targeted enforcement should be prioritised to mitigate market failures at the lower end of the market.”<sup>1</sup>*

---

<sup>1</sup> <http://rentbetter.indigohousegroup.com/wp-content/uploads/sites/3/2022/05/Wave-2-Final-Report-AE030522-for-publication.pdf>  
(Page v)

## At a Glance

---

### General

- We are limiting our comments to Part 4 of the Bill (grounds for eviction and pre-eviction protocol in the private rented sector (PRS)).
- Our briefing is based on legal advice received by SLE; research carried out by SAL, SLE and independent organisations, and feedback from property valuers.
- We fully support the need for tenants in the private rented sector to have safe, well-maintained, warm homes and security of tenure.
- 15% of Scotland's homes (340,000) are in the private rented sector<sup>2</sup> and **94% of tenants in the private rented sector are satisfied** with their housing<sup>3</sup>.
- **The rights of tenants and the rights of landlords should be balanced** to provide benefits for both parties; Part 4 of this Bill does not strike the right balance.
- The Scottish Government's *New Deal for Tenants* consultation document acknowledges that Scotland already has some of the strongest [housing] rights in the world"<sup>4</sup>.

### Housing legislation

- **Part 4 of the Bill is an anomaly** that does not fit with rest of the Bill, or the Policy Memorandum, which have an overarching focus on resilience in future public health crises.
- Many of the grounds for eviction being made discretionary have **nothing to do with Covid or public health emergencies** – meaning the Part 4 provisions are wrongly placed in this public health focussed Bill.
- We agreed with the measures to protect tenants in the public health emergency of Covid-19 pandemic. However, **there is no justification for making these emergency changes permanent outwith an emergency setting**, which is what Part 4 of this Bill does.
- The consultation on significant changes to the Private Rented Sector, including changes to grounds for repossession, has just closed. We think **Part 4 of the Bill should be removed from this Bill** and that the Scottish Government should **await its planned Housing Bill**, which was promised after its consultation on *A New Deal for Tenants* strategy, to consider such sweeping changes to the private rented sector.
- Other temporary coronavirus legislation provisions are not being introduced on a permanent basis and as with the removal of other Covid related restrictions across all aspects of our lives, we can understand a return to pre covid arrangements without any sense of confusion.

---

<sup>2</sup> <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/5/14/Overview-of-private-rented-housing-reforms-in-Scotland>

<sup>3</sup> <https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/pages/2/>

<sup>4</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)

## PRS housing supply

- We think Part 4 will have **severe consequences on the provision of much needed homes, particularly in rural Scotland**; SLE landlord members have told us they will **withdraw up to 22% of their housing stock<sup>5</sup> from the PRS** if the Scottish Government's plans in this Bill and the *A New Deal for Tenants* strategy go ahead – which would be disastrous when there is a nationwide acute shortage of housing.
- According to research by SAL, **in the next 10 years 34% of respondents to a recent survey of landlord members<sup>6</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**.
- Whilst landlords selling their properties to exit the Private Rented Sector may increase the number of homes available for purchase, there is no guarantee that future purchasers will utilise properties for owner-occupation (as opposed to options such as holiday lets).
- Where the rental market shrinks, particularly in rural areas, the Scottish Government has provided no assessment or information on the ability of local authorities, housing associations and social landlords to fill the void left by those exiting the sector.

## Effect on tenants

- There appears to be a misconception amongst some MSPs that individuals do not want to rent housing and it is a choice of last resort when there is no other option available. However, this downplays the flexibility, and quality of housing, that the PRS in Scotland provides, allowing people the option not to buy a property but still access safe, well-maintained housing.
- If the private rented sector shrinks in the short and long-term as forecast, the choice of properties that prospective tenants must select from will be severely weakened.
- Again, this is likely to be most acute in rural areas and will severely affect those looking to relocate to rural Scotland without committing to purchasing a property. (e.g. doctors, teachers, hospitality staff.) This will have a knock-on impact on rural communities and economies.
- **Prospective tenants who can provide the most reassurance to a landlord in a hugely competitive market will be the ones selected, leaving those less able to provide assurances (and high deposits) increasingly frozen out in the competition for properties.**

---

<sup>5</sup> SLE internal survey of landlord members with combined ownership of over 3000 PRS properties

<sup>6</sup> Survey of SAL members in February 2022; 635 responses representing 4,214 properties

## Effect on landlords

- Tenants have undoubtedly faced hardship during the pandemic and it is right to protect them. But landlords have also been seriously impacted by the pandemic and no consideration or even acknowledgement has been given to that in the policy rationale for this Bill.
- According to SPICe, the Policy Memorandum “does not provide any specific evidence about what impact the temporary change to make all eviction grounds discretionary has had”.
- We believe **Part 4 could see PRS property values significantly reduced**<sup>7</sup> if landlords, of all types and sizes, who are crucial in providing affordable housing across rural Scotland as part of their business model, **cannot be guaranteed vacant repossession** in the event of a tenancy breach. That is what removing mandatory grounds for eviction does. This issue will also affect tenant farmers who sublet properties.
- Banks have security over many rental properties. **If there is a significant change in the value of these properties due to legislation, then an immediate crisis may be provoked.** Landlords may well find themselves outwith the Loan to Value range acceptable to banks, and immediately in breach of covenants.
- **Landlords will have to take further measures to protect themselves against substantial risk if legislation is so heavily weighted against them. That may mean higher deposits and exercising greater selectivity on who properties are rented to.**
- Given that there will almost certainly be more cases entering the tribunal system on discretionary grounds and increased delays in cases being settled, **no assessment has been undertaken on the financial impact faced by landlords who may be sitting with a non-paying tenant.**
- There is **no clarity on retrospectivity of these proposals and how they relate to existing SAT or PRT tenancies.**

## Tribunal system

- If Part 4 of the Bill becomes law, as noted above, we would expect more cases to enter into the tribunal system.
- This being the case, we would ask for a **cast-iron commitment from the Scottish Government that it will increase the financial resources available to the tribunal system** in order to cope with the additional workload.
- **Anecdotal evidence provided to us suggests that many cases are currently taking approximately 15 months to be processed and decided upon by the tribunal system.**
- If the three month pre-action protocol (prior to the tribunal) is added onto this, **landlords can face the prospect of more than 18 months without rent by a non-paying tenant.** It is our firm view that landlords should not have to face this huge financial penalty as a result of the failure of government to adequately resource the tribunal system.

---

<sup>7</sup> Advice from land agents received by SLE

## Impact assessment

- Whilst we would forecast some immediate changes from the legislation, the likelihood is that we will not know the full detrimental impact on the supply of housing for some years to come.
  - If Part 4 of the Bill does become law, we would urge the Scottish Government to commit to commissioning an independent impact assessment (within a set timescale) on the effect the legislation is having on the sector and how the tribunal system is coping with the changes.
  - Any evaluation should also look at the effect the legislation is having outwith landlords and tenants (e.g. on rural businesses).
- 

### For more detailed information

**Simon Ritchie**

Press & Public Affairs Manager

Scottish Land & Estates

✉: [simon.ritchie@scottishlandandestates.co.uk](mailto:simon.ritchie@scottishlandandestates.co.uk)

☎: 07776 990321