



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 4 June 2024

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
18th Meeting 2024, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

Stephanie Callaghan (Uddingston and Bellshill) (SNP)

*Pam Gosal (West Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Donaldson (Scottish Government)

Catriona MacKean (Scottish Government)

Craig McGuffie (Scottish Government)

Charlotte McHaffie (Scottish Government)

Yvette Sheppard (Scottish Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 4 June 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning, and welcome to the 18th meeting in 2024 of the Local Government, Housing and Planning Committee. Please note that Mark Griffin will be joining us remotely and that apologies have been received from Stephanie Callaghan. I remind all members and witnesses to ensure that their devices are on silent.

The first item on our agenda is to decide whether to take items 3, 4 and 5 in private. Do members agree to do so?

Members *indicated agreement.*

Housing (Scotland) Bill: Stage 1

09:30

The Convener: The next item on our agenda is to take evidence on the Housing (Scotland) Bill from the following Scottish Government officials: Catriona MacKean, who is the deputy director of better homes; Craig McGuffie, who is a Scottish Government lawyer; Charlotte McHaffie, who is the private rented housing team leader; and Yvette Sheppard, who is the head of the housing services and rented sector reform unit. I welcome the witnesses to our meeting.

I invite Catriona MacKean to make a short opening statement.

Catriona MacKean (Scottish Government): Good morning, everybody. We are really pleased to be here to support the committee's scrutiny of the bill. The bill, if it is passed by the Parliament, will deliver a package of reforms that will help to ensure that people have a safe, secure and affordable place to live. We look forward to discussions today and throughout stage 1 with the committee, other members of the Parliament and external stakeholders as we seek to ensure that the measures can best achieve that aim.

I understand that the committee has agreed that the Social Justice and Social Security Committee will lead on part 5, which includes measures on homelessness prevention, and on part 6 in so far as it relates to fuel poverty. Therefore, we will highlight some of the key measures in parts 1 to 4, including those relating to rent control, greater rights for tenants to keep pets and private tenants being able to make changes to a rented home.

There are, of course, other measures in the bill. For example, it provides for duties on the First-tier Tribunal for Scotland housing and property chamber and the courts to consider the timing of eviction enforcement; reform to how civil damages for an unlawful eviction are calculated; the use of unclaimed tenancy deposit funds; a mechanism for joint tenants to end a tenancy when there is no mutual agreement; minor modifications to letting agent regulation to improve clarity on existing requirements; modernisation of the delivery of notices in the social rented sector; powers to convert older tenancies into private residential tenancies; and a change in the law on mobile homes to tie pitch fee increases to the consumer prices index instead of the retail prices index. Due to time constraints, I will not cover those provisions in detail in this summary, but we are happy to answer any questions thereafter.

On rent control, the bill introduces new powers for the introduction of a nationally consistent system of longer-term private sector rent controls,

which will be designated on a geographically specific basis and supported by a local assessment process to achieve fair and stable rent prices for tenants, if the bill is passed. The designation of rent control areas, the format and level of the rent caps that will apply in those areas and the creation of mitigating measures for certain landlords will be provided for in regulations. That is to ensure that measures can be tailored to the prevailing rent conditions in a local area and respond to changing circumstances. The regulations will be fully transparent, with detailed requirements for consultation, and they will, of course, be subject to parliamentary scrutiny.

The bill restricts the powers of ministers to designate a rent control area, in that an area can be designated only when, first, it

“is necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area”

and, secondly, it

“is a necessary and proportionate control of landlords’ use of their property in the area.”

A rent control area can be designated only for a fixed period of five years. Redesignation beyond the set time period would involve further assessment and consultation, which would be delivered through secondary legislation.

Furthermore, the bill allows ministers to provide for circumstances when the rent cap does not apply or when rent may increase by more than the rent cap, as we recognise that landlords might have experienced rising costs, including through the need to improve and repair properties.

In addition to the creation of rent control areas, the bill aims to improve the renting experience for tenants. Provisions in the bill introduce statutory rights for social and private residential tenants to make a request to their landlord to keep a pet in their home, and such a request must not be “unreasonably refused”. That means that landlords will no longer be able to have a blanket ban on tenants’ keeping pets, but landlords will still be able to refuse a request when they have good reason to do so.

To support the operation of the new rights, the bill defines a “pet”, sets clear timescales for managing requests, provides powers to set out further information that is to be included in a request and sets out how disputes are to be managed. In the private rented sector, the Scottish ministers will have powers to set out in regulations circumstances in which it would be reasonable for a landlord to refuse a tenant’s request and reasonable conditions that may be placed on a landlord’s approval of a request.

On personalisation, the bill introduces a statutory framework for private residential tenants to make certain changes to their homes. Changes are divided into two categories. Category 1 changes would not require the consent of the landlord. Category 2 changes could be requested and not “unreasonably refused” if a tenant had lived in the let property for more than six months. That said, landlords will be able to refuse such a change if it is reasonable for them to do so or to apply reasonable conditions when approving a request. The types of changes that will fall into each category will be set out in secondary legislation and will be subject to further consultation. As with the right to request to keep a pet, the bill sets clear timescales for requests and regulates how disputes will be managed. For private rented sector cases, that will be through the First-tier Tribunal.

The Scottish ministers view the measures in the bill as important next steps in delivering our vision for housing. The measures are intended to improve the rented sector for all tenants, particularly lower-income tenants in the private rented sector, who are particularly negatively impacted by current pressures on the housing market and the lack of control and choice that they experience as a result.

We are more than happy to take questions.

The Convener: Thanks very much for that overview.

We will move to questions. You have touched on some of the areas that I wanted to ask about, so I will ask a few questions to get a bit more detail. I am interested in how the bill fits in with the Scottish Government’s overall housing strategy. What part of the strategy is the bill aiming to address?

Catriona MacKean: The key focus of parts 1 to 4 of the bill is tenant protection. The measures are designed to create the legislative framework to allow for greater protection for tenants. That might be through long-term rent controls, in relation to rent levels and the rate at which rents can increase, or through strengthening tenants’ rights. Those measures very much link to our wider “Housing to 2040” vision, which was published in 2021, with a focus on improving choice, affordability and people’s experiences of accessing housing. With the homelessness prevention duties, the focus is on doing all that we can to ensure that people have a stable home that is protected. The bill looks to strengthen tenants’ rights across the wider system.

The Convener: The bill is connected to the strategy in “A New Deal for Tenants: Rented Sector Reform—Current Proposals”. Is any other progress being made through that strategy?

Catriona MacKean: Yes. Yvette Sheppard might want to come in on that question, too.

The bill is the key vehicle through which we are looking to progress the measures in the strategy, but a lot of work is required outwith the bill. For example, we are looking at how we collect the data that will underpin rent control. In connection to the bill, a range of work is on-going with local authorities in that regard. Similarly, through partnership working with local authorities and wider public bodies, we are doing the groundwork that is needed to bring forward the homelessness prevention duties.

The Convener: Great. It is always helpful to understand that a bill sits within broader work, because we can sometimes be a bit too focused on a bill without understanding all the component parts of the work being done.

In relation to getting the right balance between the rights of tenants and the rights of landlords, you said that the Government is aware that landlords face rising costs and that tenants need affordable housing and a good renting experience. In that regard, you mentioned personalisation and the right to keep pets. Can you tell us anything else about how the bill seeks to achieve the right balance between the rights of tenants and the rights of landlords?

Catriona MacKean: An important element of rent control is ensuring that there is the right balance between achieving our stated aim of stabilising rents and ensuring the proportionate use of property. The fact that the bill allows for safeguards to be built in is particularly important. Yvette Sheppard might want to say a bit more about that.

During stage 1, now that the bill has been published, we can have detailed conversations with stakeholders. In fact, we have already started to have really helpful conversations with representatives of landlords and tenants about the practical implications of what is set out in the bill and how things will work. We are able to have such discussions on key elements.

We know that greater certainty is really important for landlords and people who are considering investing in private housing in Scotland, but we have to balance that with providing flexibility for local requirements. That is why we have structured rent control as we have, with local assessment being an essential part of the process.

We are having on-going conversations with stakeholders about whether we have the balance right now or whether changes should be considered.

Yvette Sheppard (Scottish Government): Specific powers in the bill will allow ministers to take account of certain circumstances. Ministers will have the power, through secondary legislation, to exempt certain types of property from the rent control regime, based on the circumstances of the landlord or the tenant, and they will also have the power to set out circumstances in which there could be rent increases above the level of the cap. Those are the two key measures.

As Catriona MacKean alluded to, the package of safeguards for landlords includes consideration of local circumstances by local authorities and due process through consultation and the parliamentary process.

The Convener: You have both mentioned local nuances. How were the differences between rented housing in rural and urban areas considered when the bill was being drafted?

Catriona MacKean: Engagement with stakeholders in that regard has been important and will continue to be important. We understand that. We need to recognise how the bill interacts with the affordable housing supply programme and our focus on rural and island communities through our rural and islands housing action plan. We need to focus on collecting local data and ensure that local authorities take the lead in assessing whether a rent control area is required. That applies to both the initial screening process and the subsequent more detailed assessment.

Yvette Sheppard: In relation to the assessment part of the process, local authorities can, under the bill, designate all or parts of their area as a rent control area. That provision is included to reflect the fact that, within a local authority area, there will be differences in local circumstances and conditions in relation to rents. That measure will, in part, make it possible for us to respond to different sets of circumstances within one local authority area.

The Convener: Mark Griffin, who is joining us online, has a question.

Mark Griffin (Central Scotland) (Lab): Before I ask my question, I draw members' attention to my entry in the register of members' interests, which shows that I was the owner of a private rented property in the North Lanarkshire Council area until July last year.

Will the bill team provide an overview of the equality impacts of the bill's provisions, particularly as regards the rented housing proposals?

Catriona MacKean: A key thing that we have been aware of throughout the development of the proposals is that those who live in the private rented sector are more likely to be on lower incomes and, as such, they have particular

considerations that we need to think about. Higher proportions of women and single-parent households live in the private rented sector and we need to take those things into account as we develop the proposals.

09:45

Yvette Sheppard: As we have developed the measures, we have worked with lots of individual stakeholder groups. We brought together a multi-stakeholder private rented sector group to support the development of the measures and we have tried to make sure that we have really broad representation in that group. As Catriona MacKean alluded to, we have brought in organisations that support people on low incomes and those who have found it difficult to access accommodation in order to make sure that we have taken the equalities impacts into consideration as we went through the development process.

The Convener: That was helpful. Our intention was to get an overview of the bill. We will move on to some more detailed questions, starting with Gordon MacDonald, who has some questions about rent.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Before I ask my questions, I seek some clarification in relation to the questions that the convener asked. My understanding is that Scottish ministers may designate a rent control area only if they are satisfied that it is both

“necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area”

and

“a necessary and proportionate control of landlords’ use of their property in the area.”

There is bit of a conflict of interests there. How will whose interests take precedence be assessed?

Catriona MacKean: I think that the consideration that you are looking to unpack is the property rights of landlords, and the key is to have that proportionate impact. If the case for protecting tenants’ rights in the area is sufficiently strong, it will impact the assessment of proportionality in relation to the landlords’ property rights. People will have to have a clear set of evidence and data to demonstrate the need for rent control and ensure that it is appropriately balanced against the impact on landlords.

Decisions will be finely balanced, which is why we are working with local authorities to build a sense of what data can be used and built up to inform their assessments and also the advice and recommendations that will go to Scottish ministers and their subsequent legal consideration of the balance.

I do not know whether Craig McGuffie wants to say a wee bit more from a legal perspective.

Craig McGuffie (Scottish Government): Catriona MacKean has summed it up pretty well. It is a balancing exercise between two sets of competing rights. The further the rent control area goes in protecting tenants—the broader the area is, and the lower the level of the rent cap—the greater the impact will be on the property rights of landlords. We need to find the right level for the rent cap, determine the appropriate extent of the rent control area and have safeguards within it in order to balance out the impact on landlords. There will be an impact on landlords when it comes to rent control. I suppose that that is the purpose here.

Gordon MacDonald: My colleagues might ask questions about data but, when you are asking councils to collect data, will the house condition survey and value for money be taken into account?

Catriona MacKean: We are still building up those proposals. We will certainly want to consider whether those things can helpfully feature in the rent control data collection. We are looking at what data is already held. As committee members will be aware, very little data is held on individual properties at a census level. That is not the sort of data that we have. What we have is more along the lines of the house condition survey and that sampling approach. The information on broad market rental areas that underpins the work of rent service Scotland is also based on a sample approach rather than on comprehensive lists.

The question of how much further we can and should go to get more detailed information is a very live one and we are working on it. We recognise how important it is to get that right, and we can commit to taking that away as part of our considerations.

I do not know whether Yvette Sheppard wants to add anything.

Yvette Sheppard: The bill includes a list of information that local authorities may require from landlords, but that list may be amended by Scottish ministers through regulations.

Gordon MacDonald: As you mentioned, we already have rent pressure zones. Why do we need rent control areas?

Catriona MacKean: That is a very good question. The rent pressure zones legislation provides for local authorities to recommend that such zones are needed. The bill will require local authorities to make assessments and it provides a much more robust legislative framework to bring about rent control areas in a way that balances landlord rights and tenant rights. It provides a

workable framework that can be used for the protection of tenants.

We learned a lot from the rent pressure zone legislation and the difficulties that local authorities have had in bringing it into play where they have felt that it would be helpful. They have faced a number of barriers. That piece of legislation has been informative and it has helped us to build the current proposal in such a way that we are more confident that it will work in practice. As I said, it will require local authorities to conduct initial screening assessments and to progress them if the data shows that a rent control area would be proportionate and necessary.

Gordon MacDonald: The information that we have been given suggests that there is about £4 million in unclaimed tenancy deposits. The statutory deposit scheme came in in 2012. Is the figure the cumulative amount since 2012? If not, what has happened to deposits up to now? What is the annualised amount that goes unclaimed, on average?

Catriona MacKean: I do not have that level of detail, but Charlotte McHaffie may be able to comment.

Charlotte McHaffie (Scottish Government): The £4 million has accumulated since 2012. The figure increases every year. I do not have the annualised figure to hand, but we can certainly provide it in writing. There are different levels. Some deposits have been unclaimed since the start of the scheme and others are more recent. The teams have been doing a lot of work to try to ensure that deposits are claimed, as they should be, but a fair number still go unclaimed.

Gordon MacDonald: What is it proposed that unclaimed deposits will be used for if the money goes back to Scottish Government ministers?

Charlotte McHaffie: The bill sets some limits on what ministers may use the money for. It is tenants' money rather than landlords' money. The portion that is due to the landlord goes to them. It is the portion that is due to the tenant that is unclaimed. The bill sets out a number of uses around advice and information, all of which are focused on benefiting private rented tenants. The bill also includes powers to amend that list if, once the provisions are in operation, there is a need to allow other uses. A small portion of the money may also be used to facilitate the distribution of the funds.

The Convener: I would like to get a little more detail on rent control areas. Will putting the duty on ministers to decide whether to propose or designate rent control areas, informed by the local authorities, protect local authorities from the pressure and legal risk? Is that part of the thinking? Can we be assured that, given the

design of the bill, the Scottish ministers are prepared and resourced to shoulder that risk where necessary?

Catriona MacKean: Preparing local authorities will be critical. That was the subject of some really helpful discussion when the minister was at the Convention of Scottish Local Authorities housing conveners meeting last week with the COSLA spokesperson for community wellbeing. Now that we have a published bill, we can get into the detail and the specifics. We can talk more clearly and specifically about how we are proposing that rent control will work in practice and get some initial feedback from local authorities. There is a clear appetite for those discussions to continue, and we welcome that.

We set out initial costings in the financial memorandum with due regard to the likely financial impact on local authorities. We will build our understanding of that as we go through the process and talk to local authorities in greater detail about what processes they might need to support and what data they might need to draw on. We will also make sure that the provisions in the bill give them the right powers to ask for the right information and so on.

The bill is constituted in such a way that the principle is to have a national system of rent controls but with local designation. Again, that is about having the right balance. We are aiming to strike lots of balances in the bill, and that is one of those areas. We want to make sure that the legislation is robust and that we provide for the several layers of consideration that are required to consider the evidence, the data-driven case and the legal assessment of the balance of risks. The legal assessment will be done in different ways by different teams in local authorities and Scottish Government, with additional protection and consideration in the process.

I do not know whether Yvette Sheppard wants to mention any other elements.

Yvette Sheppard: A local authority working group has been working with Scottish Government officials, particularly on the assessment part of the process. We are hoping for and working towards an agreed approach with local authorities collectively that will mean that guidance and support are available to local authorities to ensure that, as far as is reasonable, there is a consistent approach to the assessment part of the process. That will help local authorities to deliver on their duties and it will be useful when Scottish Government ministers analyse the reports and recommendations that come forward from local authorities and decide whether rent control areas should be implemented in particular areas.

The Convener: I cannot remember whether you mentioned this in your opening remarks, but I want to get a bit of detail on the difference between rent control areas and rent pressure zones. Are rent controls applied to tenancies in a different way? What rent increase does the legislation allow? Also, I think that you said this, but can you confirm that rent controls can apply across a whole local authority area, whereas rent pressure zones cannot? If you could clarify those points, that would be great.

Catriona MacKean: As Yvette Sheppard has said, the bill allows for a whole local authority area or just part of it to be designated. That is an important difference.

The rent pressure zone provisions in the Private Housing (Tenancies) (Scotland) Act 2016 allow a cap to be applied to rent increases during the course of a tenancy, but they do not allow for restrictions to be applied to increases between tenancies. That is another very important difference between these proposals and what is already in place.

Under RPZ legislation, there is no duty on local authorities to carry out regular assessments of rents within their areas, neither does it provide for adequate considerations of rents in the context of protecting tenants. That change in emphasis has guided the development of the current proposals under consideration.

In bringing forward this bill, Scottish ministers consider that a system of rent controls is needed to ensure an on-going and nationally consistent approach to the consideration of conditions for private rented sector rents across Scotland. That is very much an alternative to the voluntary approach provided for under the rent pressure zone provisions.

The other element of the proposed measures that we would flag up is that, for a rent control area to be designated, Scottish ministers must be satisfied that restricting the rent rate in that area is necessary and proportionate for the purpose of supporting the social and economic interests of tenants in the area while allowing for balance with regard to the proportionate control of landlords' property use. That allows not just local circumstances but rent conditions across Scotland to be taken into account and ensures that rent controls are applied only where they are justified and proportionate.

The shift from a voluntary approach to a requirement will in no way lead to evidence being discounted. Indeed, we think that we will be able to establish a more workable framework that puts the evidence at the heart of these considerations while allowing the requirement for assessment to come in.

10:00

The Convener: Thank you. That was helpful. I call Miles Briggs, who has some more questions in this area.

Miles Briggs (Lothian) (Con): Good morning, panel, and thank you for joining us today.

You mentioned that the principle behind the bill is to stabilise rents, but what is your assessment of the rent controls that were put in by Parliament under emergency measures and which have left Scotland with some of the highest rent increases anywhere in the United Kingdom? Does this bill not have the potential to turbocharge increases for people renting in different communities?

Catriona MacKean: First, we are clear that the legislation needs to be robust and fit for purpose. The rent control and investment issues that stakeholders are raising are important considerations, and we are taking them very seriously. Indeed, such considerations will determine the implementation of any legislation, but a listening process will continue through stage 1 of the bill and, indeed, through the rest of its passage as we seek to ensure that we respond to that very important stakeholder feedback.

As for the impact of the Cost of Living (Tenant Protection) (Scotland) Act 2022 on rents, those measures applied to rent controls within a tenancy. The data that we have been looking at shows that there have been increases in advertised rents—that is, rents for new tenancies, which fell outwith the protections in the 2022 act. We know that there will have been a period where there was no rent increase in tenancies covered by the act and a further period when any increases were capped. We will be gathering information on what has happened since the conclusion of that act at the end of March, and that will be an important part of our considerations.

The strategy in the bill is to stabilise rents and to balance that aim by ensuring a proportionate impact on landlords' property rights. We recognise, too, that if we are to provide a well-functioning and effective housing system and a thriving private rented sector, we need a system that works for tenants but which is also a viable investment proposition. Taking into account and balancing those three areas will be part of our considerations.

Our engagement with investor stakeholders has been very strong throughout and, indeed, has probably been strengthened by the 2022 act, because of its immediate nature and the need to quickly build those relationships, which we have maintained. That, too, is very much part of our considerations. The wider stakeholder engagement with tenant stakeholders and individual landlords is every bit as important, and

striking the right balance across all measures will be critical.

Miles Briggs: Thank you for that. Some of the concerns that have been raised about the bill—for example, around mid-market rent—are very important, and we should already be looking at reforming things in the bill as it stands.

We have touched on rent pressure zones, but I have a couple of questions about rent control areas. What would be the timescale and the process for developing any regulations in that respect? Also, under the rent control area provisions in the bill, what would happen in that gap after the designation of a rent control area ended? From what you have said, my understanding is that there could be multiple designations within a council area, and there is a potential risk of landlords increasing rents, especially for new lets. Indeed, we saw that happen with new lets under the emergency regulations, with the market moving; in Edinburgh, for example, we have seen very different levels of rent for the same type of flat. Globally, we have seen unintended consequences where rent controls have been used, with rents for the same property doubling.

Catriona MacKean: Those kinds of unintended consequences have been front and centre in our considerations from the outset, and we have been learning from other areas in that regard. We have sought to design a framework that best balances all of those interests. As I have said, we hope that the proposed process will strengthen things and pick up on some of those points.

As for mid-market rents, which you mentioned, we are in contact with the Scottish Federation of Housing Associations and are very much aware of its representations. We have also been talking to individual social landlords, as they are particularly interested in discussing the issue with us. The matter is under active consideration as we look at the package of measures set out in the bill. We are getting a wide range of stakeholder input and are committed to working with stakeholders to get to the best position.

As we have mentioned, the bill contains powers for ministers to give exemptions to certain types of property. That flexibility is built into the framework as it stands.

Are there any other points to flag up on mid-market rents?

Yvette Sheppard: No.

Catriona MacKean: On developing the rent control regulations, engaging with the stakeholder group that Yvette Sheppard mentioned will be critical for us as we work through how some of this will work in practice and develop the regulations

accordingly. There will be a process for developing the regulations—including consulting on them once the bill is passed, if that is what Parliament decides—and we see the development of the guidance as an important part of that.

As for what would happen at the end of a rent control area designation, we will want to look at that in developing the guidance and advice. We already have processes for rent adjudication, for example, through the First-tier Tribunal, and that approach is strengthened by other provisions in the bill.

We are mindful of the issues and our learning from the 2022 act will be part of the process. We have only just seen that act come to an end, and we are keeping a close eye on what is happening and on the bridging measures for rent adjudication—that is, the modified process designed to bridge our way out of the emergency legislation. Certainly it is a key consideration.

Yvette, do you want to add anything?

Yvette Sheppard: The system is designed to be cyclical. The bill sets out a date by which local authorities will provide their first assessment report and recommendations to Scottish ministers. Decisions on designation will be made subsequently. After that, those assessments and the date for provision will run cyclically. There will be an assessment report and a further recommendation made before we reach the date by which a rent control area will either continue or fall.

The bill also contains a power for Scottish ministers to make provision for exit from a rent control area in quite a restricted way. By building on the work involved in and the experience of the 2022 act, we can understand how ministers might exercise that power, if they choose to, to make regulations supporting an exit from a rent control area.

Miles Briggs: Thank you for that.

I want to touch on data, too. You have already mentioned some of the work that the Scottish Government plans to do, but what impact could that work have on councils, specifically the requirement on them to assess rent conditions in their areas? Do councils, particularly Scotland's smaller councils, have the analytical capacity and the additional workforce to undertake that work? After all, workforce challenges are regularly raised with us.

Moreover, why is this data collection role being proposed for councils instead of being carried out at a national level? I know that different data sets are already provided at national level, but why has that not been included in the bill?

Catriona MacKean: We recognise that collecting robust data, particularly on the tenancy rent increases that will be a critical part of the assessments, is a complex task, and we absolutely agree that it is a considerable ask of local authorities. That is partly why we have been so keen to engage with them from the outset, including through the local authority working group that we have mentioned.

We recognise that we need a clear strategy that sees us into the future. There is also likely to be a need for some incremental approach as the legislation beds in and is used and as we learn from the process that we have in place to begin with and whether it needs to be adapted, improved or built on. We are liaising with local authorities to explore the collection of any necessary data that will inform rent control assessments, and that is an on-going process.

I would not discount the possibility of there being national-level data to support local authority assessments, but we are not yet at the point in the process where we can be definitive about how that will work in practice. Again, a balance will have to be struck between the cost of data collection and ensuring its robustness and reliability, and that will be an on-going consideration not just for us in national Government but also for local authorities. I expect that, even where we had national data to draw on, local authorities would still want the flexibility to draw on their own local data.

The provisions in the bill that give local authorities the power to ask for specific information from landlords are very important. I know that it is a different process, but local authorities already have teams of people supporting landlord registration. We want to be clear about how the local authority role would work in totality, but we need to speak further with the authorities before we can be definitive.

Miles Briggs: Since the bill was published, the Scottish Government has declared a housing emergency in response to lots of councils, some of which have seen the largest rent increases, declaring their own housing emergencies. Indeed, my own council here in Edinburgh has been one of them. What response have you had to the bill since then?

I note, too, that the homelessness duties that you touched on already exist, as far as I can see, but they are being swept up in the bill. One of those duties is to ensure that children and families are not in temporary accommodation for more than a week, but in Edinburgh, some have been in such accommodation for two years. What real impact do you think this bill will have? I am concerned that this is a case of politicians talking about bringing in a bill that affects local authorities, when those authorities do not have any capacity—

and, in fact, could lose it. How can we achieve the delivery of the outcomes and ensure that things do not get worse as a result of this bill? We must be very mindful of that.

Catriona MacKean: Absolutely, and the wider context in which the bill sits is very important in that regard, because it is very much aimed at the longer term. It is aimed at setting out a framework that stabilises rents; strengthens tenants' rights; shifts the emphasis towards preventing homelessness, not just by local authorities but by all the listed partners; and sets a culture and environment in which we look to prevent housing problems, avoid homelessness and avoid rents rising to a point where affordability becomes an increasing problem for tenants. The strategy is very much about setting that future-facing framework.

Of course, that does not mean that we do not need to do all that we can in the immediate term and work with local authorities and local government to identify all that the Scottish Government can do to tackle immediate housing pressures, particularly in places such as Edinburgh, which is facing record numbers of people in temporary accommodation and wider housing pressures. However, we need to do the same across the whole country, recognising, as was mentioned earlier, the impact on rural and island communities.

Our sense, as officials, is that this is not an either/or. The bill is about progressing a future-facing framework while still taking the action that is required right now to address the immediate pressures.

The Convener: I want to ask a bit more about the landlord register and data collection. In working on the bill, has the Scottish Government considered requiring landlords to provide evidence that basic safety and environmental standards have been met? Landlords already have to go through the process of energy performance certificates, electrical certificates, gas safety checks and so on. I am interested in knowing what the implications would be of making it a responsibility of landlords to provide that evidence proactively. Have you considered that evidence being provided publicly so that tenants are aware of the context of the rental housing before they go into an agreement with the landlord?

10:15

Catriona MacKean: We have considered the role of the landlord register and the legislative framework that underpins landlord registration during the course of the bill and in considering the Government's proposals relating to heat in buildings. For the Housing (Scotland) Bill, that was

not seen as a central consideration for the development of rent control. However, I see the case that you are making for that wider information, and we can certainly take that issue away.

We have a landlord registration framework and a set of information technology systems that underpin landlord registration, which are designed for a particular purpose. Although we are always thoughtful about how that could be flexed to meet other aims that have emerged since the original legislation was put in place, that is not always a straightforward proposition—I am sure that the committee will be aware of that. The provision of information on the energy efficiency standards, for example, is definitely being considered, but there is not a straightforward path to including that within existing data collections. That is not off the table, but it is not something that we felt that it was right to actively bring forward in the bill.

The Convener: Okay. It is interesting that, at the beginning, you said that part of the bill is about improving the renting experience, and you talked about pets and personalisation. I imagine that, if a person knows that they have a landlord who proactively provides all those certificates and ensures that those requirements are fulfilled, that would be helpful in the relationship that they are entering into.

Catriona MacKean: Yes. We can certainly take that away and consider it further. The interaction with the heat in buildings proposals and what is being consulted on there is a really important link that we have been mindful of throughout. It is about continuing to get the balance right in respect of the information that we ask for from landlords and how well we are balancing the asks with the benefits to tenants. That is a good point that we will take away.

The Convener: Thanks. You will probably be aware that the committee is monitoring petition PE1778, which is about the landlord register in general. There are concerns that it does not really do what it needs to do. Maybe there is something in that space as well. The bill is being drawn around the provision of affordable rent, but the experience that people are paying for is also important.

Mark Griffin: We have heard evidence that suggests that there is relatively low use of the rent adjudication process. Why do you think that is?

Catriona MacKean: We are keen to raise awareness of tenants' rights, and there have been a number of campaigns in recent years that have aimed at doing that. That will be an important part of ensuring that greater use is made of rent adjudication where appropriate.

I do not know whether Charlotte McHaffie or Yvette Sheppard wants to come in on that.

Charlotte McHaffie: I am happy to do so.

Mark Griffin is right that the rent adjudication process has not been used as it had been expected to be used since it came in. As Catriona MacKean alluded to, we have carried out a number of campaigns. There was an improvement in the use of the service, but it was postponed due to the Cost of Living (Tenant Protection) (Scotland) Act 2022, and it could not be used for a while.

One of the key things in looking at how the process has been used is the risk that a tenant faces that, if they challenge the rent, it could be set higher. That is a barrier. We know from looking at the data that that has not resulted in higher rents on many occasions—I think that there have been only two—but our rent service Scotland colleagues get a lot of calls, and they have reflected on people asking about that and raising that as a concern, and not seeing applications coming through following their discussions. We think that one of the key factors is the risk that tenants feel that, if they challenge a rent increase, they could end up with a worse one from their perspective. That is why the bill looks to cap the level of an adjudication at the amount proposed by the landlord.

Mark Griffin: Okay. It is interesting to know that you are having conversations with rent service Scotland, it is flagging that as an issue, and that has been the driver of the change in the bill. Do you have any information about the number of inquiries that come in that are not followed up with full applications as a result of those conversations? As well as the change to remove the ability to set a higher rent, were any other measures considered to improve access to the adjudication process?

Charlotte McHaffie: I do not know whether rent service Scotland keeps data on that. I think that our colleague who will give evidence later would be able to confirm whether it does.

On other options, the main one is raising awareness of rights. That has been the main focus until this point to ensure that tenants are aware. A number of pieces of research have shown that an area in which we can still make improvements is awareness of rights and how to exercise those rights. That is an on-going process.

The Convener: A representative of rent service Scotland, who is in the room at the moment, will join us shortly. We can ask for a bit more detail about that.

Willie Coffey has a number of questions about evictions.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning to everyone on the panel.

I want to go back to a point about tenancy deposits, which Gordon MacDonald raised. As you know, at the end of a tenancy, a deposit may be withheld in full or in part by a landlord, depending on a number of factors. That is usually to do with the condition that the property was left in at the end of the tenancy. How is the assessment of the condition of a property when a tenant leaves seen to be fair? When a tenant leaves, are they still legally entitled to pursue the deposit?

Catriona MacKean: There are processes in place. Charlotte McHaffie is probably best placed to answer that question.

Charlotte McHaffie: Processes are in place. Our three tenancy deposit schemes manage that process in line with the regulations that have been set. When a tenancy comes to an end, there should be documentation, and the landlord will do a check-out. They will look at the condition of the property to evidence whether any damage has been caused by the tenant. Usually, there is an agreement between the landlord and the tenant on reasonable deductions for any damage that has been caused.

If there is a dispute, each of the three schemes has a free adjudication dispute resolution service that will look at the evidence presented by the landlord and by the tenant and come to a conclusion on the best way in which to proportion up the deposit. That service has specific timescales set through the regulations for its operation, and the schemes support that service through the provision of information to landlords and tenants on the best way to present the information that is needed to make those decisions.

Willie Coffey: Is any amount of a tenant's deposit that is withheld for those reasons part of the £4 million that Gordon MacDonald referred to, or is that completely removed and deducted and gone for ever?

Charlotte McHaffie: For an unclaimed deposit, the landlord proposes the amount that they want to retain. If the tenant does not communicate—there are statutory timescales within which they need to respond—and the scheme cannot get in touch with them, the proportion that is to be paid to the landlord goes to the landlord and the proportion that was for the tenant is an unclaimed deposit and will sit with the schemes indefinitely. That has to be protected in client accounts, and that money is protected until the tenant claims it.

We have found that many of those deposits are not reclaimed. From looking at tenants' deposit schemes, a lot of the people who do not reclaim tend to be international students. The schemes

have been working to address information to help people to reclaim. It is only tenants' money that is in the unclaimed deposits.

Willie Coffey: Is there no provision in the bill to try to address that particular issue? Thousands of people could be due a return on their deposit, but are simply not claiming it.

Charlotte McHaffie: That is right. Although there is nothing about that in the bill, we already have powers in regulations to make changes to try to address why tenancy deposits are unclaimed in the first place. One reason is that the schemes have only one set of information. We propose to support the implementation of that part of the bill with taking forward regulations.

Willie Coffey: That is brilliant—thank you. Turning to evictions, the bill proposes to require the courts and tribunal to consider whether to delay an eviction, but we understand that that discretion is already there. Why does the bill introduce something that can already happen?

Catriona MacKean: It is an additional layer of protection for tenants. It ensures that there is clarity that the matter must be considered, so it strengthens the protection for tenants by allowing for that to be more front and centre in the ask of the tribunal when it is considering a case. As you said, in practice, it does not fundamentally change the powers of the tribunal to consider those things, although it places greater emphasis on that. The measure is particularly focused on recognising more formally in legislation, and in the guidance that we will provide subsequently, that certain times of year, such as religious festivals, or wider situations in a household's experience can have relevance.

Charlotte McHaffie may want to add something to that.

Charlotte McHaffie: I think that that covers it. Another element is that some tenants do not necessarily find it easy to engage with the process. Although some may actively look for a delay and bring forward those issues, others may not do so. The provision gives such tenants an opportunity to come forward and say that there are circumstances that mean that a small delay to the enforcement would be beneficial.

Willie Coffey: Have you gathered any evidence on the use of discretionary delays? Are there very few? What sort of numbers are we talking about in Scotland?

Catriona MacKean: That was covered in the new deal for tenants consultation. If I recall correctly, at that point, the proposition was around delaying winter evictions in particular. We got feedback on that, which helped to shape our proposals.

With cases that go through the tribunal, it is more difficult to gather information on what might have happened if we had had the measure in place. Our approach is based more on the experiences that people have had and the feedback on how the measure could be useful. The measure is not framed as being just about winter but more generally, to allow for the forefronting of wider circumstances all year round, as we recognise that different times of year can present different challenges.

Willie Coffey: The bill does not propose any changes to the grounds for eviction. During the consultation on the new deal for tenants, we had some views from tenants about whether the grounds for eviction should be reviewed, modified, changed or otherwise, but I think that you have decided to keep them the same.

10:30

Catriona MacKean: Yes. We are still keen to progress a review of the grounds for eviction, but it was not possible to progress that in time for this bill, because of the focus on other significant changes at this time.

Charlotte McHaffie: The new deal for tenants consultation was almost the start of the process of us gathering people's views about the use of the eviction grounds, so we already have information on the concerns about how some of the grounds are operating. The main focus is the review, which we are still committed to and which will give us an opportunity to look at some of the changes that have come through over the past few years. For example, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 made all grounds discretionary. That has now had time to bed in, so we will have an opportunity to review that aspect as well.

Willie Coffey: On the question of damages for unlawful evictions, there was a temporary measure in place that will be formalised in the bill. What evidence do we have to support formalising that now?

Charlotte McHaffie: You are right that, through the Cost of Living (Tenant Protection) (Scotland) Act 2022, we changed temporarily to a very similar process to the one that we put into the bill, although we have tweaked it slightly. We have seen an increase in applications to the tribunal. The process had been very underused. We know from research by Citizens Advice Scotland that there is a high level of illegal evictions compared to the figures on prosecutions or people seeking unlawful eviction damages. Under the Cost of Living (Tenant Protection) (Scotland) Act 2022, there was an increase in applications.

We are monitoring the decisions that are coming out of the tribunal. So far, we have not managed to tell too much from that, but we will continue to monitor those decisions as the cases that are in the system under the 2022 act will remain there until they are concluded.

Willie Coffey: Are we talking about hundreds or thousands of cases per year?

Charlotte McHaffie: We do not have official data on illegal evictions. Only handfuls of cases have come through over the past few years, so there seems to be a big disconnect between the numbers. The Citizens Advice Scotland numbers were higher than what we are getting through any official statistics.

Willie Coffey: My last query is not really about evictions; it is about joint tenancies and the requirement to give two months' notice to the other tenant. How did we arrive at the figure of two months and is it fair to potential tenants who may wish to come in and join the tenancy?

Charlotte McHaffie: We looked to align the two months' notice with the three months' notice period that landlords are required to give for the majority of tenancies where they come to an end. The two months plus the standard 28-day notice period that then goes to the landlord gives people in that situation that three-month period—it aligns with that.

We are trying to balance the issues. The process will be used where tenants have not come to an agreement or where no mutual agreement is possible, so we do not see it being used often. It is about giving people reasonable time to find alternative accommodation if that is needed or to look for another tenant, for them to be assigned and for that to be agreed with the landlord. We are balancing that with other issues. If, for example, someone is in an abusive relationship and the joint tenancy is being used as a means of control, we want to ensure that the timescale is not overly long.

We have tried to balance the two elements of giving remaining tenants sufficient time to get housing advice and work out with their landlord what they are going to do, and protecting people who might be in a really difficult position.

Catriona MacKean: It is worth highlighting that that is designed as an alternative route and is not designed to be the main way by which those things might be resolved. We recognise that, in many cases between tenants and landlords, it will be perfectly possible to resolve the issue without recourse to that legal route, but the bill is providing certainty that there is a legal route there if it is required in certain circumstances.

The Convener: On evictions, purpose-built student accommodation is not covered. Is there scope for covering that in the bill? Did you consider that? It was covered during the pandemic.

Catriona MacKean: Yes, it was considered. There has been an on-going review of purpose-built student accommodation and we are still considering the recommendations. That is still working its way through the process. The timing was one consideration for us in thinking about whether to reflect any changes in the bill.

The other consideration was that the measures in the bill are primarily based around private residential tenancies, which is a very different arrangement from what is in place for people living in purpose-built student accommodation. Obviously, there are links, but we did not feel that it was appropriate timing-wise or part of the core purpose of the bill to bring PBSA into consideration here.

The Convener: So it is about timing and the purpose of the bill but, as your review develops in the coming months and the bill is still going through the process, might you come to a different view based on that review?

Catriona MacKean: Yes, and we are absolutely in a place of listening to all stakeholders across the piece on what is required to meet the purpose of our bill. We recognise that student tenants need to be considered as part of the process, particularly those who live in private residential tenancies—we recognise that that is a part of the picture. However, we need to balance that with the practicalities of ensuring that we continue to meet the bill timetable.

We are very much looking to take views and evidence from stakeholders, including from Parliament, about any changes that might be considered, but the issue has not had the full consideration that the other elements of the bill have had from an official perspective in our policy and legal work. As I say, we are keen to understand what stakeholders might be looking for from future legislation and how we can ensure that there is a good level of housing rights and protection for students in PBSA.

The Convener: We will move on to the theme of implementation. I will bring in Mark Griffin.

Mark Griffin: The Nationwide Foundation's better renting research found that some tenants were less likely to exercise their rights due to a power imbalance between tenants and landlords. There is a perception for tenants that if they try to enforce their rights, they will simply be evicted. While giving tenants more rights, how will we give them more power individually to enforce those rights?

Catriona MacKean: I have spoken a lot about our work with local authorities on the implementation of the bill, but our work with the First-tier Tribunal and the Scottish Courts and Tribunals Service will be really important as well. The first thing is to make sure that the enhanced rights that we are bringing forward are practically deliverable and that we have a clear sense of how they will be implemented.

Turning to the provisions in the bill, the measures that will allow for a rent adjudication to decrease as well as increase rent are an important practical shift in tenants' rights within the system. The significant increases in damages for unlawful evictions are also intended to address the imbalance that we have heard about from tenants and to ensure that there is a significant deterrent for landlords who might choose to progress an illegal eviction. By making that so costly and therefore risky, we are trying to create an incentive to ensure that people follow the due process and that tenants can access their rights.

The other thing, which we have mentioned already, is ensuring strong communication to tenants of what their rights are and that there is a high level of understanding, working with partners such as Citizens Advice Scotland and Shelter Scotland. We have done some work with Young Scot on reaching young people in particular and ensuring that those rights are well understood. We need to continue that process.

The current protections and framework in Scotland have great strength, and they are still relatively recent and new. There is a real job in communicating that clearly so that people know, when they need to know, what their rights are and how they can access those things. Equally, it is about ensuring that the practical framework is in place with our partners so that access to justice and rights is part of the process as well.

I see it as still being a very evolving picture, as we ensure high awareness of the Private Housing (Tenancies) (Scotland) Act 2016 rights as well as the additional rights that we are seeking to build in if the bill is passed in Parliament.

Yvette Sheppard: With the rent control measures in the bill, we have considered what tenants might need to help them to exercise their rights. There are provisions in the bill that will place obligations on landlords in relation to the information that they include in any advertisement for a rented property. We will make some changes to the information that a landlord is required to provide to tenants at the start of a new tenancy, so that tenants are aware that they are in a rent control area and what the previous rent for the property was. That will mean that they can be assured that any new tenancy has a rent that is in accordance with the requirements.

We have also looked to ensure that there is provision for tenants to have any rent increase notice in a rent control area verified. We will bring forward tools, information and guidance that will support tenants and landlords to understand the operation of the rent control area. However, where a tenant has a concern, the bill provides for a route of verification through which they can ask rent service Scotland to verify that the rent increase is within the requirements for that particular area.

We have considered how we can best help tenants and what information we can ensure that they have to help them to exercise their rights in the new rent control areas.

The Convener: At the beginning, we spoke about balance, so I will bring in Pam Gosal to ask some questions.

Pam Gosal (West Scotland) (Con): Good morning. Housing developers have said that rent controls are hindering the supply of new homes. Has any assessment been made of the bill's impact on the supply of private homes? What evidence do you have on how the private rented sector has been changing in the light of the recent rent increase cap?

Catriona MacKean: That is a really important question. Ministers are clear that we are looking to build a future system in which investment in rented homes is both viable and beneficial to tenants. We absolutely recognise that that needs to be part of our planning when considering the bill.

We have good relationships with a range of stakeholders related to private investment in housing and, from those conversations, we get a good sense of their concerns. We are looking to work with them to understand how those concerns can be addressed through the framing and implementation of the bill, but we should not forget that we need to achieve the bill's core purpose of protecting tenants and stabilising rents through rent control.

Throughout the bill's development, ministers have been clear that investment in private housing is not incompatible with rent control. We know from other countries that there are things that can support that and things that could work against it. In designing a system that works effectively for Scotland, we are looking to hear the views of all stakeholders and to consider and balance them as the bill progresses.

In relation to evidence on the impact of recent legislative measures, we have had helpful information from investor stakeholders about their assessments of what might have happened. It is always difficult to know what would have happened if things had been different—those questions are always hypothetical—but we are

paying close attention to the situation, and we recognise that continued investment in the supply of homes is a really important consideration. The stakeholder groups that have supported us thus far will continue to be important as we progress our conversations and considerations during the bill's passage.

You might have made another point—I am not sure that I have addressed all the points.

10:45

Pam Gosal: I asked whether an assessment had been made of the bill's impact and about the evidence, but I think that you have covered that.

Rents are rising. The Office for National Statistics has shown that, since the introduction of the rent cap, rents have increased by nearly 16.5 per cent, which means that they are rising more quickly here than they are anywhere else in the United Kingdom. How will you ensure that the bill does not have a similar effect? You have said that you have been speaking to stakeholders, but what has come out of those discussions so far? Is there any benchmarking? Are you looking at examples of rent control being introduced elsewhere and at what has happened there?

People really cannot afford the increases. The committee has heard evidence that it is unaffordable for people to rent, and a lot of housing developers felt that they were being squeezed out of the market and that that was why the restrictions were introduced.

There is a problem on both sides—rents are too high for tenants, and there is a supply problem in relation to people who rent out properties. Those are two different problems, but they link together. What has come out of your talks with stakeholders so far on how to resolve the situation?

Catriona MacKean: We recognise that the core purpose of the rent control provisions was to balance stabilising rents with protecting the property rights of landlords. We also recognise, from our conversations with stakeholders, that avoiding any reduction in investment in housing supply is a really important part of the picture, too. That is the key central message that comes through from conversations with stakeholders. We know that investors are looking for as much certainty as possible, and we will continue to try to provide that, balanced with the need for local sensitivity and responsiveness.

We recognise that it is important that we build flexibility into the bill, with measures that allow for specifics to be set out in regulations, so that things can be changed over time to respond to what is happening and to what we are seeing. That will

ensure that we are able to respond to any unintended consequences that arise.

Equally, we are looking at what measures could mitigate the risks that stakeholders are flagging to us, such as the risk of lower stakeholder or investor confidence and the risk of private landlords not being sure of the timescales involved or of how the provisions will impact them. We are working on how we can strengthen the safeguards that are already included without undermining the bill's core purpose, which is to protect tenants.

Earlier—this might have been before you joined the meeting—we were reflecting on the Cost of Living (Tenant Protection) (Scotland) Act 2022, with its implications being clear. In relation to rent increases, the 16 per cent figure that you mentioned is based on advertised rents; it does not in any way reflect in-tenancy rent experiences. The rent of anyone who was covered by the provisions of the 2022 act will not have increased. There was a 0 per cent increase for a period, and then there was a 3 per cent increase for most people, with a 6 per cent increase in some cases.

There will have been a big difference between rents for tenants within tenancies and rents for tenants between tenancies. Under the bill's measures, if a rent control area was designated, it would be possible for there to be controls on rents for tenants both within tenancies and between tenancies. That would not be the same situation as we had with a blanket approach across the whole of Scotland, without having different measures.

It will be a national system with local flexibility and implementation, which means that there will be greater sensitivity to what is being experienced in different areas. That is an important part of mitigating some of the unintended consequences. There will also be a continued duty on the Scottish ministers to ensure that, during the period in which a rent control area is designated, the measure remains proportionate and necessary, so there will need to be monitoring.

Pam Gosal: You talked about the need for the measures to be proportionate and necessary, which is very important. I have spoken about new homes being built and about people being unable to afford to rent properties, but we must not forget about landlords, as you mentioned. Some of them have high mortgages, and they must have the right amount of money to pay for them. Sometimes, they are being squeezed out of the market and say, "We're not going to provide homes because we don't get the return to pay even for a simple mortgage or a simple loan on a property." Do you have any statistics or data on that? What is your view?

Catriona MacKean: We are aware of those considerations. Such issues have been central to our conversations with organisations such as the Scottish Association of Landlords. We know that various surveys of members have been conducted, and I think that Scottish Land & Estates has carried out a similar process. We know that there is a real sense of uncertainty and apprehensiveness about what the measures will mean for individual landlords. In recent years, there has been very high and sustained pressure on people's mortgages, given interest rates and so on, and we recognise that that has had an impact on landlords, too. That is definitely part of our consideration.

We keep a close eye on the landlord registration system and on how many properties are being brought forward for rent. The latest data that I have shows that, between August 2022 and March 2024, there was a 2.1 per cent increase in the number of registered properties for rent in Scotland. That is not perfect data, but we look at those indicators regularly to check whether we are seeing any changes in the availability of properties playing out in practice. We are not seeing that yet, but we are mindful of the need to recognise that that is a really important part of the system.

We want a thriving private rented sector in which investment is a viable proposition, but the focus should always be on affordable high-quality homes that meet people's needs in that sector. To get the balance right, we need to hear landlords' concerns, consider what we can do to mitigate some of the risks that they flag to us and introduce a package of measures that best meets the overall aim of providing great homes in the PRS.

I do not know whether any of my colleagues want to add anything.

The Convener: We will have to move on, because we are a bit pressed for time. Thanks so much for clarifying the work that you have been doing with landlords in relation to monitoring the landlord registration system, with the data showing that there has been a 2.1 per cent increase in the number of registered properties.

We have come to the end of our session. It has been really helpful to have you here to answer questions so that we can get some details on your thinking behind the bill and its intention.

I will briefly suspend the meeting to allow for a change of witnesses.

10:53

Meeting suspended.

10:56

On resuming—

The Convener: I welcome our second panel: Chris Donaldson is the head of rent service Scotland.

I will ask the opening question. Will you explain how the adjudication process in the Private Housing (Tenancies) (Scotland) Act 2016 works in practice, what timescales are involved and what data you use to assess open market rents?

Chris Donaldson (Scottish Government): Good morning. The rent adjudication process came into force in December 2017, and it was suspended in September 2022, when the Cost of Living (Tenant Protection) (Scotland) Act 2022 came in. During that time, there was quite low uptake of the process by tenants. What happens is that a landlord will issue a rent increase notice, which gives the tenant three months' notice of an intended increase. The tenant has 21 days to apply to a rent officer and, once an application has been submitted, we have approximately 40 days to process it. We will look at the property—we will probably go out to inspect it and value it. Sometimes the landlord or the tenant will also send in supporting photographic evidence of any issues. We will use comparable evidence in coming to a valuation.

We will then make an order that sets an amount for the rent increase. The tenant and the landlord have a couple of weeks to appeal that decision. If they are unhappy with it, a senior rent officer will review it and make a final order. If they are still unhappy, they can go to the First-tier Tribunal for a further stage of appeal. We publish those decisions on our web page. The rent adjudication register also gives people the opportunity to see the comparable evidence that we have used. Obviously, it is redacted, but it gives a geographical postcode and information such as the number of bedrooms, the rental amount and so on. It lets people see how it has been used.

The process came in in 2017. At first, we had low numbers. In the first year, we had two applications. In 2021, the figure increased to 44, and, in 2022, up to September, we received 96 applications. At the time, the process was not very well publicised, and the uptake was low. Tenants might also have been apprehensive about applying because they felt that there were other issues that could be used against them. That changed on 1 April, when the Cost of Living (Tenant Protection) (Scotland) Act 2022 expired. A new modification was made to the rent

adjudication process, which started in the past two months.

The Convener: Thank you for that overview. Mark Griffin has a question.

11:00

Mark Griffin: Have there been any problems in accessing sufficient data in order to make comparisons about open-market rent levels? Is that more of a problem in cities and towns or in rural areas? Do you have any information on that?

Chris Donaldson: We already have a couple of statutory functions to compile data. We do that primarily for certain local housing allowance rates and certain universal credit housing element rates, and we also use it as comparable evidence for various other decisions that we must make for benefit purposes. We collect the data by broad rental market area, of which there are 18 in the country; 32 local authority zones make up the broad rental market areas.

We have certain challenges in some areas—for example, there could be a scarcity of properties in some rural and island areas, and in more desirable areas where there are lot of holiday lets. We collect a random sample—we are talking about an average of between 10 and 15 per cent across each area, which includes various bedroom sizes and property types.

We could receive an application for any property in the sector. If we receive an application for something that is fairly unique, such as a flat in a castle, we will try to find comparable evidence at the time, but we have quite a large pool of data to pull on, which we have been collecting for years.

The Convener: That is quite insightful. My ears pricked up when you mentioned rural and island issues. Pam Gosal has a question.

Pam Gosal: Good morning. The bill proposes to remove the ability of a rent officer to set a rent that is higher than the rent that the landlord has proposed. In practice, how often does a rent officer set a rent that is higher than the rent that the landlord has proposed? What impact do you think that the proposal might have on tenants' willingness to refer a rent increase notice for adjudication?

Chris Donaldson: Since 2017, we have used the ability to set a higher rent a couple of times. I cannot comment on how often the First-tier Tribunal has used that ability, but we have used it a couple of times. We could set the rent at the same level as that requested, or at a higher or lower level.

If the proposal comes in, it might take away tenants' fear and apprehension that if they apply

for an adjudication, the rent could be set at an even higher level than that requested. I do not have any data on that. The number of inquiries that we get through our helplines is relatively high, but those inquiries do not always result in applications being made at that stage. It is difficult to know how the proposal will impact, but we will use comparable data to set an open-market rent.

The Convener: I want to pick up on the fact—this came up in the earlier session as well—that you get a high level of inquiries, but that does not translate to people taking the next step. Are you able to understand what is going on there? Do we need to think about supporting people through that process more?

Chris Donaldson: The application process is free, so there is no charge for applying. Each month, we get between a couple of hundred and 400 inquiries via telephone or email. In 2022, we had 96 rent adjudications. Since April, the position has changed, and we have had between 300 and 400 per month.

With regard to people's willingness to apply, obviously, people can go to Citizens Advice Scotland and other agencies for help. At the start of this year, there was quite a good marketing campaign that highlighted tenants' rights to apply. Maybe it is also a case of people having more awareness of those rights.

Gordon MacDonald: Good morning. I seek a quick clarification. Earlier, you said that when you are considering a rent increase, you might go out to inspect the property. Are you able to look at the condition of the property? There might be black mould or dodgy electrics, or the bathroom or the kitchen might need to be upgraded. Can you make any recommendations about that when you carry out the rent assessment? Does the tenant have any right to appeal the rent level on the grounds of the condition of the property?

Chris Donaldson: Yes. We will value the property based on a hypothetical tenant and a hypothetical landlord, and we will consider whether there are any improvements that the landlord or the tenant has made that affect the valuation. If there are issues, there are already various recourses available to tenants. For example, they can apply to the local authority or the First-tier Tribunal about the condition of the property. We will signpost them to such organisations if there is an issue with things such as mould or faulty central heating. That will have an impact on the valuation of the property. Some properties might not have running water, even in this day and age. Therefore, the condition will have an impact.

Willie Coffey: You have talked about the numbers in your case load. I think that you said

that you were getting about 20 applications a year in 2019, then 44, then 96, and you are now taking 400 calls per month. Are you anticipating that your case load will go up because of the bill? If you are getting so many inquiries—up to 400—why are you not getting anywhere near that number of applications for adjudication? Are the inquiries being resolved over the phone?

Chris Donaldson: Yes, some of the inquiries will be resolved, but also when the tenant goes away and thinks about it and thinks about all the considerations, we do not see that materialising in an application. From when the modifications came in on 1 April up until Sunday, we have had about 696 applications—we had about 400 in the first month and 300 in May—so there has been a huge increase in the number of applications. Obviously, there is a lot going on in the sector, but there has also been a successful marketing campaign to highlight tenants' right to apply.

Willie Coffey: Do you think that the bill will make that go even higher, and can you cope with that level of increased case load?

Chris Donaldson: Potentially, the change to the ability to set a rent higher will make it more attractive for tenants to apply, as that could take away their fear and they would then apply. There is no cost to them, so there is nothing for them to lose by applying; we cannot set the rent higher than the landlord has requested. Yes, potentially that could increase the numbers. Resources-wise, there is a financial memorandum to go along with the bill, which includes estimates based on our analysts' and economists' views of the volumes that it may lead to.

Miles Briggs: Thanks for joining us. I have a question about the understanding between tenants and landlords. To what extent do you think that tenants and landlords understand the adjudication process that you have outlined and their rights and entitlements in that?

Chris Donaldson: We have guidance pages, and we have an online application form to try to make it easier and more accessible. Tenants can still get paper copies as well. The guidance pages are quite self-explanatory and try to put into plain English how you can apply. There has also been a lot of press interest over the months and years about rents and rising costs. The Cost of Living (Tenant Protection) (Scotland) Act 2022 came in to help sitting tenants with that and caps were imposed at that point. I think that people are a lot more aware now and, especially if they see that it is free to apply and there is no risk to them, it is more accessible to apply.

Miles Briggs: A lot of the rented market in Scotland is made up of individual additional properties that people own. They are not big

landlords. There is data available now showing that a lot of them are moving out of being landlords because they are expecting some of these changes. With the Housing (Scotland) Bill bringing another set of regulations and duties that they must follow, do you have any data or information from people contacting you that suggests that those landlords, who may have inherited a property that they rent out, are likely to sell up and leave the market? In Edinburgh, there is a buoyant housing market, so property can be sold quite easily. There is evidence of that taking place, but the national data set does not seem to be available to allow us to look at that. What are your views on that and the information that you are gathering from people contacting you?

Chris Donaldson: We do not collect any data on that. We look at the landlord registration numbers, but that is over a three-year time series where the licence is valid. We do not see that. We have odd phone calls in which one or two will say their mortgage costs are increasing and they cannot afford to keep their property or to keep a tenant in it and they are going to sell, but we do not collect any statistics on that and we do not know how much of that comes to fruition.

While we are collecting data, we see adverts and maybe estate agent or auction sites that say, "Sold with a sitting tenant". We pick up on things such as that, but we do not have any statistics on it.

The Convener: You mentioned right at the beginning of our conversation the 21-day period. Is that three weeks or 21 working days?

Chris Donaldson: It is three weeks.

The Convener: Do you think that that is enough time for somebody who is not familiar with the process and who may or may not know their rights to become alert to the situation and get motivated to do something about it?

Chris Donaldson: The three-week period was set in legislation in 2016. Obviously, there is only three months before the rent increase will take effect if it is unchallenged, so the three-week period is there to give the tenant initial time to apply. The application form is about seven or eight pages, so it is not in great detail. It is quite easy to fill it in online or fill it in on paper and send it to us. The time limit is also to stop any delay to the rent increase taking effect. It is basically taking up the first 21 days of a 90-day period.

The majority of applications that we see come in within timescales. I have no statistics on how many tenants would hit the 21 days and decide not to apply, but if the landlord emails the rent increase notice or posts it to the tenant, they have three weeks to apply to us.

The Convener: That comes to the end of our questions. Thanks so much for joining us this morning. It has been helpful to understand a bit more about what you are doing at rent service Scotland. As that was the final public item on our agenda today, I now close the public part of our meeting.

11:13

Meeting continued in private until 11:34.

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