

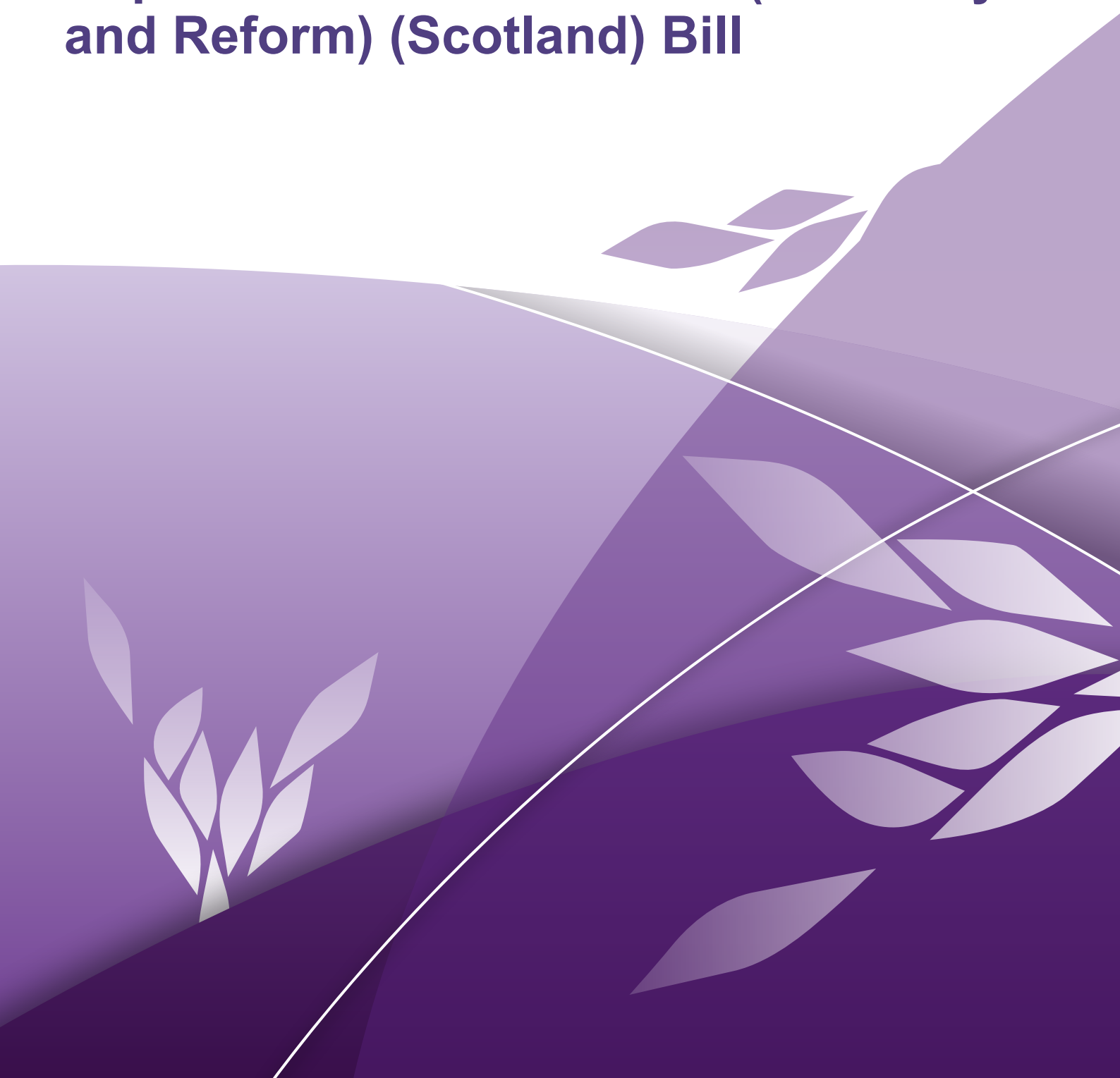


The Scottish Parliament
Pàrlamaid na h-Alba

Published 20 April 2022
SP Paper 156
5th Report 2022 (Session 6)

Local Government, Housing and Planning Committee

Report on the Coronavirus (Recovery and Reform) (Scotland) Bill



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Contents

Membership Changes	1
Introduction	2
The Bill and Housing Policy	4
Overview of provisions in Part 4	6
Making all eviction grounds discretionary	7
Pre-action protocols	10
The Private Rented Sector	11
Conclusion	13
Annex A - Minutes of meetings	14
Annex B - Evidence	15
Published responses and evidence summary of the Scottish Parliament's call for views on the Coronavirus (Recovery and Reform) (Scotland) Bill: Detailed survey - tenancy provisions	15
Official Report of meeting	15
Scottish Government Consultation responses	15

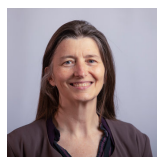
Local Government, Housing and Planning Committee

To consider and report on matters relating to local government, housing and planning falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government and the Cabinet Secretary for Finance and the Economy, and matters relating to the Local Government Boundary Commission and local governance review and democratic renewal within the responsibility of the Deputy First Minister.



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Paul McLennan
Scottish National Party



Marie McNair
Scottish National Party



Annie Wells
Scottish Conservative
and Unionist Party

Membership Changes

The following changes to Committee membership occurred during the course of this inquiry:

- Graeme Dey MSP was replaced by Marie McNair MSP
- Meghan Gallacher MSP was replaced by Annie Wells MSP

Introduction

1. The Coronavirus (Recovery and Reform) (Scotland) Bill ("the Bill"), was introduced on 25 January 2022. The lead Committee for the Bill is the Covid-19 Recovery Committee, and the Bill was referred to the Local Government, Housing and Planning Committee ("the Committee") as one of three secondary committees because of the range of policy areas covered by the Bill. This Committee only considered Part 4 of the Bill, on tenancies. The other secondary committees considering other aspects of the Bill are the:
 - Criminal Justice Committee
 - Education, Children and Young People Committee
2. The Local Government, Housing and Planning Committee agreed its [approach to scrutiny on 1 February 2022](#). The Committee decided to invite a number of stakeholder organisations and the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights to provide evidence in two panels on 8 March 2022.
3. To ensure a joined-up approach and efficient use of resources, the subject committees considering the Bill published a joint call for views, allowing people to respond to all of the Bill or to particular parts of it. The joint call for views was launched on 3 February 2022. There were two options for those who wished to comment, a long-form and a short-form. [The submissions to the call for views have been published](#). A summary of the evidence received is available at the link in Annex B.
4. The Covid-19 Recovery Committee wrote to a number of subject committees on 8 February, inviting them to contribute any evidence gathered which could be relevant to their scrutiny of the Bill. Responses from the Equalities, Human Rights and Civil Justice Committee and the Health, Social Care and Sport Committee, can be found on the [Covid-19 Recovery Committee website](#) in the meeting papers for 3 March 2022. As part of its approach, this Committee agreed to write to the Social Justice and Social Security Committee. Its response can also be found on the Covid-19 Recovery Committee website.
5. [The Committee heard from two panels of witnesses on 8 March 2022](#), the first comprising stakeholders and the second the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights, accompanied by Scottish Government officials. The witnesses on the first panel were:
 - **John Blackwood**, Chief Executive of the Scottish Association of Landlords, who made [this submission to the Scottish Parliament's call for views on the Bill](#) and spoke on behalf of the Association's members;
 - **Matt Downie**, Chief Executive of Crisis, who made [this submission to the Scottish Government's consultation on public health, public services and justice system reforms](#) , and spoke in his capacity as Chief Executive of Crisis;
 - **Alastair Houston**, a solicitor and Head of Housing and Court Department, Legal Services Agency, who made [this submission to the Scottish Government's consultation on public health, public services and justice system](#)

[reforms](#), and gave oral evidence based upon his experience and knowledge;
and

- **Andrew Watson**, a researcher at the University of Glasgow and author of [“The pandemic arrears crisis: Private landlord perspectives on the temporary legislation impacting the Private Rented Sector”](#). Andrew provided oral evidence based on his research findings.

6. The Committee would like to thank all individuals and stakeholders who contributed to our evidence gathering, both through the call for views and at the meeting on 8 March 2022.

The Bill and Housing Policy

7. The provisions in the Bill cover a wide range of policy areas. The Policy Memorandum states that the Bill aims to support the Scottish Government's Covid Recovery Strategy and its overall objective of addressing the harms caused by the pandemic, and tackling systemic inequalities made worse by the pandemic. Part 4 of the Bill aims to address some of the harms arising from the pandemic faced by tenants in the private rented sector.
8. The Scottish Government published [Housing to 2040 in March 2021](#). This is the Government's long term strategy for meeting its aim that "by 2040 everyone living in Scotland would have access to a safe, warm, affordable, high quality and energy efficient home that meets their needs". As part of achieving this aim the Scottish Government is [currently consulting on a rented sector strategy](#), A New Deal for Tenants, to give tenants more secure, affordable and stable tenancies. The Government plans to bring forward a housing bill following consultation on the rented sector strategy.
9. Research by the Resolution Foundation and Joseph Rowntree Foundation has identified that people who rent their homes have been disproportionately affected by the pandemic. Renters have fewer savings and are more likely to have lost their job and been on furlough compared to those with mortgages. Despite renters employing strategies to prioritise paying their rent, arrears and debts are increasing. (see [SPICe Briefing: Coronavirus\(Recovery and Reform\)\(Scotland\)Bill: Health, Education, Public Services and Housing](#).)
10. Previous Coronavirus Acts have already made some changes to legislation to give tenants additional protections. These are temporary and will only remain in place until 30 September 2022 unless they are made permanent before that date.
11. The Minister told the Committee that although the provisions in Part 4 of the Bill support the draft Rented Sector Strategy, waiting and including them in the wider housing bill would mean allowing the temporary provisions to lapse only to reintroduce them later. The Minister explained that this could create confusion and uncertainty for both landlords and tenants saying:

” If we were to consider implementing the provisions in the year 2 housing bill, we would in effect have a situation where the provisions apply in the social rented sector but not in the private rented sector. Then you would bring them in, then let them lapse and then bring them in again. I think that that would lead to significant confusion— almost bewilderment, to be honest—for tenants and landlords and to a significant risk of confusion at tribunal level about precisely how the tribunal is supposed to treat each individual case at various times.ⁱ

The Policy Memorandum for the Coronavirus (Recovery and Reform) (Scotland) Bill does, however, recognise that a year 2 housing bill “would be an appropriate opportunity to make further refinement to legislation arising from this Bill”.

ⁱ Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 36

12. The Committee heard differing views from witnesses on whether housing measures should be included in the Bill. Matt Downie, Crisis, supported the inclusion of housing measures in the Bill and told the Committee that homelessness prevention should be at the heart of Covid-19 recovery. Andrew Watson, however, suggested that having a consultation on the provisions in the Bill separate to the wider consultation on A New Deal for Tenants may have led to lower engagement with them.ⁱⁱ

13. The provisions in this Bill are part of wider ongoing work on the Scottish Government's long term housing strategy. The Committee accepts that allowing current temporary provisions in relation to tenancies to lapse only to potentially reintroduce them in a future bill would risk causing uncertainty and confusion to both tenants and landlords. The Committee will undertake further scrutiny of measures to support the rental sector once the Scottish Government completes its consultation on its rental sector strategy and introduces a bill to take forward relevant measures.

ⁱⁱ Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 3

Overview of provisions in Part 4

14. Part 4 of the Bill relates to evictions in the private rented sector. Landlords seeking to evict tenants can apply to the [Housing and Property Chamber – First-tier Tribunal for Scotland \('the Tribunal'\)](#) for an eviction order. Previously, [some eviction grounds were mandatory, meaning that if the ground was established the Tribunal had to grant an eviction order](#). These **mandatory grounds** were:
1. Landlord intends to sell the let property
 2. Let property to be sold by lender
 3. Landlord intends to refurbish the let property
 4. Landlord intends to live in let property
 5. Landlord intends to use the let property for non-residential purpose
 6. The property involved is held for a religious purpose and is required for that purpose.
 7. Tenant has a relevant criminal conviction. This ground applies if your tenant is convicted of an offence punishable by imprisonment that involved them either:
 - a. using the property for illegal reasons
 - b. letting someone use the property for illegal reasons
 - c. committing a crime within or near the property
 8. Tenant is no longer occupying the let property

There were eight other **discretionary grounds**:

1. Landlord's family member intends to live in the let property
 2. Tenant no longer needs supported accommodation
 3. Tenant has breached a term of the tenancy agreement
 4. The tenant has engaged in relevant antisocial behaviour
 5. Tenant has associated in the let property with someone who has a criminal conviction or is antisocial
 6. Landlord has had their registration refused or revoked
 7. Landlord's HMO licence has been revoked
 8. An overcrowding statutory notice has been served on the landlord
15. There were **two grounds that could either be mandatory or discretionary** depending on the circumstances of the case. These grounds relate to the length of time rent had been in arrears and where a tenancy was part of the tenant's ongoing

or proposed employment and they are no longer, or did not become, an employee of the landlord

16. The Bill will change this by making permanent two of the temporary changes brought in by Coronavirus legislation. One of the two changes to be made permanent is that **all grounds for eviction will become discretionary**. The Tribunal will still be able to grant an eviction order if it considers it 'reasonable', taking all the circumstances of the case into account.
17. Part 4 also makes permanent a “[pre-action protocol](#)” for evictions relating to rent arrears. This involves providing:
 - Clear information on the tenancy, level of arrears, tenants' rights, signposting to support and advice
 - landlords to make reasonable efforts to agree with the tenant a reasonable plan to make payments
 - landlord to give reasonable consideration to the steps that the tenants have taken and what external factors have impacted on the tenant's ability to pay the arrears.

Although it will not be mandatory for landlords to follow the protocol, the Tribunal will consider whether or not landlords have complied with it in deciding whether to grant an eviction order in rent arrears cases. The onus is on the landlord to record what actions have been taken to support the tenant. The pre-action protocols bring the private rented sector in line with the social housing sector.

18. Comprehensive background information about Part 4 of the Bill, the changes made to tenancy legislation during the pandemic and the Scottish Government's consultation of the relevant sections can be found in the [SPICe Briefing on the Bill](#) under 'Tenancies'.

Making all eviction grounds discretionary

19. One of the main effects of part 4 of the Bill would be to make all grounds for eviction discretionary for private tenancies. This means that the decision of the [First - tier Tribunal](#) will be based on what is deemed reasonable on the part of the landlord and the tenant. Both the Scottish Government's consultation on the Bill and the Scottish Parliament's call for views received a range of views about this change.
20. Most individual respondents disagreed with the proposals to remove mandatory eviction grounds, arguing that this disrupted the balance between the rights of both tenants and landlords and would increase the risk to landlords. Responding to the call for views, the Scottish Association of Landlords argued that:
 - ” this proposal will dent investor confidence and make what is already an unfavourable legislative and policy framework for landlords even less attractive with the potential to result in a reduction in the supply and quality of homes available to those who choose to live in the private rented sector.ⁱⁱⁱ

iii [Scottish Association of Landlords written submission](#)

21. In evidence to the Committee, John Blackwood, Scottish Association of Landlords, noted that the vast majority of landlords only own one rental property. This is supported by the Scottish Government response to a [Freedom of Information Request in November 2020 which stated](#):

” Based on information held by the Scottish Government as at May 2019, where there were approximately:

228,212 registered landlords with 1 Property (94% of all registrations)

12,317 registered landlords with 2 Properties (5 % of all registrations)

1,757 registered landlords with 3 or more Properties (1% of all registrations)

Landlords have property to let for a wide range of reasons: it might be an inherited parental home; a 'spare' property resulting from the marriage of partners who both own a property; or it might be viewed as an investment and/or in lieu of pension provision.

22. The Committee heard evidence that expanded on the point raised by the Scottish Association of Landlords about landlords' concerns over risk. Andrew Watson and John Blackwood, Scottish Association of Landlords, both noted concerns among landlords that the Bill would raise the risk of letting a property to an unacceptable level. John Blackwood said:

” We are hearing concerns from landlords up and down the country about the future viability of their businesses in Scotland, and even now many are opting to sell up and exit the market. A big concern for us is that, very soon, we could see the doors to private renting firmly closed to those who perhaps rely on it the most, and we need to find ways of overcoming that.^{iv}

23. Matt Downie, Crisis, acknowledge the need to address the concerns of landlords but argued that, with regard to the removal of mandatory eviction grounds in the private rental sector:

” the issue is not whether private landlords will be disadvantaged or driven out of the market but simply that discretion allows for individual circumstances and the support needs of tenants—and landlords—to be taken into account, which has not always been the case. From our perspective, that change is a commonsense move that could, if the system functions in the right way, be to everyone's advantage.^v

24. This point was echoed by the Minister when he was asked about the balance of rights between tenants and landlords if mandatory eviction grounds were removed. He argued that:

iv Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 3

v Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 12

” The proposal will not fundamentally end or curtail the rights of landlords. However, being able to take into account individual circumstances, which include, but are not limited to, those that have been caused by the pandemic, will provide a far fairer balance of rights for everybody involved.^{vi}

25. The Committee heard specific concerns about the absolute discretion that would be given to the Tribunal to consider whether or not it would be reasonable to grant an eviction order compared to the statutorily prescribed factors that the sheriff court has to have regard to when considering whether to grant a decree for eviction in the social rental sector.

26. A range of organisations and individuals are likely to be affected by these changes. The Committee has been contacted by the Church of Scotland with concerns about the impact of changes on Church property. The Committee has not had an opportunity to consider this matter but we are aware that there are likely to be a number of organisations with similar concerns. This needs to be taken into account as the Bill progresses.

27. The Committee also heard a range of views on how effective removing mandatory eviction grounds would be in reducing homelessness, either on its own or in combination with pre-action protocols.

28. Andrew Watson suggested that it was the extension of notice periods to six months during the pandemic that had the most significant effect on the drop in evictions, rather than making the grounds discretionary. However this had also led to increased rent arrears by the time cases came to tribunal. A continued extension to notice periods that landlords must give to tenants to six months, which was in the coronavirus legislation, has not been included in the proposals.^{vii}

29. John Blackwood said that after analysing all the eviction cases that went before the First-tier Tribunal, only three were protected as a result of all of the eviction grounds being discretionary.^{viii}

30. The Minister acknowledged this analysis but argued that as well as the significant impact for the individuals involved in those cases, the measures also had the wider impact of preventing cases coming to the Tribunal at all. He told the Committee that:

” the bigger impact, which is perhaps harder to measure, relates to cases that do not go to tribunal in the first place. For example, a landlord might previously have thought about going to the tribunal on grounds that would have resulted in a mandatory determination for an eviction order. If the determination was discretionary, the landlord might reach the view that they had not taken a reasonable course of action and that the individual reasons for their seeking an eviction were not reasonable, so they might be more likely not to proceed with eviction in the first place.^{ix}

vi Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 27

vii Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 6

viii Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 6

ix Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 29

31. The Committee views the move to allowing the Tribunal to consider all the relevant factors before granting an eviction order to be a positive development for tenants in the private rental sector. This change does not prevent landlords from applying for or obtaining an eviction order but does allow wider consideration of the circumstances of both landlord and tenant before a decision is made on whether to grant an eviction order.

32. The Committee acknowledges the concerns raised by some witnesses about the potential to increase risks to landlords in the private rental sector. It is vital that the Scottish Government works constructively with landlords to address these concerns.

33. The Scottish Government should monitor the impact of making all grounds for eviction discretionary, including the effect on the number of evictions and on supply of property in the private rented sector. The Committee will reflect on the impact of these changes when we consider the future housing bill.

Pre-action protocols

34. The Bill makes the [pre-action protocol](#), previously introduced as a temporary measure, permanent. Although not mandatory, landlords are encouraged to follow these pre-action requirements when seeking to end a tenancy due to rent arrears. If an eviction order is sought, the Tribunal will be required, when considering whether it is reasonable to grant an eviction order on the ground of rent arrears, to take into account the extent to which the landlord has complied with the protocol.

35. Alastair Houston, Head of Housing and Court Department, Legal Services Agency, argued that rather than landlords being encouraged to follow the protocol it should be mandatory, similar to the process in the social rented sector. He told the Committee that:

” I think that we should largely follow the procedures in the social rented sector, where there are certain mandatory pre-action requirements that have to be followed. As such, those are not factored into an assessment of reasonableness, but rather are mandatory procedural steps that are akin to service of a notice.^x

36. Witnesses agreed that abiding by pre-action protocols was, regardless of legislation, an indicator of best-practice by landlords. John Blackwood noted the support of the Scottish Association of Landlords for the pre-action protocol because of its role in supporting landlords and tenants to work together to address issues with rent arrears. He did, however, question whether it was effective at helping in the most difficult cases. He also noted that the pre-action requirements had been

^x Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 17

brought in quickly as a result of the pandemic and that:

” now is the moment for us to look at the detail of the requirements and ensure that we get the right information to the right people when they need it.^{xi}

37. Other witnesses also cautioned against over reliance on pre-action requirements or expecting them to do too much. Andrew Watson told the Committee that:

” It is entirely right to go ahead with the provisions on the pre-action protocol, but we just need to be realistic about the impacts that it can have and to monitor those impacts in some way.^{xii}

38. The Committee views the pre-action protocol as a useful tool for helping landlords and tenants resolve issues with rent arrears. To ensure that the protocol is as effective as possible the Scottish Government should review both the requirements and any signposting or guidance material for both landlords and tenants to see if it can be improved.

The Private Rented Sector

39. The Bill has two specific provisions relating to housing - making permanent the removal of mandatory eviction grounds and the introduction of pre-action requirements. As previously discussed, these measures are being introduced at the same time as a wider consultation on the rental sector. During its scrutiny of this Bill, the Committee heard evidence on some of the wider issues in the rental sector. This is something the Committee takes a keen interest in and we will be returning to look at this sector throughout the session.

40. Multiple witnesses highlighted the important role of the private rental sector and the interaction between the private rental sector and local authorities.

41. In its [submission to the Scottish Government consultation](#), the Legal Services Agency highlighted clear links between the measures and a decrease in the need for emergency accommodation, and the associated costs to local authorities.

” Together, Scottish local authorities paid more than £1.2bn on temporary housing between 2011 and 2017. While some of this was re-claimed via housing benefit, the cost to the taxpayer will still have been significant. If the Tribunal have greater powers to decide on the outcome of private sector evictions we expect to see a substantial reduction in spending relating to temporary accommodation.

42. Andrew Watson highlighted the temporary extension of notice periods as an area where, because of the increased rent arrears associated with the extended notice

^{xi} Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 20

^{xii} Local Government, Housing and Planning Committee. Official Report, [8 March 2022](#), Col 16

period the cost of housing people who would otherwise have been homeless had been shifted from local authorities onto landlords. He told the Committee that:

- ” You need to balance the success of people not being evicted and the savings to local authorities in relation to emergency housing provision with the fact that we have transferred the costs of housing those individuals from the public to the private sector.^{xiii}

43. The Bill contains two specific measures to grant tenants in the private rental sector additional protections. While the Committee welcomes these measures we also acknowledge that tackling homelessness is a complex task that requires coordination and cooperation across organisations and sectors. We note the issues that were raised by witnesses as part of the Committee's scrutiny of the Bill, particularly the points made about the relationship between the private rental sector and local authorities when it comes to preventing homelessness.

Conclusion

44. The Local Government, Housing and Planning Committee has been designated as a secondary committee to consider the tenancy provisions in the Coronavirus (Recovery and Reform) (Scotland) Bill.

45. The Committee agrees with the approach taken in Part 4 of the Bill. We recognise that the Bill offers continuity for some of the measures that were introduced under the coronavirus legislation. Maintaining the measures avoids confusion for tenants and landlords in the medium term, that could arise from the expiry of the coronavirus legislation, until such time that a housing-specific bill is introduced. The Committee will carefully consider the evidence we heard as part of work on this bill when we come to consider any future housing bill.

46. The Committee is keen that the Scottish Government monitors the impact of the housing provisions in this Bill in advance of the introduction of any further housing legislation.

47. We ask the Scottish Government to respond to this report in advance of the Stage 1 debate on the Bill

Annex A - Minutes of meetings

[4th Meeting, 2022 \(Session 6\) Tuesday, February 1, 2022](#)

The Committee agreed its approach:

The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed to—

- its approach to evidence taking
- a joint call for views with the other committees considering this Bill
- write to the Social Justice and Social Security Committee on the Bill
- agree to consider future draft Stage 1 reports in private

[8th Meeting, 2022\(Session 6\) Tuesday, March 8, 2022](#)

Coronavirus (Recovery and Reform) (Scotland) Bill

The Committee took evidence on the Bill at Stage 1 from:

Alastair Houston, Solicitor and Head of Housing & Court Department, Legal Services Agency;

Matt Downie, Chief Executive, Crisis;

John Blackwood, Chief Executive, Scottish Association of Landlords;

Andrew Watson, Researcher, University of Glasgow.

and then from:

Patrick Harvie, Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights;

Greig Walker, Coronavirus (Recovery and Reform) Bill Team Leader;

Yvonne Gavan, Private Housing Services Team Leader;

Craig McGuffie, Lawyer, Scottish Government.

The following interests were declared—

Meghan Gallacher as a councillor in North Lanarkshire Council.

Mark Griffin as an owner of a private rental property.

Paul McLennan as a councillor in East Lothian Council.

Elena Whitham as a councillor in East Ayrshire Council.

The Committee then considered the evidence heard earlier in the meeting (in private)

Annex B - Evidence

Published responses and evidence summary of the Scottish Parliament's call for views on the Coronavirus (Recovery and Reform) (Scotland) Bill: Detailed survey - tenancy provisions

[Published responses to Scottish Parliament's Call for Views.](#)

[Summary of Evidence of the Scottish Parliament's Call for Views](#)

The Scottish Parliament launched a call for views on the bill on 3 February 2022. A detailed survey was launched with a closing date of 25 February 2022 and a short survey was also launched with a closing date of 18 March 2022.

Official Report of meeting

[Tuesday 8 March 2022 - evidence from stakeholders and the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights](#)

Scottish Government Consultation responses

[Covid recovery: a consultation on public health, public services and justice system reforms](#)

[Consultation analysis](#)

[Published responses](#)

