



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Local Government, Housing and Planning Committee

Tuesday 3 September 2024

Session 6



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Tuesday 3 September 2024

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
HOUSING (SCOTLAND) BILL: STAGE 1	2

LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
22nd 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)

*Pam Gosal (West Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Emma Roddick (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tony Cain (Association of Local Authority Chief Housing Officers)

Mike Callaghan (Convention of Scottish Local Authorities)

Callum Chomczuk (Chartered Institute of Housing)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 3 September 2024

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning, and welcome to the 22nd meeting in 2024 of the Local Government, Housing and Planning Committee. I remind all members and witnesses to ensure that their devices are on silent and that all other notifications are turned off.

The first item on our agenda is to decide whether to take items 4 and 5 in private. Do we agree to take those items in private?

Members indicated agreement.

Housing (Scotland) Bill: Stage 1

10:03

The Convener: The next item on our agenda is to take evidence on the Housing (Scotland) Bill. We are joined in the room by Tony Cain, who is policy manager for the Association of Local Authority Chief Housing Officers, which is otherwise known as ALACHO, and by Callum Chomczuk, who is national director of the Chartered Institute of Housing Scotland. We are joined online by Mike Callaghan, who is policy manager for the Convention of Scottish Local Authorities. I welcome the witnesses to the meeting.

We have quite a few questions. We will try to direct them to witnesses so that they know what is coming. Mike Callaghan, if you type R in the chat function, we will know to bring you in. There is no need for the witnesses in the room to operate their microphones.

I will begin with a general question for Tony Cain and Mike Callaghan initially, but Callum Chomczuk is welcome to come in. In your submissions, you identify a lack of coherence in the bill. Will you expand on your views on the overall coherence and effectiveness of the bill as a package of measures to assist in the realisation of a new deal for tenants? What improvements could be made?

Tony Cain (Association of Local Authority Chief Housing Officers): I am happy to give that a go. The first point to make is that, in relation to rent controls, the issues with rents at the moment are a symptom of a wider problem in the housing system. They are not the problem themselves; something else is driving them. Rent controls might make a difference in the short term in leading to different outcomes but, in the longer term, unintended consequences will emerge and there will still be the underlying problems. We are addressing a symptom, not the cause, of the problem. That is a starter for 10.

In relation to the rest of the bill, the new deal for tenants is very narrowly focused. The provisions on evictions do not really deal with some of the wider challenges. I know that, in some submissions, issues have been raised about the grounds for eviction in the private rented sector and in the social sector. The provisions do not obviously fit in a more coherent plane. For example, as I said in our submission, it is not clear why we are concerned about affordability in the private rented sector but are not in the least bit concerned about affordability in the owner-occupied sector, which is where 60 per cent of the population live.

The approach is a bit piecemeal. It does not look like a whole-system response and, as a consequence, things will squeeze out between our fingers. The bill might have some impact—although it is difficult to see what that impact will be—but it will not necessarily shape the whole system in a positive way.

The Convener: My understanding from being in the Parliament is that things take time and we cannot do everything at once. Parts of the bill will move us in a direction. You said that the situation is a symptom of a wider problem. Will you expand on what you think the wider problem is?

Tony Cain: You are right that things take time, but the bill is the third or fourth bite at the private rented sector cherry, so it is not as though we have not looked at the issue previously. We had a very long debate in 2015 and 2016 about what became the Private Housing (Tenancies) (Scotland) Act 2016.

Our system is unbalanced, is not working well and is not delivering in an even-handed way. Some people are advantaged by the system, and there are those who suffer significant disadvantage. I appreciate that we are not here to talk about homelessness, but homelessness is a system outcome. The housing system creates situations in which people cannot manage their housing journeys effectively, so they present to local authorities. We have to change the system in order to manage such issues.

In relation to the grounds for eviction in the private rented sector—I am repeating myself, because I said exactly this in January or February 2016 when we looked at that bill originally—the legislation does not abolish no-fault evictions; it creates a list, or a pick and mix, of no-fault evictions that landlords can pick from. Some of the things on the list ought to leave you with a question in your head. If a landlord loses their registration as a fit and proper person, the tenant is immediately at risk of eviction. I am not sure that that makes sense as a solution to that particular problem. I am not convinced that a landlord losing their right to sell a property should result in a household becoming homeless.

Changes can be made. I am not expecting all the problems to be resolved overnight, but it is about the direction of travel. I do not think that we have made enough progress in rebalancing the system so that tenants are better protected. One of the points that I made in my submission is that the debate should be about consumer rights, consumer protection and, to an important degree, human rights, but it is largely about property rights and the responsibilities that go with them. That is unhelpful.

The Convener: Mike Callaghan, would you like to come in on that question and talk about COSLA's submission?

Mike Callaghan (Convention of Scottish Local Authorities): Good morning, everyone. COSLA is supportive of the ethos of the Housing (Scotland) Bill in respect of—*[Inaudible.]*

The Convener: Hang on a minute. We have lost your audio.

Could you try again?

Mike Callaghan: Okay. COSLA is supportive of the ethos of the Housing (Scotland) Bill in respect of the prevention of homelessness duties and the prevention of domestic abuse. It is very much in line with our established political position in those respects.

In our written submission, we talk about a lack of coherence, because there are various tensions in the bill. Members of the committee will be very aware of the strategic challenges with housing in Scotland. The Scottish Parliament declared a housing emergency on 15 May and, some months back, a third of our member councils across the country declared local housing emergencies. There has also been a cut to the affordable housing supply programme. The pressures on local authorities, as strategic housing bodies and providers of homelessness services, are very significant.

You will not be surprised to hear that, in relation to the cost implications that are outlined in the financial memorandum, we believe that we will be underresourced, with new burdens being placed on local authority housing and homelessness teams, which are under much pressure, given the number of local housing emergencies that have been declared. The cut, some months ago, to the affordable housing supply programme, which I mentioned, has limited the housing options that are available.

We can see the rationale behind rent controls. In our cities, particularly in Edinburgh and Glasgow, rents are at very high levels. However, we need more homes in Scotland—ideally, affordable mid-market homes—and there is a tension in that respect. We are aware that there is a lot of interest from investors in building in Scotland, but they are deterred by some of the proposed rent control provisions. That is a matter of concern, because our primary focus is having more houses available for people in our local communities. There is that element, as well as all the costs and the bureaucracy of setting up rent control systems, because we will need reliable and robust data to be available.

The Convener: Callum Chomczuk, do you want to come in on the general question? We will talk about rents and evictions in detail later.

Callum Chomczuk (Chartered Institute of Housing): I will add to what the other witnesses have said. On our concerns about the bill's lack of coherence, there is a lack of vision for the private rented sector. As Tony Cain said, we have taken an intermittent approach to the PRS over the years, and there is a lack of strategic vision about what shape and size the sector should be. The PRS is a hugely important, dynamic and accessible part of our housing system, and we know that there is an interplay with the rest of the housing system. When we make changes in one part of the system—the PRS, in this instance—the owner-occupied sector and the social rented sector are affected. We need to be mindful of that and to make changes that do not have unintended consequences. The committee has heard a lot about that.

From looking at the bill, we think that there has been a lack of modelling of what the impacts will be. What do we expect the impact to be on rents and affordability? How will the bill affect supply across the entire rented residential sector? That undermines confidence in the bill.

Fundamentally, there should be a focus on the lack of supply, and we should look at the details in relation to the impact that the bill will have. There is nothing wrong with rent controls, but we have to look at supply across the whole housing sector. We can look to drive affordability in the private rented sector, but tenants need to have somewhere to go. That means that we need to look at the available options in the social rented sector and elsewhere.

Mike Callaghan talked about the housing emergencies. Introducing a rent control system runs the risk of exacerbating some of the problems and challenges in local authorities across Scotland. Unpacking those challenges would give us all a bit more confidence about how appropriate the bill is at this time.

Emma Roddick (Highlands and Islands) (SNP): I want to dig down a bit more on CHI thinking that there are parts of the Housing (Scotland) Bill that might contribute to homelessness. Callum, can you go into more detail on that?

Callum Chomczuk: The impact of rent controls, as the committee has heard, is on the availability of supply in the private rented sector. We know from our members speaking to local authorities that they are seeing more and more presentations in to the homelessness system from the private rented sector because landlords are leaving the system. I know that the committee has heard

previously about the increasing lack of investment in the build-to-rent market. We are seeing less and less availability of supply in the private rented sector. Decreasing the supply of homes available in the private rented sector will put more pressure on the homelessness system and on the social rented sector, as well. We are in a housing emergency: the less supply we have the more we will exacerbate the housing emergency in Scotland.

Emma Roddick: People not being able to afford their rents will also cause homelessness.

Callum Chomczuk: Affordability is a concern—absolutely. Rent controls in themselves are not a problem. They are not the wrong answer, but we need to think about the entire system: how can we best drive affordability? In looking at the bill, that is where we should start: how can we best make housing more affordable in Scotland? I think that I said this to the committee the last time that I was here: the best and most effective way is to provide supply. The way to drive affordability is to create choice for tenants, so that if there is less supply in the private rented sector, there are options available in the social rented sector.

10:15

There absolutely can be some short-term benefits for tenants in the private rented sector who may see their rents rise more slowly than they would have done otherwise. We are not talking about rents being reduced; we are talking only about limiting rent increases. However, over time, we run the risk of limiting growth of the supply of homes that we all know Scotland needs. Although there could be some short-term benefits, we risk exacerbating a supply crisis for the longer term, with fewer options available and increasing homelessness. The committee has heard a lot about homelessness figures over the last year and we know that the next set of figures is likely to be even worse. We need to set a firmer foundation for how we are building all the homes that we need and a concern is that the measure would undermine the confidence to build homes.

Emma Roddick: To clarify, you are saying not necessarily that there needs to be more private landlords, but that we need more availability in general—for example, by increasing housing stock in the social sector.

Callum Chomczuk: The discussion about the size of the private rented sector is an important one to have. We do not have that discussion; we had decades of growth in the private sector and did not really discuss what that looks like. Now we are seeing a period of decline in the private rented sector, but we are not really talking about how big the private rented sector should be and how big a

part it should play in our lives, or about how big the social rented sector should be. If we had that discussion about what is the right size for the cities, towns and villages across Scotland, that would be positive.

Fundamentally, it is about supply. If we were to see more options being available in the social rented sector, the concerns that the committee has heard about the impact of this—about the viability of mid-market rent or build-to-rent—would be far fewer. If we had more confidence that we could build social and affordable homes, the concerns that the committee has heard about would be less likely to come to fruition.

Emma Roddick: How big should the private rented sector be?

Callum Chomczuk: I do not have the answer to that. That is a question for the committee, the Government and the sector to work on together. We have never unpacked that. We have never thought about how big the sectors should be. We want to see professional landlords in the private rented sector. We want to see high-quality homes. Everybody that the committee has heard evidence from wants to see high-quality homes. It is not just the size of the sector that is important, but the quality of the landlords and the homes. We are where we are, but we probably should have had that discussion before we looked at the Housing (Scotland) Bill. How big should the private rented sector be? What is the right fairness and balance to give people appropriate housing options to move to the right type of homes for them and their lives? If we were to take this opportunity to think about the size and shape of the sector, we would get to much more impactful policy solutions.

Emma Roddick: Are we at risk of losing professional landlords with high-quality housing if we bring in rent controls?

Callum Chomczuk: Some of them will absolutely be at risk of leaving. I know that the Scottish Association of Landlords talked about 22,000 landlords leaving over the next year; some of them will be high-quality landlords. We do not want poor landlords in the sector. No one could possibly disagree with that. We want poor landlords to leave the sector. We want a high-quality rented sector, for both the social and private rented sectors, so anything to support that is good, but we do not want the loss of important rented accommodation that people depend on. The reality is that we do not know what will happen to that accommodation. Some of it will go into owner occupation, some of it might go to the social sector and some of it will undoubtedly become short-term lets, but the loss of residential rented accommodation will be crippling for us all, particularly in a housing emergency.

The Convener: We will move on to focus on rent specifically and I will bring in Willie Coffey.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, everybody. Clearly the intention behind the rent control provisions in the bill is to provide some kind of stability and support for tenants' housing costs. Will that be the outcome that the bill will achieve? I am aware that an Organisation for Economic Co-operation and Development report told us that 13 countries operate rent controls and that another 23 countries, I think, have some kind of restriction on rent increases. It is a measure that seems to be used and applied elsewhere. What are your views about the rent control principle itself? Does it provide the stability for tenants that the Government hopes it will achieve?

Tony Cain: The short answer is, yes, it can provide that, but it needs to be within the context of a properly functioning or evenly balanced housing system, and we do not have one of those. The unintended or the unexpected consequences are the major risk around some of this. At the end of the day, there is a choice to be made here, which is the job of politicians. The advice that I am inclined to give is that if we intend to go with this system, some improvements will need to be made in order to give it a chance of working effectively—you have heard some evidence on that already.

I worry that rent control areas will have boundary impacts that will be difficult to manage. You may want to use those boundary impacts strategically—if you control rents in one area, it will drive investment into another—so you might regard that as a good thing. The impact of some rent controls might mean that some landlords will leave the sector and you might regard that as a good thing, too—depending on which ones are leaving. I do not think that the objection is to rent controls per se. The issue is how they fit within the broader drive towards a stable sector and a better functioning housing system.

We have to ask the question: given that the private rented is a market-driven sector that is meant to survive off market signals about demand and supply, why is there an expectation that it should be affordable? What does “affordable” even mean in the context of the private rented sector?

That leads on to one of our major difficulties, which is that our social housing sector is much too small and, in some places, it is so small that it has no influence on the operation of the local housing system. In Edinburgh, social housing amounts to about 14 per cent of the housing stock, but the private rented sector is bigger. That is significantly unbalanced and needs to be addressed.

Another challenge in this context is that we are seeing a drift towards build-to-rent and mid-market rent as the focus of the new supply of rented accommodation. Effectively, rents are going up because social renting is becoming proportionally less important and mid-market renting is becoming more important. Rents are going up. That does not seem to be the intention of this policy position, but the net effect of the wider system and the other decisions that are being made means that people will face higher rents on average.

Willie Coffey: Thank you. Callum Chomczuk, will the rent control principle have the desired effect that we hope it will have?

Callum Chomczuk: Echoing what Tony Cain said, the broader issue of the totality of supply is fundamental to the success or failure of the policy. We cannot look at the two in isolation. The other point is that we know that the experience of tenants is that, on the whole, rents tend to increase between rather than within tenancies. The establishment of this principle creates the incentive for landlords to increase rents annually where that has not normally been the case.

In our evidence, we talk about the fact that despite the emergency rent cap legislation in the Cost of Living (Tenant Protection) Scotland Act 2022, we still saw rents increase quite substantially across Scotland. There is significant regional variation, but there have been double-digit increases in rent across Scotland during that period. We are building in an escalator for annual rent increases, which is absolutely not what the bill intends. There will be outliers for that. Most landlords value having good tenants and are not looking to drive them out of their properties. That is incredibly important, but the concept of rent controls will create an uplift in annual rents that was not there before, which will somewhat undermine the purpose of the legislation.

Willie Coffey: Thank you. Mike Callaghan, will rent control measures achieve the stabilising effect that we hope they will achieve?

Mike Callaghan: That is a very good question and it is interesting to hear about the studies from other countries on this. As Tony Cain and Callum Chomczuk have mentioned, what we have right now with the supply of housing in the country is an imbalanced housing system. We have to be circumspect in how we consider any introduction of rent controls given that it could have the opposite effect and there could be unintended consequences, such as avoidance by landlords and displacement effects. As well as that, there are setting-up costs for our local authority members, and there is a need to have robust and reliable data.

As I mentioned in my earlier point, rent controls could have an impact on investment in Scotland to create more housing, so we must be mindful of that issue, as well. It is worth exploring or looking at the evidence from other countries and seeing how this works, but we are very focused on the current housing situation in Scotland, which, as we all know, has major strategic challenges.

Willie Coffey: Thank you for that. I will come back to Mike Callaghan. Your submission to the committee recommends that part 1 of the bill should be reconsidered so that we can discuss further the issues about affordability—some people mentioned those in their opening remarks. Could you give us a flavour of why COSLA is saying that and what your recommendations are?

Mike Callaghan: On affordability, we have a chronic undersupply of housing in Scotland. The affordable housing supply budget was cut some months ago and, therefore, there is less housing available, which is causing more pressure on homelessness services. There is a need for more housing. The lack of housing provision and any deterring of private investors coming to invest in Scotland for more housing will create problems in making further provision available.

We are very supportive of the homelessness prevention duties and other elements of the bill. However, on the affordability aspects, it is very important that rent controls do not deter financial investment, particularly in mid-market rent developments in Scotland, which it would be very helpful to develop and make available in our local communities.

Willie Coffey: You also say in your submission to the committee that you would prefer to give tenants stronger rights to challenge unreasonable rent rises. We have heard from a lot of tenants who are unhappy, or are unable or find it very difficult to go into the process of challenging rent rises with whoever has imposed them. Could you explain your thinking there? What would these additional stronger rights look like and how easy would it be for people to embrace them and use them in practice?

Mike Callaghan: We are very supportive of improved rights for tenants in housing, particularly in the PRS. We are supportive of giving rent officers a greater role to provide more effective rights to challenge unreasonable rent rises. From our perspective, that would be in line with the consumer protection approach and would be more effective from a public spending perspective. We would be very supportive of that and of having further dialogue on how we can best address the problems of affordability in some parts of the private rented sector. At this stage our members are not really geared up to provide the resources

to manage rent controls locally or act in an enforcement capacity.

Tony Cain: This speaks to the nature of the relationship between a tenant and their landlord and their expectations. It is a power relationship. Half the private rented sector is managed without a managing agent—without an estate agent or a letting agent of any sort—and half of it is the personal property of the landlord rather than property that is clearly within an investment structure. Many of those landlords manage the property as if it is their personal home. You can make the life of a tenant very uncomfortable without breaking the law: you can regularly ask to look at the house; you can frequently ask questions about their behaviour; and you can restrict what they can do or make it clear to them that you are unhappy with this, that or the other. You can interfere in the tenant's home life without necessarily breaking the law because it is your home and because you feel entitled to do that. There is something there about rebalancing and regularising that relationship.

My view is that we should insist that it is a professional sector and that private rented homes are managed within a corporate structure—big company, small company; it does not matter. We should take out that very personal and very direct contact where the landlord feels aggrieved if the tenant does something to their house they do not like and the tenant feels at risk because if they ask the landlord a question they do not like, the relationship becomes uncomfortable and has a bearing on the way in which they respond.

We need to do something about rebalancing that relationship in order to give tenants the confidence that they can exercise their rights without facing unreasonable responses from landlords. Such things do happen and they happen quite a lot, which is why tenants often do not bother to understand their rights because they have no expectation that their rights will be honoured or implemented in an effective way. That is pretty much universal. There is even a hint of that in the social rented sector. It is an uneven relationship.

10:30

Callum Chomczuk: I absolutely support what Tony Cain said. That power imbalance is due to the lack of choice, which inhibits people's ability to make decisions that meet their fundamental self-interest and what is best for them. People often have to put that aside because they do not have the confidence or the ability to find a home that meets their needs. I absolutely accept that.

I go back to the point that I mentioned earlier about looking at each of the parts—the PRS and

the rest of it—piecemeal. How do we ensure that we have much greater clarity about rights and responsibilities of both parties? We know that there is weakness in enforcement. We know that there is lack of capacity in local authorities to enforce standards. We know that bad practice can be overlooked—Tony Cain talked a little bit about poor practice in the PRS. We need to find a way to ensure that there is much greater clarity about rights and responsibilities for both parties, much greater resource for enforcement, which needs to be financed, and fundamentally, more options available in order to give tenants the confidence that where their rights are not being upheld and where there is poor behaviour from a landlord, they are able to take action through the courts or action to move to a property that can meet their needs. Without addressing those fundamental pillars, we will still find an inhibition from tenants to address inappropriate rental behaviour from landlords because they just do not want to take the risk.

Willie Coffey: Thank you for those responses.

The Convener: On the back of that, I am interested in whether there is an indication that landlords are not meeting their legal obligations when it comes to providing energy performance certificates to tenants, issuing gas safety certificates to tenants within 28 days of a check and providing a copy of the electrical inspection condition report to tenants, where that is legally required. Do you have information on those things that landlords are meant to do? Are they generally doing that across Scotland? If that information was posted publicly, could that be used as an indication of a good landlord?

Tony Cain: That transparency would be important. Most registered landlords are doing those things. However—I accept that this is anecdotal—I know that one local authority recently decided to more thoroughly back-check the veracity of some of the certificates and discovered substantial fraud in the provision of electrical safety and gas safety certificates. It discovered gas registrations that did not exist and inspections that had not been carried out. In the public sector, 10 per cent of gas safety checks are back-checked to make sure that the check has been done properly. That is not happening in the private rented sector, but we do it in the public sector because the checks are not always done right and you need to know that they are being done right all the time. There are lots of risks around that. There is avoidance in some quarters, and our enforcement arrangements are weak in that sense.

Forgive me, but I will make one observation on that. If you set up an enforcement or regulatory framework to keep the good guys happy, you will

create space for the bad guys, and that is what we do. The private rented sector attracts a significant element of poor landlordism, but it also attracts criminal activity. The property sector is the primary focus for serious and organised crime in the United Kingdom. It is not just me saying that; Police Scotland will say it, too. Because we regulate to keep the good guys happy, we are actively creating space for those who seek to exploit that and exploit tenants.

The Convener: To clarify, are you saying that, if we had more transparency on those three levels—and if they were public facing—that would help us in making the sector better for people?

Tony Cain: Yes. You could publish the EPCs and gas safety certificates—that makes sense. However, a more assertive enforcement regime is probably needed. A colleague from Glasgow made the point in her evidence that the regime is still relatively light touch. We need to think about the nature of the service—we are talking about the provision of a home or a house; not hiring a car or selling somebody a bag of sweets. The right to a home life and to adequate housing is a human right, and the consequence of bad housing is substantial for the individuals and society as a whole. I am not sure that we take that seriously enough in the private rented sector. We are quite aggressive about it in social housing. Social housing providers are, quite rightly, regularly pilloried for their failures, and the regulatory framework is not as tight as it used to be, but it is tight. However, we do not apply any of those pressures to private landlords and it is an amateur sector. Half of those landlords own only one property and half of them do not use a professional agent.

The Convener: So a more assertive regime would be one that is similar to that in the social rented sector.

Tony Cain: You would need to have that conversation with the representatives of landlords who are in the room, but I think that there is a case for a much more assertive approach to quality control and enforcement in the sector.

The Convener: Thanks very much.

Pam Gosal has a couple of questions.

Pam Gosal (West Scotland) (Con): Good morning to our witnesses. Thank you for the information that you have provided so far. The Association of Local Authority Chief Housing Officers and the Chartered Institute of Housing have stressed their concerns about the potential for rent controls to shrink the market and put upward pressure on rents. The Scottish Government states that there will be some exemptions and that rules will be localised. Why are such mitigations not adequate? What

mitigations would be appropriate? I put that question to Callum Chomczuk first.

Callum Chomczuk: On the bill as it stands, mitigations are absolutely required. I would make the case that they are required in the bill rather than allowing for local flexibility, because having measures in the bill will give confidence to everyone. It will give confidence to the market, tenants and the system that, in the case of mid-market rent providers, there is scope for housing associations and others to continue to build properties at mid-market level. If we allow for local flexibility, we will require five-year updates to allow debate and discussion, so there will be uncertainty. Social landlords do not work in five-year windows; they work with 30-year business plans, so we need certainty in the bill that gives confidence in the mid-market.

I agree with Tony Cain that mid-market rent should not be the focus of the bill, but it is an important and increasing part of the housing system and we want the bill to safeguard that. It is important and it provides appropriate housing options for some people. Therefore, let us ensure that, in the bill, we create the space to give confidence and viability to the landlords that will continue to build for mid-market rent.

A carve-out just for mid-market rent is not necessarily the appropriate approach. We might want to look at building in exemptions for rents that are under the local housing allowance rate, which might give confidence that the lowest rents in the sector will not be subject to rent control provisions.

Beyond that, there is some interesting discussion. The committee has heard previously about the lack of investment and about the report from Rettie looking at the billions that could have been invested in Scotland but have been directed across the rest of the UK in the build-to-rent market. We clearly want to encourage investment in Scotland and to encourage more properties and more building, so we need something that gives confidence to investors that it provides a margin of return.

Right now, the bill does not give that confidence. Investors will not seek to build properties with a zero per cent return—no one is going to take that risk. Although rent control might not be likely, it is possible and might be probable in some cases, and every five years the situation can be reviewed. We need something in the legislation that gives confidence to the sector and that says that we want people to build in Scotland and that we want investment and homes. CIH does not have a one-tenure approach; we want a housing system that works, which means having properties of every tenure available—build-to-rent, mid-market and social and affordable housing all have a place. We

therefore need some exemptions that will mitigate the poor impacts of the bill.

Tony Cain: You have already heard evidence that the proposal is having an impact on investment decisions. You can only take them at face value, but you had John Boyle and other representatives of the build-to-rent sector at the committee saying that nobody is interested in build-to-rent in Scotland now because of the uncertainty about their income streams in the future. They are asking for a degree of certainty around their capacity to generate a return from those types of investments. There is a judgment about whether you want to respond to that call, but it is one of the issues around the way that the bill will impact.

You might take the view that shrinking the private rented sector by driving out landlords is one of the outcomes that you want. To be clear, as long as you are explicit about it, that is a perfectly reasonable objective. I think that the private rented sector is too big, but then I think that the social rented sector is too small. It is about how you connect those outcomes.

Callum Chomczuk's point about exempting rents that are at or below the local housing allowance rate, for example, makes complete sense to me. They are not the rents that you are concerned about. We invest in affordable housing at or around the local housing allowance, so why would you create a risk around that? I doubt that you could connect the provision directly to the local housing allowance, because that is controlled elsewhere, but I think that you would want to use that as a benchmark as the lower limit of rent control. It does not need to apply to every tenancy; it needs to apply to the sections of the market that are problematic in terms of affordability.

There is a conversation to be had. Some in the sector have set out—reasonably clearly, I think—what they think needs to be done in the bill. The big investors are asking for certainty, so there is a conversation to be had about how much certainty you can give them within the principal objectives of the bill. That is a reasonable question to ask.

Pam Gosal: My next question is to Mike Callaghan, who mentioned robust data. Before the summer recess, we heard from several councils about the bill. Jennifer Sheddan stressed the need for robust data so that a council's decision to designate a rent control area has strong evidence behind it. Is COSLA confident that the data that councils currently hold is robust enough to make an informed decision? If not, are you confident that sufficient data will be available in time to help councils to make their assessments on rent by November 2026? How can the risk of insufficient data be mitigated?

Mike Callaghan: That is a very good question. I will go back to the point that I made at the beginning about the financial assumptions in the bill. I think that there are underestimates in respect of local authorities being financed and having enough resources to set up effective, efficient and robust data systems to collect the data. We have heard from previous witnesses to the committee from Edinburgh and Glasgow about the sheer volume of landlords in both cities, some of whom are quite small while others have really diverse portfolios. The scale of data collection is substantial, and each local authority needs to absorb the costs of that in its budget.

It is critical to understand that there are a lot of differences in the data. There can be complexities to do with advertised starting rents and what rents are actually set at, at a given time. There is a lot of diversity in scale and it is a considerable amount of work to do that. There is also the question of what scale we set—should it be city-wide or at a political or ward level, or should it be at street level or involve one part of the city? There are other factors such as displacement that could occur in setting up a rent control area. A lot of factors have to be taken on board.

As a non-practitioner, I cannot clearly give an answer about the timescale but, certainly, from early discussions that we have had, it seems that the financial assumptions in the bill, on everything from homelessness prevention to the rent control elements, are underestimates. We therefore need further discussions with the Scottish Government and to work with our member councils to get a better and more accurate picture of what the cost implications would be.

Callum Chomczuk: The landlord registration system will be the most effective way to try to capture the data. We need a national data set. The idea of having 32 different systems with 32 different leads, complexities and inconsistencies is fraught with risk. Any determination for a rent control system would be subject to legal challenge, because we will see incomplete data across local authority boundaries. Therefore, we will require a national approach that can absolutely be complemented with local insight.

There are the points that the convener mentioned about the need for the data that we capture to be transparent. There are also the issues of size, quality and rent. I believe that the data must be at national level to give everybody confidence that it is rigorous and detailed enough to base a decision on; otherwise, I worry that the measures will be subject to legal disputes and that the will of local authorities, and in turn the ministers, to make a determination on the issue will not be there. We need a national system and to have confidence in what we will get. As Mike

Callaghan rightly said, we also need the resourcing to fund that data collection.

On the timescales, I do not think that we are there, because we are not clear on the means of capturing that data and the challenges in doing so. The bill talks about some penalties. The fact that we have not started the process suggests to me that it will take some time, but a national approach with consistency will be the cleanest, quickest and most effective way to develop any good data set.

10:45

Pam Gosal: You have just mentioned costs and Mike Callaghan said that the process could be quite costly, in terms of resources and time. Have you discussed with the Scottish Government the finances to support you with this? Have you also discussed putting in place a national system?

Callum Chomczuk: I have talked about the costs of the bill in the round. I do not have anything on this specific issue, and we certainly do not have an estimate of what the cost would look like. For me and the institute, the first and most important thing is the principle and trying to get agreement on the creation of a national data set and what we are looking to understand. However, we have not had any detailed discussion with the Government. That comes back to my earlier point about the lack of modelling, which would have been helpful for the committee and for all of us to understand what we want specifically and how much that would cost. We have not had detailed discussions about that.

Tony Cain: Our data sets on private renting in the housing sector are poor—I think that you have heard plenty of evidence about that. You have also heard quite good evidence about what they need to look like to properly support the regulation of the sector but also to support the sector and investment in it. To do that, you need to know what rents look like and what the sector looks like. At the moment, I am not even sure that we can reliably say whether it is growing or shrinking. We have had lots of contradictory evidence on that, but I suspect that it is shrinking in some places and growing in others. We also do not know how properties move across the sector. Because of the way that the landlord registration system works, we do not know how long any individual property has been in renting, and when and if it leaves or whether it comes back.

There is something pretty fundamental about having a robust, nationally collected and statistically reliable data set, because there will be legal challenges to decisions to introduce rent controls—you can be absolutely certain about that—so if there is any weakness in the data set, that weakness will be targeted. I say that there

“will” be legal challenge, but we have already seen a legal challenge from the Scottish Association of Landlords over the first iteration of rent controls during the pandemic and, for example, we have seen the self-catering industry being quite aggressive in its use of litigation to defend its interests and challenge decisions on regulation. To not expect that in this context would be a mistake. Putting in place proper data sets—genuinely statistically reliable ones—is part of the process of implementation.

Mike Callaghan: To go back to what Tony Cain said, from our experience in COSLA of working with the local government finance team on behalf of our member councils, we feel that the process for developing the financial memorandum and gathering local authority costs to inform it could have been better. We would have much preferred a longer engagement period to allow the local authorities to consider and provide robust and informed information. We are unclear as to how the local authority cost gathering has informed what is in the financial memorandum.

Specifically on rent controls, our view is that it involves significant time and that there will be a substantial resource requirement, but that has not been reflected in the financial memorandum. There is a lack of clarity on some of the costs and how they were arrived at, and there is not enough detail to be able to assess accuracy. Also, some costs are missing, such as those relating to the local authority role in enforcement.

The Convener: You may be aware that, in the lead-up to the bill, we had a landlords panel and a tenants panel before us, which was very helpful in enabling us to speak to people with lived experience. Our tenants panel proposed an alternative system whereby landlords should apply to a third party such as rent service Scotland if they want to increase rent levels. The thinking behind that is that it would place the onus on landlords to ensure compliance, improve data collection and relieve the pressure on local authorities to collect data. Tony Cain, what are your thoughts on that suggestion?

Tony Cain: Essentially, that system was in place up until 1988. Under the old regulated tenancy regime, every registered rent was set by a rent officer for three years, who also set the rate of increase for subsequent registrations. That is a very resource-intensive approach, but you could replicate the way in which tenants could seek to challenge a rent rise directly themselves. The question then becomes how you define a reasonable rent, a fair rent or a market rent, and that has been debated in the context of the assured tenancy regime and the regulated regime.

I suspect that that approach is a little bit too resource intensive for the present state of public

finances, which I think would be the principal concern about it. It hangs on how controlling of the sector the Scottish Government wants to be. That approach is probably a little bit heavy for the world that we are in just now, but it is a legitimate alternative view.

This proposal can be made better, but it will not control all rents.

The Convener: Do you mean the proposal in the bill?

Tony Cain: Yes.

Callum Chomczuk: I agree with Tony Cain. We have talked about resources, the committee has talked about resources for the bill and the public debate on housing is focused on resources. Consideration should be given to the proportionate benefit. How could the money be better used if it was not used to set rent controls? How could we put more money into the hands of tenants who are in hardship? How do we build such homes? The purpose of the bill is to drive affordability, but will it deliver the most proportionate impact for the money spent? Just hearing that, I am not sure.

The Convener: Thanks very much. I will bring in Gordon MacDonald on the theme of personalisation of homes.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Before I ask about that, I need Tony Cain to clarify a wee point. In answer to Willie Coffey's question about rent controls and how they operate in other countries, you said that there was a level of imbalance in the Scottish housing markets. What did you mean by that, and what is the nature of the imbalance?

Tony Cain: They are imbalanced on a range of levels. I have already said that the relationship between landlords and tenants is a power relationship and that the perception is very much that the power rests with the landlord. Our housing tenure system is imbalanced in the sense that there are too few social rented homes and they are too unevenly spread. We have 14 per cent in Edinburgh and 32 per cent in Glasgow or in West Dunbartonshire. There is something about understanding how those factors play into the way in which the system functions.

This is a complicated area, and I will not pretend to know all about it, but a lot of how you analyse that swings on the data that you have and we do not have good data across a number of things. However, the system is clearly imbalanced because we have got a problem with rents and with homelessness. Supply is not meeting the needs of everybody who is looking for a house and, for a substantial number of people in homes, the affordability of those homes is stretching their capacity to pay for other things—there are debates

about whether to heat or pay rent and whether to heat or eat.

Gordon MacDonald: I accept what you are saying about the tenant-landlord relationship imbalance and that we need to address that. I hope that the bill goes some way towards doing that.

I am curious about the amount of social housing. When you compare the amount of social housing in Scotland with the amount in European Union or OECD countries, we are in line with Austria. We have 632,000 units of social housing stock. The Netherlands is the only other country that has a higher proportion of such stock. If all the other countries, whose social housing stock is below 10 per cent of the total housing stock, have managed to bring in rent controls, why is it difficult for Scotland to do that?

Tony Cain: One of the problems with making comparisons between jurisdictions is that you have to understand all the nuances of the systems and I do not think that we do.

Gordon MacDonald: Yes, I appreciate that.

Tony Cain: Take Vienna: 60 per cent of all the homes in the capital city of Austria are effectively within the public sector. There is little market for private renting or, indeed, for owner occupation in the city and it functions very well. Some of those are very high-quality homes. In Glasgow, the percentage of social housing is 33 per cent; in Edinburgh, it is 14 per cent; and, in East Renfrewshire, it is 12 or 14 per cent. Across many of our rural communities, there is no such housing; the private rented sector is the principal provider of rented homes in many parts of rural Scotland. It is imbalanced. It is not evenly spread and so, too, is the impact.

What is the evidence of imbalance? Every year, there are 35,000 homelessness presentations. There are substantial concerns about the affordability of rents in the private rented sector. House prices are consistently rising and, on average, they are now five times greater than the average wage. Those are the indicators of imbalance.

Gordon MacDonald: Yes, and there are 140,000 more homes than households in Scotland.

Tony Cain: That is an interesting point, which you made in one of the previous evidence sessions. The figure that is used is 120,000, which is about 4 per cent of the total. About 10 per cent of the population moves in any given year. That is the figure that you get from the question in the census, which asks whether you have you been in your house for less than a year. Therefore, about 250,000 households are looking to move and

about 120,000 homes are likely to be vacant at any one time. It is an open question as to whether that excess of homes that could be occupied over and above the homes that are occupied is sufficient. There needs to be a vacancy rate to facilitate those moves. Typically in the social sector, it is about 7 per cent. In some councils, it is below 4 per cent, which is problematic for those councils.

There is a debate about whether the surplus in the effective stock is sufficient to allow the level of moves that take place naturally in the system, whether that 4 per cent should be 8 per cent—that would be another 120,000 homes—and whether that would create the flexibility in the system to allow more folk to manage their moves. Again, I do not think that we have looked at the issue from that perspective.

Gordon MacDonald: No.

Thanks very much. We could talk about this all day.

Tony Cain: I certainly would. [*Laughter.*]

Gordon MacDonald: On personalisation of homes, I will come to Callum Chomczuk first. In your submission, you have more or less said that you are generally supportive of the proposals to allow more personalisation of homes by tenants but that the guidance should be further clarified. What needs to be in that guidance?

Callum Chomczuk: As, I hope, the committee has heard, that should be one of the least contentious parts of the bill. The idea that tenants should have rights over, and can live their lives in, their properties seems incredibly sensible. It is good that we are bringing that in.

The guidance needs to set out the circumstances in which tenants and landlords will have such discussions, and how they will interplay. That will be the challenge. It is very difficult to scope out every possible situation, but the guidance needs to set a framework. I come back to the issues of rights and enforcement. There has to be clarity for tenants on their scope to personalise their home—that is, what is reasonable and what requires permission.

On a more personal than institutional level, there is tension around having to ask permission to keep a pet. I reflect—I mentioned this to Tony Cain previously—that I had one child when I was in a rented property, and then I had a second one. I did not have to ask my landlord for permission to have a second child, but I would have to have permission to make a change to the property.

I have concerns about asking for substantially greater deposits. There is a point to having the deposit system in the first place. Having pets and undertaking modest personalisation seems

reasonable—those are reasonable adjustments. In our support for people to have pets and to undertake personalisation, I would not want to see an onerous expectation placed on tenants to put additional resources up front for that, because that undermines the whole principle of having pets and personalisation, which is about enabling people to create a home that is their home.

Most people agree to the principle of personalisation. There needs to be further work on the detail; getting right the balance of what is proportionate in relation to what further expectations are placed on tenants to enact those rights needs to be teased out a bit more.

Gordon MacDonald: I am glad that you mentioned the proposed increase in deposits for those who want to personalise their home, but surely there is a balance in there somewhere. If somebody has a sense of ownership because they have been able to personalise their home, they are likely to be a longer-term tenant and, therefore, a landlord is guaranteed their rent. However, some landlord organisations have suggested that higher deposits should be part of the consent process of allowing alterations, or that there should be a condition that tenants must reinstate the property to its original condition when they are giving up the let. What do you think about that?

Callum Chomczuk: Sometimes that principle, although well founded, ends up undoing some of the real benefit for a tenant—and I think that is as true for the private rented sector as it is for the social sector.

On returning accommodation to the state in which the tenant entered it, someone has built a home and improved its quality and condition. Taking a very binary approach to that would undermine the benefits that future tenants would see.

Although I understand the principle and I understand the calls from the landlord sector wanting assurances, we are talking about someone's home. This is about their rights to live in that home. Landlords pass over those rights to tenants in return for compensation. Tenants should have those rights, so I am cautious about making them subject to further conditions, given the principle that we are setting, which is to tell people, "This is your home".

11:00

Gordon MacDonald: Yes, absolutely.

Tony Cain: I agree. The test here is around the human right to a home life and when it is reasonable to constrain that right and in what circumstances. I do not know that we have worked

through those questions in that context. The solution is the minimum possible interference with the right to achieve the legitimate policy outcome that you are looking for. At the moment, if I am living in private rented accommodation and I have a couple of kids and I want to buy one of them a rabbit for Christmas, I have to ask permission from my landlord to buy that present. Is that an excessive imposition on the right to a home life?

The proposals have not been tested in that context. If we start from the position that everybody's right to a home life is the same—I have a right to keep a rabbit because I own my home, or most of my home, anyway—how do you then structure a constraint on that? I decorate my home and do other things to it. Actually, I do not decorate it; I get somebody else to do that. How do you understand those constraints in the context of your starting point being that everyone has all the rights? If you are going to take some away, you need to be clear that it is the absolute minimum that needs to be done to achieve a legitimate policy outcome.

The structure of the sector works against us because big landlords operating large stocks simply price in some of the risks that are associated with allowing those rights, while small landlords with one house absolutely insist that they manage the property in a way that excludes the possibility of any risk at all and that becomes an imposition on the home life of the tenant. We need to review what is being suggested here within that human rights framework.

Mike Callaghan: It is a very good question. Our position is broadly supportive of personalisation—of tenants having the right to personalise the home that they are renting. Times have changed now. In the past, renting in the private sector was maybe a stopgap; now rented accommodation is very much part of a continuous place for somebody to live for a long period. Making a house a home can help a tenant's wellbeing; it can also improve tenancy sustainment from a landlord's perspective.

In various instances, the measure should be framed within a consumer protection and trading standards framework, but guidelines could be developed to strike a balance between what is perfectly reasonable and what considerations there should be in relation to pets or perhaps the number of pets. We are broadly supportive of the proposal.

The Convener: I will bring in Willie Coffey, who has questions on evictions.

Willie Coffey: Yes. We are into the evictions space. Tony Cain, your submission to the committee was quite clear: you think that the bill is a missed opportunity to review all the grounds for possession. Will you explain to us why you said

that, and how can we make improvements in the timescales that we have for the bill?

Tony Cain: It goes back to the human rights approach. Your starter for 10 is that everybody has the right to a safe and secure home and to not have it taken from them arbitrarily or without due process—then you unpick each ground.

I have said before that we have not abolished no-fault evictions. The 2016 act initially created a list of mandatory no-fault eviction grounds, which landlords got for the asking. There are now grounds where the landlord must demonstrate reasonableness, which is a whole other conversation. I should declare an interest because I am also a member of the First-tier Tribunal for Scotland, so I sit in hearings on these issues as an ordinary member.

The first thing is to understand how those grounds operate and what we think is reasonable in the context. There are some straightforward questions. Why is it okay to evict a tenant if the landlord loses their registration? If the value in the sector for an investor comes from the rental stream, why is it okay for a landlord to evict a tenant because they want to sell or change the property or they want to move in themselves?

It is about going back to seeing this as a properly functioning commercial investment sector that delivers returns in the context of a proper appreciation of the human rights of the tenant involved. Eviction is an act of violence; it is as simple as that. If you have ever attended an eviction or been part of that process you will know that it is a terrible thing to do to anybody in any circumstance. I am not sure that we understand the scale of that imposition and the way it plays out in the lives of the individuals who face it.

Willie Coffey: You have posed several questions there. What could the Government reasonably do to address some of those concerns and incorporate that in the provisions of the bill?

Tony Cain: My view is that in the longer term we need to move the private rented sector into a much more professional investor framework so that it is not about individual amateur landlords renting out their own property but commercial institutions managing at scale that are able to price in risks around tenants' rights and take out the personal relationship. At the moment, if you get on well with your landlord it will work and it will work every time, but not everybody gets on well with their landlord for ever and that is the point at which things become uncomfortable and break down. That risk needs to be taken out. Your landlord does not need to be the person who is personally attached to whether the living room is magnolia or royal blue; it needs to be a person who is managing an asset and respecting the

human rights of the person to whom they are providing a home.

Willie Coffey: Thank you. Do Callum Chomczuk or Mike Callaghan have any comments about the eviction clauses in the bill and how we could perhaps improve them?

Callum Chomczuk: I think what you are hearing from our evidence is that this process is unpacking a number of issues that it would have been useful to consider at the start of the bill process. The place of the private rented sector in our housing system is incredibly significant. Tony Cain talked about the range and size that we see across the system.

Installing a rent control system with the mitigation that we are talking about could be effective, but it does not unpack what is the role for the private rented sector. How should it be governed and regulated? Should it be more regulated? Should we be more light touch? Tony has talked about there being more professionalisation and CIH would support that, but there are other opinions about having a lighter touch.

We have perhaps missed a bigger debate on what is the role of the private rented sector. Looking at grounds for eviction is part of that, but it is about looking at more than just one bit at a time. We have the “Housing to 2040” strategy, which is supposed to be a 20-year vision for the housing sector. The private rented sector is a huge part of that. How are we building towards that, so that the sector is a vibrant and accessible part of it? Private rented housing plays a key role, but it is not the only housing option for people.

For me, this is less about the grounds for eviction. Perhaps we have missed an opportunity to review those, but there should also be a discussion around what is the future of the private rented sector and how we make it sustainable for the long term.

Willie Coffey: Mike Callaghan, do you have any comments on the eviction process and proposals? Could we improve them, tighten them up or clarify them?

Mike Callaghan: I broadly agree with the points made by Tony Cain and Callum Chomczuk. Tony suggested having an improved investor framework and taking out the personal relationship aspect of it. We would be supportive of the proposed improved protection and compensation for unlawful evictions, but suggest that the courts have the power to make awards above the maximum as well as below the minimum where circumstances merit it. We would also support the proposal to require the sheriff court and First-tier Tribunal for Scotland to consider the options to suspend a decree to allow vulnerable or at-risk

tenants to manage the process of a forced house move.

Tony Cain: There are a couple of points to make. A tenancy itself operates as a framework in which the behaviour of tenants is controlled. We need to be clear that all the controls being exercised are appropriate. In both the public and the private sector there is a ground for eviction—it is a fast-track ground for eviction in the public sector, which is effectively mandatory—which says that if you commit an offence for which you could be jailed for more than a year you are at risk of eviction. In fact, if you commit an offence for which you could be jailed for more than a year you are at risk of being jailed if you are convicted. We have double jeopardy for tenants. We evict tenants for offending even though we also prosecute them in the courts. I could commit an offence for which I could be jailed for many years and I would not lose my home as a consequence.

What is our policy objective in holding the threat of homelessness over tenants in those circumstances and how reasonable and proportionate is that? It strikes me that if we are looking at those types of threats or controls, we have reached the point where that is beyond what is reasonable.

Living off immoral earnings or illegal and immoral behaviour are still grounds for possession, as is associating with known criminals. Why are those an eviction risk when for other occupiers they are not? How proportionate is that and what is the alternative to it? We have never examined any of that. We have been living with those grounds for a century and never thought about them.

Willie Coffey: I turn to the tribunal process. I will direct this question to Callum Chomczuk and Mike Callaghan as Tony Cain is a member of the tribunal. During some of our evidence sessions, tenants and landlords have raised concerns about the operation of the tribunal process. Do you have any insight, knowledge or experience of that? Be careful what you say, because you are sitting next to Tony.

Callum Chomczuk: Absolutely. It was not one of the points that came up in our engagement with our members. Our reflections were mostly around the rent control system, so I probably would not have a lot of confidence in adding much to what the committee has already heard in that area.

Willie Coffey: Mike, have you picked up anything about the tribunal process and how people engage with it? Are they satisfied or otherwise with how it works?

Mike Callaghan: I cannot really comment on that from our perspective. One thing is that, given that we are looking to improve the current

legislation on housing, we must be conscious that we do not get to a situation where some of these tribunals become overpressured by the amount of business that they have to deal with. I do not have much more to add.

Tony Cain: I think that I can make a couple of safe observations, one of which is in relation to the obligation to consider suspending a decree. I have been on the tribunal since I think 2016 or 2017. Pre-pandemic, the issue of suspending a decree was almost never considered and now it is regularly considered.

I should declare another interest because, on the initial consultation on the bill, one of the suggestions that we put in was that rather than having a winter ban we simply have the opportunity to suspend in the courts. I think that is a good idea.

It is much more of a live issue. I have had tenants in front of me say, "I think you should give the landlord his decree now" and "I do not think you should suspend it at all" so we do listen in the tribunal to what is being said to us—what people want from the process is important. That suggestion would unquestionably be a positive because it would allow another level of protection for the more vulnerable tenants. I take the point about rent arrears. There needs to be balance across both sides of the equation.

Workload is not my subject to comment on—nor, I suspect, are timescales—but I observe that most tenants are unrepresented when they are respondents and I think they would have more confidence to state their case and defend their tenancies if there was a better system for ensuring that they were supported through that process.

Miles Briggs (Lothian) (Con): I had a follow up to that question on eviction about grounds for eviction. The University of Glasgow and Marie Curie's "Dying in the Margins" research has evidenced people having to move home—on average I think that they pointed towards 27,000 people a year being evicted from their home—due to their experience of dying and also of bereavement, such as through the death of a partner. What better protections in the bill do you think there should be for terminally ill people in Scotland?

Tony Cain: You will not be surprised to learn that I have had quite a lot of conversations with Marie Curie and with MND Scotland, which also has concerns about the end-of-life process for tenants. They are right that our current arrangements are uncomfortable. I have had this conversation with people in those circumstances. The tenant gets a condolence letter from their landlord in the same post that they get the eviction

notice, which seems to me to be completely inappropriate.

We need to look at what is an appropriate way of responding when somebody is living in a house that is adapted, for example, and circumstances mean that they no longer need that, particularly if that is because a family member—a loved one—has died. I think that our current arrangements are clumsy. There is a conversation to be had about whether there needs to be suitable alternative accommodation available or whether there should be a delay. I know why the arrangements are in place. For many housing associations especially, it is the only provider of adapted property and they worry that if they cannot ensure the properties are only occupied by people who need the adaptations then they will not be able to meet their primary purpose. There is a conversation to be had across all those issues.

Similarly, there is a challenge for the sector in delivering services when people are terminally ill. We have not spent enough time thinking about how we ought to do that. I think that the points from Marie Curie are well made. I am broadly supportive of them and I think that we need a more sophisticated conversation about how we give effect to their ambitions.

11:15

Miles Briggs: We had some additional questions from talking to our expert panels of tenants and landlords—the convener has touched on that. The landlords pointed towards what they saw as unique circumstances in rural areas, specifically with regards to the Government's island communities impact assessment screening. Is there anything specific within the bill's proposals that you think is not going to meet the needs of rural and island communities? A lot of our conversations were about how businesses can be encouraged to bring properties forward and where there might be an impact. Rent control has clearly had that effect as well.

Tony Cain: There are a couple of interesting points that were made in evidence to you. Scottish Land & Estates made a big play of the types of impacts on land-based businesses; they talk as if such impacts affect all rural private renting and they do not. That point is about private renting by businesses whose principal business purpose is managing land, whether it is for agriculture or other purposes. They are in a relatively unique position and I think that there is unquestionably some consideration about some of the points that were made there. However, much private renting in rural areas looks like private renting elsewhere—although if you live in a rural area, you pretty much must have a car. If you are renting a flat in a village there is not that much difference to

elsewhere in the day-to-day relationship with the landlord—even if you know them, which brings risks as well as positives. There are issues there.

You heard the representative from Aberdeenshire Council say that the private rented sector has calmed down completely, is more or less in balance and is not a concern for them in rental terms. I know that if you talk to colleagues in Orkney and Shetland it is not an issue for them because there is very little by way of traditional private renting in those areas. Shetland, for example, effectively has no private rented sector to speak of.

I did not see anything in the screening that howled at me. However, there are sensitivities and nuances in rural areas that are important to recognise—not least that there are some areas where the private rented sector is the principal provider because the social housing sector has all but disappeared.

Callum Chomczuk: The report from the Society of Local Authority Chief Executives and Senior Managers and ALACHO last year talked about the cost of building and we all know that across the housing sector the costs of building homes is extraordinarily high and is much more so in rural parts of Scotland. To go back to the earlier point around the rent control provisions, anything that inhibits the construction of homes or encourages landlords to leave the sector is undoubtedly going to put pressure on the system. It might have been Mike Callaghan who talked earlier about the housing bill and the fact that, in many ways, the rent control provisions address what is quite an urbanised problem in our major population centres, with Edinburgh being probably the best example of that. The creation of a national system that is applied nationally is undoubtedly going to have an impact. The investment decisions of builders or existing landlords could clearly have a disproportionate effect on rural Scotland where there is already a lack of available housing. That would be one of the rural risks.

Tony Cain: My observation would be that there is a crossover between traditional private renting or longer-term renting and the short-term let sector and there is an opportunity to move between the two, so we need to be clear that the regulatory regimes are complementary. There is also an option for avoidance around that. We know that there is a connection between criminal activity and property in private renting. You had a police officer make exactly that point in relation to short-term lets—I was sitting beside them when they said it. So, there is something about being clear about the complementary nature of those two regulatory frameworks and achieving the policy objectives that you are looking for. Short-term lets are not the cause of our housing challenges but there are

unquestionably some places where the diversion of properties into second homes and holiday homes is problematic.

Mike Callaghan: I will be very brief, convener, because Tony Cain and Callum Chomczuk made some good points there about the variation in rural areas and about last year's SOLACE and ALACHO report. There is variation around the country: there has been shrinkage in the private rented sector in some rural areas and that causes challenges for, for example, key workers in education and healthcare, but also for workers in key industries in Scotland, such as renewables. That is something to be mindful of in considering particular provisions being applied to rural areas in Scotland.

Miles Briggs: Thanks for that. I have a question about the potential to reform housing first, specifically extra supported accommodation and homes, as part of the bill. Several charities that I met with over the summer would like to see that addressed in the bill, specifically in relation to people for whom the housing first approach does not work and who need a sustainable tenancy with supported living in respect of finance and often medication, too.

In the Social Justice and Social Security Committee, I asked the former cabinet secretary a question about how many people the housing first approach does not work for and she picked a number of about 3,500 people in Scotland. What could be in the bill to establish a better framework or model to support the development of things such as live-in peer-support housing and other things that we need to see more of? In Edinburgh, for example, we have a waiting list of 50 people with alcohol-related brain damage who are looking to get into accommodation that does not exist. Those people often end up in our homeless sector. Is there a missed opportunity within the bill to do something bespoke around that?

Tony Cain: I would not want to do it on the hoof. We would need to spend a bit of time thinking about how that would work. The journey over the last 20 years has been about separating care from housing so that if someone no longer needs care, they are not at risk of having to move on, and also separating their care provider from their landlord because there are risks when we conflate the two. One of the causes of homelessness or hospitalisation in some of the high-dependency sectors, particularly for people with learning disabilities, is that care packages break down and people end up in hospital and then get stuck in hospital for a long time. There is a bit of a challenge—a crisis even, and perhaps a borderline scandal—about adults with learning disabilities in particular being stuck in hospital for

very long periods. So, I am not convinced that that is necessarily the way forward.

Something else to unpick are issues around capacity. I know that the early reviews of the outcomes from housing first, and indeed the “Hard Edges Scotland” report in the most recent round, referred to a client group who “lacked capacity”. We need to think very carefully what we mean by that. Thinking around capacity has moved on quite a lot, so it is not necessarily entirely black and white or binary—either you have it or you do not and if you do not have it everybody else makes decisions for you—because there has been development of processes around assisted decision making, which can be very powerful.

I would worry about tying accommodation too tightly to support. I also worry about some of the models that are effectively private rented sector models that are being developed, and which swing off the back of very high rents. We are using the enhanced management allowances within the housing benefit system to place vulnerable adults, who may be borderline in terms of capacity, within settings where their home and their support are linked together and their rents are relatively very high. It is a complicated question.

I have always thought that there is a cohort for whom housing first or a home is not necessarily the answer to their homelessness because their challenges have been driven largely by health failings. We have not yet designed a solution for that group, whether it is 3,500 or 5,000 people. It has been around about that number for a very long time so there is a pipeline. It is replicating itself: there is a process of creating individuals with those vulnerabilities that we probably need to unpick.

Callum Chomczuk: One of the challenges around housing first is the intensity of support and the capacity of the staff to support people. The question is: how do we think about professionalisation and staffing across the whole housing sector? It is a very organic sector—people will fall into it. Tony Cain has talked a lot about the fact that people need to be much more professional and much more thoughtful, and I have mentioned that, too. Housing first is a pillar of the system. It plays a role, but if it is not meeting the need that is out there, what else is required of services and staff? How are we ensuring that we are bringing talent through our education system and providing opportunities? A thoughtful discussion as part of the future of housing cannot just be around the buildings and the rental system but must be around the staff who manage and deliver the services, including letting agents, landlords, housing-first staff and housing managers. There is a bigger issue within your question that would be worthy of examination.

The Convener: Pam Gosal, you indicated that you had an interest on rural issues and housing. Do you still want to come in on that?

Pam Gosal: No, that question was answered, thank you.

Mark Griffin (Central Scotland) (Lab): I want to come back to the issue of deposits, but from a different angle. The CIH has submitted evidence suggesting that we could do more to ensure that tenancy deposits are returned, and flagging the issue of how deposits are held potentially impacting on people’s ability to move. Do you want to expand on any of that and give us pointers on where we should be going in the bill to suggest changes that would allow deposits to be returned and would support people who want to move?

Callum Chomczuk: The deposit scheme has been around for 10 years or so and was quite a step-change at the time. Instead of the deposit sitting with the landlord or letting agent, suddenly we had this third-party deposit scheme. That gave confidence to the tenant. There is also an arbitration system for whether people get the money back or not.

I think that that was an important first step, but we are at a point where we seem to be continually holding on to international students’ money. I feel that a system in which the tenant was responsible for leaving their money with the deposit system would address a lot of the complications with return of deposits. To have their bank details and a system of communication direct with the tenant might not be seamless, but it would be much easier to return the money. The existence of deposit with a third-party deposit system is conditional on access to the tenancy: that would be clear. I feel that the landlord having confirmation through the third-party tenancy deposit scheme would be a pragmatic and reasonable way to get around the matter, instead of never returning international students’ deposits once they have left the country. It feels immoral to be holding on to other people’s money.

We can talk about how we could use that money: we could look at how we address tenant hardships and at what we discussed previously around pets and personalisation and how deposit money might be used to help to address concerns in the landlord sector. The important thing is that the tenants’ financial security is not compromised. There is a myriad of ways we could use the funds that we have, but we should not have them. We should be doing everything that we can to return them.

I think that a system in which we put more power into the hands of tenants, and in which landlords have to support tenants by saying that there is a range of deposit schemes and that once

they have received independent verification the tenancy will begin, would be a practical way to address the understandable, but unintended, consequences of building in a deposit scheme.

Mark Griffin: Thanks. Are there any other comments on how the tenancy deposit scheme is operating?

Tony Cain: What Callum said, basically.

It seems to me that the first order of the day is to make sure that we return more deposits. The deposit schemes are very clear: it is the tenant's money, not the landlord's money. There is no reason for it to go to the landlord first, and the deposit being lodged by the tenant would solve a lot of problems. We do not get, in the First-tier Tribunal for Scotland, too many deposit retention cases or cases of failure to lodge deposits, but the deposit being lodged by the tenant would resolve all the issues about the risk of landlords not lodging deposits.

On the subject of what happens to the unused deposits, our submission basically says that the Verity house agreement and the principle of subsidiarity would suggest that, rather than ministers taking control of that money, it might be better if it was managed locally, so I would put it in the hands of local authorities to use.

Emma Roddick: Very briefly, do you think that what deposits can be retained for in terms of repairs needs to be made more specific, so that a deposit does not amount to betterment for a landlord?

Tony Cain: No. My understanding is that the rules are clear; the rent deposit schemes are clear and the decisions that are made are, generally speaking, fair and reasonable. There are appeals processes, as well. The rules around why there is a deposit and what it is to be used for are clear. Deposit schemes are one of the three or four most important changes in our housing system over the past 20 years and are a major step forward in protecting tenants.

11:30

Mark Griffin: I have another area of questions. Thanks, convener.

We have touched briefly on the rights of both tenants and landlords, the lack of awareness of those rights, the power imbalance between landlord and tenant, and tenants' inability—even just the feeling of being unable—to pursue and enforce those rights. This question is probably for Tony and Mike. Thinking about the role that councils could have in maximising that awareness and the ability to enforce tenants' rights, do you feel that there should be more powers for local authorities to enforce landlord registration and

other things that could improve awareness and enforcement of tenants' rights? I will come to Mike Callaghan first.

Mike Callaghan: That is a good question. Powers for local authorities to enforce in relation to supporting tenants and their rights sounds sensible. Again, though, resources would have to be effectively calculated to ensure that they are adequate and sufficient. Making all tenants aware of their rights and supporting them from the signing of a lease is very sensible, especially for tenants from certain groups—for example, those for whom English is not their first language and people who have a disability. The needs and requirements of a range of people who might experience barriers to access should be looked at and they should be made aware of their rights. It is important that efforts be made in that area and it is important that, if local authorities role were to be extended and they were to do more in that area, they would be effectively resourced. It is unarguable that it should be ensured that tenants have the right information when they start their tenancy and while they are living in a property.

Tony Cain: There is more to be done to ensure that tenants are fully aware of their rights, and that they are fully aware of the process for enforcing and defending those rights and the steps to take to enforce and defend them. How we do that is for another conversation, but it costs money. You need to put information in tenants' hands and you need to put support beside them when they are having difficult conversations with their landlords. Even in the social sector, it is difficult to get into a spat with a council because of the nature of the relationship. The tenant needs to know quite a lot and there is every chance that the council will roll out a solicitor in front of you, so people need to be able to deal with that conversation on as close to an equal footing as possible. There is much to do in that area.

Callum Chomczuk: We talked earlier about the power imbalance: rights are realised by tenants or anyone else only when they have genuine options. There is clearly a resource implication for local authorities—and for the Government, if a national approach is taken to doing this—but we could campaign and we could make people aware.

Earlier, we talked about a PRS charter and there was mention of setting out rights and responsibilities. There is a lot that we could do, but fundamentally this comes down to there being genuine housing options available for tenants. We cannot just promote the rights that are available, because they are not real unless people have a genuine housing option. Unless you have the power to leave a home when your rights are not being recognised and realised, the rights do not exist. It is important that we have the discussion

about what rights exist and how we enforce them; however, without people having viable housing options for when the worst happens, it will not make the impact that we would hope for.

Tony Cain: Quite a lot of people who live in the private rented sector would rather be elsewhere, so creating a space in which they could be elsewhere is probably important in creating a space in which they can enforce their rights. Many of them would prefer to be in the social rented sector.

The Convener: Why is that?

Tony Cain: It is because the social rented sector is substantially more affordable—I use that term advisedly—and because expectations in it about quality of outcomes and the responsiveness of the landlord service are much higher. If you are a social rented sector tenant and your gas boiler breaks down, it will, on 95 per cent of occasions, be fixed within four hours. If my gas boiler breaks down, God knows what I would do, but it will not be fixed in four hours. There is an expectation of service and there is a place to go if the service is not delivered. I think that that means that people are more comfortable and feel less vulnerable.

Emma Roddick: Tony Cain touched on this earlier in connection with adaptations. I do not know whether you are aware that Marie Curie is arguing for strengthened succession rights in general for bereaved tenants. Is there a place for that in the bill, and how far should such provision go?

Tony Cain: I think that that is a conversation that we need to have. One of the concerns in the social rented sector arises because of circumstances that anybody who is involved in housing management on a large scale will have come across, in which somebody moves in with an older relative because they know what is going to happen, and wants to be there for a year then claim occupancy of that property.

There is a load of things going on, one of which is the preoccupation with landlords being the ones who decide who lives in the home. If we were in the position of having better supply, we might be less concerned about that.

There are other concerns and risks. I am not talking about the Marie Curie type of circumstances. I dealt with a case when I was working in Clackmannanshire, where a single lad wanted to succeed to the tenancy of his grandmother's three-bedroom house that he had moved into 11 months before his grandmother died. We had to fight and argue quite hard to make it clear that he was not going to get to stay in a three-bedroom house on his own. He was there for one particular purpose: he was there because he wanted to inherit that tenancy. We

need to find a way of managing such challenges, but I agree that eviction should not be the consequence of the death of a loved one.

Willie Coffey: I have a very brief question for Tony Cain on the deposit retention issue. You said that things are clear and that there are processes for all that, but I know of a case in which a person who was leaving a tenancy left behind what he considered to be helpful materials, including a kettle and a Hoover, because he was moving to Australia, but he was penalised for that and got a bill for removing them. He thought that he was doing the new tenant a favour by leaving them there.

Tony Cain: That relates to the expectations around the state of the house when the tenant moves out. Most tenancies will say that the house should be left broadly in the condition in which it was let and that things should be in the same room as they in were originally.

Landlords might take their main chance. The question whether it is a reasonable approach to make deductions from a deposit is really for the deposit schemes. There could, equally, have been a matter of bulky items of furniture that were not particularly suitable or were not wanted by the landlord being left, and they can be expensive to remove. There is something to consider in there about flexibility in the way matters are interpreted, but I do not think that problems with decisions around deposit returns are a substantial part of the issue with the deposit system.

I think that, for the most part, the system works. There will always be issues at the margins, and I would be frustrated with such a case, too. You do wonder—

Willie Coffey: An act of kindness was penalised.

Tony Cain: I agree that it feels that way.

The Convener: In the future, how will we know what impact the bill has had on the private rented sector and on tenants' lives? We are interested in whether you think that the bill should, in the interests of transparency, include a requirement for the Scottish Government or local authorities to regularly report on the impacts. If so, what key indicators should be used to measure the impacts?

Callum Chomczuk: It would be helpful to do that work at this stage rather than wait until the bill process has concluded. We should hear from Government ministers on what specific changes they expect the bill to make, beyond the hope of driving affordability in the private rented sector. The committee has heard repeated concerns about the impact that the bill could have on the supply of stock in the private rented sector, on the

prevalence of mid-market rents and on the homelessness figures across Scotland. It would be helpful and instructive for the Government, at this point, to provide clarity on the modelling that it has done in relation to the concerns that the committee has heard. If the impacts will not be as positive as we had hoped, that will give us a base from which to address the concerns.

As I have said, rent controls in themselves are not bad, but our failure to understand their impact could be devastating. If we are going to drive out investment in one part of the housing system, we need to be mindful of that and consider how we can provide support elsewhere. I do not think that the committee has heard from any witness who does not want to see more social and affordable homes—that thread has probably come through in every committee session—but we need to understand the scale of development. If we are looking to manage the size of the private rented sector in certain ways—the bill will change the size of it—how will we offset any undesirable consequences?

It would be incredibly helpful to hear from the Government now on its sense of the bill's impact, and then there could be updates. If we do not meet those expectations, what steps will be taken? How will we take budgetary and financial decisions and focus on increasing the supply of affordable housing or on other issues that will help us to meet improved housing outcomes and minimise homelessness, as we all want?

The principle of reporting on the impacts would be incredibly welcome. It comes back to the point about greater transparency, which we talked about in relation to rents and other aspects. Ensuring transparency on the measures of success on homelessness and in the housing system would be really welcome.

The Convener: What should the key indicators be?

Callum Chomczuk: It should be whether we are reducing homelessness. We are in a housing and homelessness crisis. I appreciate that the Social Justice and Social Security Committee, not this committee, is looking at the homelessness prevention duties, but we should consider whether homelessness is reducing and whether people have the housing options that they need. I probably want to give the question a bit more thought and come back to the committee with something more considered.

However, fundamentally, we should consider the levels of homelessness. The bill is trying to drive affordability and address homelessness. How we measure affordability is fairly vexed, so I am not making any suggestions on that, but we should certainly consider how homelessness

levels change over time. That would be the simplest and most straightforward way of measuring the impact.

Tony Cain: The starter for 10 is to think about the ambition that the Scottish Government has set for the bill. It is very broad. The policy memorandum says that the bill's aim is

“to improve the housing outcomes ... for people who live mainly in rented accommodation”,

and, on rent control, it is about

“making rents more affordable and ensuring tenants are less likely to be ‘priced out’ of housing due to rent increases.”

That does not seem to be precise enough, but it introduces the issue of affordability and how that is defined. If the bill is to make rents more affordable, the Scottish Government probably has to start by saying which rents are not affordable, why they are not affordable and where they are not affordable. Frankly, that ask might be beyond us all—I am not necessarily having a go at the Scottish Government for not being able to do that. The working group that has been trying to come up with a shared understanding of affordability is nearing its conclusion, but the process is contentious.

Yes, the impacts should be monitored. The Scottish Government should set out what success for the bill would look like, and it should be able to either demonstrate success or demonstrate how it will respond to insufficient success.

In relation to timescales, my worry is that it will probably take five years to build the data sets that we need to safely constrain the rents of private landlords, who might very well go to the law if they think that the evidence is unsafe, so it could be a number of years before some of the measures bear fruit. That takes me back to the point that I started with, which is that the need for rent controls is a sign of imbalance in the system. The bill needs to go alongside measures to rebalance the system so that pricing in housing is more consistent, more even and more closely linked to inflation or wages. Prices should be linked to incomes but, at the moment, they are not.

The Convener: Does COSLA have a perspective on that?

Mike Callaghan: Tony Cain and Callum Chomczuk have made good points about the need to have some kind of monitoring in place. We must establish our baseline and then identify where we want to be and how we can support the process to get there.

Callum Chomczuk mentioned the key strategic headline of homelessness figures. Statistics on that issue should be being published this month to show the current position. That is a key measure

that will show whether we are making progress. It is sensible and pragmatic to take that approach, so we are supportive of identifying key measures and areas of success. Ideally, for some measures, we would use existing information that is gathered and collated off the shelf, so to speak, because, as Tony Cain identified, collating some of the information could take a lengthy period.

The Convener: The good news is that we will hear from the Minister for Housing next week, so you have primed the pump for our discussions with him. Thank you very much for joining us today and for a very useful conversation. We have gone over time, but I let the meeting run on because it was very helpful to hear from you.

That was the last item in public on our agenda, so I close the public part of the meeting.

11:45

Meeting continued in private until 11:47.

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