



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 8 March 2022

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
8th Meeting 2022, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Graeme Dey (Angus South) (SNP)

*Meghan Gallacher (Central Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Blackwood (Scottish Association of Landlords)

Matt Downie (Crisis)

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

Alastair Houston (Legal Services Agency)

Andrew Watson (University of Glasgow)

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament
**Local Government, Housing and
 Planning Committee**

Tuesday 8 March 2022

[The Convener opened the meeting at 09:30]

**Decision on Taking Business in
 Private**

The Convener (Ariane Burgess): Good morning and welcome to the eighth meeting in 2022 of the Local Government, Housing and Planning Committee. Can all members and witnesses ensure that their mobile phones are on silent and that all other notifications are turned off during the meeting?

Willie Coffey and Mark Griffin are joining us remotely for today's meeting. We also have with us the convener of the Social Justice and Social Security Committee, Elena Whitham, who is joining us for both evidence sessions on the Coronavirus (Recovery and Reform) (Scotland) Bill under item 2. I welcome Elena to the meeting.

Item 1 is for the committee to decide whether to take item 4 in private. Item 4 is consideration of the evidence that we have taken on the Coronavirus (Recovery and Reform) (Scotland) Bill. Do members agree to take that item in private?

Members indicated agreement.

**Coronavirus
 (Recovery and Reform)
 (Scotland) Bill: Stage 1**

The Convener: Item 2 is evidence on the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 1. The committee is leading on scrutiny of part 4 of the bill, which makes provision for strengthening protections from eviction for private rented tenants.

We will hear from two separate panels of witnesses today, with the first consisting of stakeholders and the second being the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights.

We are joined remotely for our first session by Alastair Houston, who is a solicitor and head of housing and court department, Legal Services Agency; Matt Downie, who is the chief executive of Crisis; John Blackwood, who is the chief executive of the Scottish Association of Landlords; and Andrew Watson, who is a researcher at the University of Glasgow.

I will aim to bring all witnesses into the discussion, but if members wish to direct a question to a particular witness, please make that clear to assist our broadcasting team in operating cameras and microphones. If any of the witnesses wishes to come in on a particular point, they should let me know by typing R in the chat function and I will bring them in at an appropriate point.

I intend to allow up to around 75 minutes for the session. I now open up the session to questions from members and begin with a question that I will initially direct to Matt Downie.

Do you agree that the tenancy proposals in the bill will contribute to the Scottish Government's objective of addressing the harms that have been caused by the pandemic and tackling systemic inequalities that have been made worse by the pandemic?

Matt Downie (Crisis): Good morning, everyone. Thank you for the invitation, and thank you for the question. I fundamentally do agree, yes. The important backdrop to this is not just the pandemic; it is also the Scottish Government's aim that, by 2040, the housing system in Scotland will be tenure neutral with the purpose of everybody, regardless of where they live, experiencing the same affordability, security and other arrangements that allow for their housing to be successful. Although that ambition exists, it is also the case that those who are in the greatest housing need have the fewest housing options. We see that every day through our services, and

we know it to be true particularly in relation to homelessness.

My view is that the provisions that are laid out in part 4 of the bill will help to achieve a much greater sense of equity and improved life chances. It is our view that the private rented sector can be a safe, secure and appropriate tenure. Putting it on a stable and equal footing with the social rented sector can be achieved by the measures that are set out in the bill and others that I hope to get into a bit more today. We can move from the private rented sector being a cause of homelessness to being a really good solution.

That will give you some idea of the comments that I would like to get into later but, fundamentally, I agree with your first proposition.

The Convener: Thank you very much for giving us that optimistic view, Matt.

John Blackwood what is your perspective on that question?

John Blackwood (Scottish Association of Landlords): Thank you for inviting me to give evidence this morning.

We are concerned about investor confidence in wanting to continue to provide valuable housing in Scotland, and that is something that we in the Scottish Association of Landlords would like to focus on. We are hearing concerns from landlords up and down the country about the future viability of their businesses in Scotland, and even now many are opting to sell up and exit the market. A big concern for us is that, very soon, we could see the doors to private renting firmly closed to those who perhaps rely on it the most, and we need to find ways of overcoming that.

The Convener: Do these changes need to be made permanent now or should they be part of a wider package that might be introduced in a future housing bill? Perhaps Andrew Watson could respond to that.

Andrew Watson (University of Glasgow): A general point that I would make is that including this change in the wider Covid recovery strategy might well have led to its being overlooked in some quarters. I have seen very little discussion about it on social media, LinkedIn et cetera, whereas the new deal for tenants has received significant social media coverage and commentary. It might therefore have been better to locate the proposed changes in a single PRS-focused consultation.

An issue that we will probably return to later is the amount of change in the PRS after a period in which it has already seen a lot of change. It sometimes seems that the impact assessments that are carried out look at the specific impacts of specific pieces of legislation rather than the impact

as a whole. For instance, the financial memorandum states that it is unlikely that there will be any significant loss of landlords as a result of the legislation. That might or might not be the case, but when taken in the round with changes to energy performance targets, future rent controls and so on, it might well have quite a profound effect on supply. As a result, keeping it separate from the consultation on the new deal for tenants is potentially a little bit damaging.

The Convener: Alastair Houston, do you have any thoughts on making the changes permanent now instead of putting them in a wider package?

Alastair Houston (Legal Services Agency): I am quite keen to see them made permanent just now, and I would echo Matt Downie's comments on equity of tenure. I see no reason why the private residential sector should not be put on an equal footing with the social sector.

It is important to note that, for the purposes of resolving homelessness, the private residential tenancy is already a statutory option for local authorities in fulfilling their duties to a homeless person, and it is therefore important that tenants in the sector enjoy the same protections and that, ultimately, the sectors are harmonised.

Meghan Gallacher (Central Scotland) (Con): Good morning. Before I ask my questions, I refer members to my entry in the register of members' interests, as I am a serving councillor in North Lanarkshire Council.

I want to build on Andrew Watson's answer to the question on the need for a separate PRS consultation by asking him how sufficient the Government's consultation on the bill's proposals was overall.

Andrew Watson: This particular change was set out as part of a standard and normal consultation process. The landlords to whom I have spoken were not immediately aware of it, because the bill itself has very much been branded as Covid recovery legislation. As a result, it might not have drawn the attention of some of those for whom it was perhaps designed. As I have said, there are a lot of other things going on in the PRS at the moment that have perhaps distracted people's attention. I am not sure about the level of response that other consultations get, but the response to date does not strike me as being massive. However, you might have a different opinion on that.

Alastair Houston: From the perspective of completing the consultation, I think that it was user friendly and easy to understand. However, I agree with Andrew Watson that it may have been missed by some stakeholders, given that it forms part of the bill. I expect that stakeholders who are particularly active in the sector were aware of it.

Certainly, the organisations with which we work closely were involved in formulating responses.

John Blackwood: I concur with everything that has been said. There has been a consultation period and we have been involved in the consultation, which is obvious given that we are at the committee meeting. More widely, landlords have been made aware of the consultation through our membership engagement at a local and national level. I take the point that we need to look at the bigger picture of what purpose the private rented sector serves and how we can properly and proportionately regulate it for the future, while instilling confidence in landlord investors.

The Convener: I remind witnesses that if you want to come in and we have not directed a question to you, you should type R in the chat function.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): My first question is for Matt Downie. Could you tell us more about the impact that the temporary removal of mandatory grounds for eviction has had? What were the advantages of that?

Matt Downie: From our perspective, the ways in which homelessness can be prevented and individuals' circumstances improved are not always clear when the cases come from a mandatory system. Therefore, discretion in every sense allows for a sensible conversation that prevents the human misery, cost and degradation that homelessness brings. That does not make eviction impossible—it will still take place, which we would always say is appropriate. We need to—*[Inaudible.]*—are supported in the sector. There are lots of ways in which that can happen and could be improved.

In the past couple of years, we have discovered that homelessness through the private rented sector has decreased significantly because of these measures. The applications for homelessness assistance in local authorities on the basis of eviction from the private rented sector have plummeted, which is because of the range of measures that were in place.

This relates to the previous question in the sense that we now see a lot of concern from local authorities about pent-up situations to do with rent arrears, for example, so this is the time to bring in these measures and full discretion, so that each case can be dealt with on its own merits, rather than by a one-size-fits-all decision from the tribunal.

Willie Coffey: You mentioned that there has been a significant drop in the levels of homelessness. I think that your submission mentions some of the figures, but do you have

them to hand? So that members are aware, what was the drop in homelessness numbers?

Matt Downie: The number of households presenting as homeless due to a loss of rental tenancies fell by 57 per cent in 2021 compared with the previous year. That is 4,651 people down to 1,999, which is a very significant drop.

Willie Coffey: Do any other panel members want to respond to the benefits of the measure that was introduced, or can I move on to the next question?

09:45

John Blackwood: We reported on that in our consultation response. We analysed all the eviction cases that went before the First-tier Tribunal for Scotland housing and property chamber in 2021. One of the issues that we had was how many tenancies were actually protected as a result of all grounds being discretionary. When it comes down to it, we found that there were only three tenancies that were protected as a result of all the grounds being discretionary, so the impact of the measure was effectively negligible.

Andrew Watson: I agree with John Blackwood, but I reiterate that the primary reason for the massive drop was the extension of notice periods to six months. That had a significant effect on the number of tenancies proceeding to eviction. That was incredibly successful, but it had a number of unintended outcomes. It meant that by the time that most cases were agreed at tribunal, around 13.8 months' worth of rent was in arrears. You need to balance the success of people not being evicted and the savings to local authorities in relation to emergency housing provision with the fact that we have transferred the costs of housing those individuals from the public to the private sector.

Willie Coffey: My second question is probably for John Blackwood. To what extent do you think that the proposal to remove the mandatory eviction grounds provides us with the right balance between the rights of tenants and the rights of landlords?

John Blackwood: Our main concern relates back to the Private Housing (Tenancies) (Scotland) Act 2016 and the introduction of the new private residential tenancy. That was very much hailed as a new piece of legislation that would give tenants, importantly, greater security of tenure, which is what the Government intended to do. Beyond that, it was hailed as a piece of legislation that would support private landlords and give them greater security and safeguards in relation to the overall tenancy regime and grounds for repossession.

In the past few months, all that we have seen in our sector is a slow erosion of the safeguards that were promised to us by the Government and the Scottish Parliament. The net result is that private landlords are saying, “Do you know what? We do not want to be in this sector any more,” and are considering selling up. From our recent survey of members, we know that one in three of them is considering doing just that. The overall impact that that would have on the provision of housing in the private rented sector would be dramatic. We as stakeholders and as politicians need to consider that and the impact that it would have on providing much-needed housing for those who need it.

Alastair Houston: I can appreciate John Blackwood’s comments about the lack of certainty when all the grounds have been made discretionary, but that lack of certainty can cut both ways. At present and as is proposed in the bill, the discretion that would be available for the First-tier Tribunal in relation to the private sector differs somewhat from what is available to the sheriff court and the social sector in that it is an absolute discretion. It can be contrasted with what is available to the sheriff court, where at least there is a list of statutorily prescribed factors that the court is to have particular regard to, which are absent from the legislation.

That coupled with a lack of statutory guidance means that the interpretation of what is reasonable in a particular case falls entirely to a particular tribunal on the day. I agree that that causes a lack of certainty for both parties, because they can be influenced by tribunal members’ individual views and the differing weighting of circumstances in different cases and so on.

I believe that it is possible to have discretionary eviction grounds but with a more rigid framework behind them to enable parties to work through them and have a better understanding of what may or may not be reasonable when it comes to eviction.

Andrew Watson: It is important to note that this is a revisitation of the debate that was held during the introduction of the private residential tenancy; it was concluded that the combination of mandatory and discretionary powers offered the correct balance at that time.

The research that Nick Bailey and I recently carried out recommended the temporary extension of discretionary grounds for rent arrears through to September 2022 on the basis that the extended notice periods were to be removed. That was primarily to provide an extra layer of protection as the pandemic moved to an endemic stage. I note that 43 per cent of the landlords we surveyed were happy for that to be the case, although a third disagreed. We did not ask them about making those changes permanent, but we did ask them

about that in relation to the pre-action grounds, and they were steadfastly against it.

We took a cautious approach with our recommendations, based on the situation that we faced at the time. However, I think that it can be argued that, despite the impacts of the pandemic, which have been many and varied, there are still grounds on which discretionary consideration is appropriate. Again, it comes back to the supply imperative. The thing that is always rolled out—and I think that John Blackwood has already mentioned it—is certainty. It is about a landlord knowing that they could get a property back after a fixed period of arrears, within a fixed period of time, through the tribunal. That is key to the investment case for the PRS, not just for the quarter of a million small landlords dotted around the country—5 per cent of the population, incidentally—but for the build-to-rent sector.

When you start looking at grounds such as landlord intentions to sell a property, there are any number of reasons why a landlord would sell a property. However, as it is an investment in most cases, one reason might be to buy an annuity to pay for later-life care, and not having certainty about being able to get the property back when required could cause issues with that investment case.

It is similar when we look at a landlord’s intention to live in the property. For example, I relocated for work once and I rented out my property for a couple of years on the basis that I knew that I would get the property back when my assignment down south had finished. If I no longer had that certainty, would I make different decisions about what to do with that property?

That is the much broader consideration that we need to have. Landlords are extremely heterogeneous; they have very different motivations—many of them investment based, but again for different reasons. It is a mistake to treat it as one size fits all, which is what making it mandatory does. We should be looking at it in a bit more detail.

Matt Downie: There are two sides to this and, from a tenant perspective, it is important that the rights and chances of tenants in the private rented sector are looked after, too.

I think that the timing is right and it relates to Covid recovery, which is why it is appropriate for it to be in this bill. If there is a period of time once the bill is enacted when we can assess whether it is true that we are losing landlords from the market and why we are losing those landlords from the market, that will allow for any further changes to be made.

It is important to pursue the bill and then see what changes occur, particularly because it is not

just around the discretionary grounds; it is about the pre-action protocols and other things that relate to that. We need to see it as a whole system and, first, whether the evictions happen—particularly those that local authorities are worried about as we come out of Covid—and, secondly, whether landlords exit the market. If that is the case, what needs to happen in addition in the future? However, I think that now is the right time and this is the right balance, as you suggest.

Willie Coffey: Is there time to bring John Blackwood back in, convener?

The Convener: Yes, that is fine.

John Blackwood: I will be very quick. One thing to bear in mind is that landlords are investors—we have to see them as investors running businesses. As has already been pointed out, some of them will have a future plan to de-invest and sell up as part of their pension plan. That is a natural process that they will go through at some point. Some people will just be renting out temporarily if they are renting out their own home and they want to have security to move back into their own home. That is a very different situation from social landlords that either have a statutory duty or are providing a social function in housing. The motivations and factors behind the business operation of that housing sector are very different.

Largely, we deal with individuals who own just one or two properties. When they feel that their investment is at risk, they will get nervous, as all investors do. Those people are reluctant investors as it is, which is why they have invested in bricks and mortar. We are hearing from our members that they are incredibly concerned and are planning on selling now, not later. We have an issue with a housing shortage in Scotland today. We should not wait until next year or a few years' time—we need to deal with the issue today.

Willie Coffey: Thank you all for those answers.

Paul McLennan (East Lothian) (SNP): Good morning. I refer everyone to my entry in the register of members' interests as a serving councillor on East Lothian Council.

My question was going to be about investor confidence, but that seems to have been picked up in the previous question. However, the point that John Blackwood made takes us back to what Matt Downie said about waiting to see where things go over the next year or so and letting the market settle down on the back of Covid. Do you want to come back on that, and does anyone else want to come in on the issue of investor confidence? As Willie Coffey has mentioned, there is a balance to be struck in that respect.

John Blackwood: I understand the rationale for saying that we should wait and see, but as

someone who works at the coalface, I see the impact of legislation—and impending legislation—on investment confidence today. It is quite alarming. We have already seen a 7 per cent reduction in landlord registration figures in the past four years. Every day, I hear landlords saying that their tenants have given them 28 days' notice to leave—which, of course, tenants can do under the private residential tenancy—and that they are thinking that now is maybe the time to sell their property. More than 60 per cent of landlords cite the fear of impending legislation as the motivating factor for selling, as well as the anti-landlord rhetoric that they are getting from the Government.

We need to address both that and the question of how we ensure a continuous supply of housing in the private rented sector. I am concerned that we are not seeing that. We see from our figures a further reduction of 36,000 properties from the private rented sector over the next 10 years—and that is a conservative estimate. A big chunk of the sector is just vanishing.

Of course, those houses are still lived in by people, but they are being sold and will continue to be sold to home owners. That might serve one need, but what about renters? Some people will always have to rent or choose to rent. We need to ensure that we have an adequate supply of properties for those renters today as well as in the future.

Paul McLennan: I would like to understand the association's membership a little more. You said that most of your members tend to have one or two properties. What is the approximate breakdown? Do most landlords own one or two properties or are there bigger players who own 15 or 20 properties?

John Blackwood: As you can imagine, we have a wide range of members, but we know from the landlord registration statistics that the majority of landlords in Scotland own just one or two properties. From memory, I would say that about 75 per cent of landlords in Scotland have fewer than five properties. Those are the stereotypical landlords. They are not big corporate organisations but relatively small investors who are at the mercy of legislation change.

This is not just about the tenancy regime—there are wider factors to take into account. The pandemic has had an effect on all their lives. Moreover, many people have thought that, because the house sales market is incredibly buoyant, this might be a good time to bring forward their retirement plan, and that also impacts on the supply of housing. A whole range of factors is having an impact, and we need to address today the leaky bucket of properties being lost to the rented sector rather than wait for it to become an even bigger problem in the future.

10:00

Paul McLennan: I am also keen to pick up on a point that Andrew Wilson made earlier. Andrew, like the Scottish Association of Landlords, you have talked about the private rented and build-to-rent sectors. I know that we are talking about landlords, but the build-to-rent sector is a really important part of the tenure mix, too. Could you expand on your evidence and say a little bit more about that?

Andrew Watson: Our survey got very few responses from the build-to-rent sector, but that was to be expected, because the build-to-rent sector in Scotland is still very anaemic. There is a massive pipeline there, but a pipeline does not mean that there are houses for people to move into.

As a result, the position at the moment is that the PRS is the answer to all housing ills. Historically, a private rental was a transitory home for transitory populations such as students and young professionals, but the growth of the sector over the past 20-plus years has seen it answer demand for every housing type and for every type of household. That is fine, but it naturally puts different things at loggerheads. We want flexibility, and we want investment, but to the same extent, we also want the governance structures that we might see in social housing. There is a bit of work to be done to put all that together. It is not as simple as drip feeding bits of legislation through; we need a much larger and more holistic plan for how the PRS works, what we want it to provide, how it dovetails with house-building programmes and so on.

The investment case for small landlords is, for the most part, the same as that for the build-to-rent sector. There is some irrational behaviour among landlords. They might keep a house because, for example, they have a sentimental attachment to it or because it is in an area where they used to live. Landlords can make such strange financial decisions but, on the whole, the majority of them are not willing to lose money in the long term, and they very much see the private rented sector as a bank account where their capital can sit safe. The investment fundamental is there. Obviously the build-to-rent sector is a lot more advanced in its analysis and expectations in the research that it has carried out, but the legislation affects it in the same way.

As I said earlier, it is not simply a matter of saying that we are looking at these issues. If we are trying to get investor confidence, we need to look as though we are taking a holistic approach to the PRS. When I think about recent changes such as the removal of mortgage interest rate relief, what is forthcoming on energy efficiency, the new deal for tenants, rent control and so on, I am

genuinely worried about what all of that will do to supply.

Our survey found that landlords are disenchanted with the sector. They feel as though they are under siege, and they think that policy makers are biased against them. That might not be the case, and people might completely disagree with that characterisation, but the landlords who completed our forms and took part in our interviews felt very strongly about that.

Another important contextual point is that the financial memorandum uses an annual rent figure of £8,300 to emphasise the rental return that landlords can receive. That is a bit of a red herring, because the actual rental income is not the headline figure. From an investment perspective, what we are really interested in is net yield and capital growth. I am working on another piece of research that is not yet published but which shows that the average—

The Convener: I am sorry, Mr Watson—I really appreciate your response, but we have other questions. If you could bring your comments to a close, that would be great.

Andrew Watson: Okay. I will just quickly finish this bit about yields, because it is quite important.

The mean net yield in capital growth for landlords is very healthy. However, although about a quarter of landlords had a net yield of 3 per cent or more, which is dangerously close to the best current and savings accounts, about a third had a negative capital growth rate. For all that there are landlords for whom this is not an issue, there is also a big chunk of landlords who do not have a lot of wiggle room. That is an important point to make.

The Convener: Thank you. In the interests of time, we have to get on, but I am glad that you made that point. Does Matt Downie or Alastair Houston want to come in?

Alastair Houston: There has been a lot of discussion about landlords' motivations and the planning that they undertake, but it is important that the private rented sector is not solely defined by those motivations and that planning. As I have said, it is set out in legislation that the private rented sector is meant to provide long-term and permanent homes for tenants. Landlords' interests must be taken into account, because the sector is needed, but they should not be the overriding interest in conceptualising what the private rented sector is.

Matt Downie: Alastair Houston has slightly covered my point already, but I think that it is worth returning to what the proposals really are about. From my perspective, the issue is not whether private landlords will be disadvantaged or driven out of the market but simply that discretion

allows for individual circumstances and the support needs of tenants—and landlords—to be taken into account, which has not always been the case. From our perspective, that change is a commonsense move that could, if the system functions in the right way, be to everyone's advantage.

As for the extent to which landlords and landlord bodies feel that there is an agenda against them, that should be dealt with seriously, because we need landlords in the private rented sector for it to function and we need them to want to be in that market. There are specific schemes that can help with that, but only 50 per cent of local authorities in Scotland have what we would see as a fully functional private rented sector access scheme.

There are things that can be done to help landlords as well as tenants. From our perspective, it is important to note that the proposals are not going to stop evictions, but they will lead to more commonsense decision making where currently it does not always exist.

The Convener: Thank you for bringing us back to what the proposals are about. We move to questions from Graeme Dey.

Graeme Dey (Angus South) (SNP): This question is probably best directed to John Blackwood to start with. What evidence, if any, is there of the effect of the temporary introduction of the pre-action protocol? Has it led to a reduction in rent arrears or prevented applications for evictions being made to the tribunal?

John Blackwood: The simple answer is that we have no evidence of its effect, as other responders to the consultation have also stated.

Of course, our members have to comply with the requirements, and we aid them in doing so and support them through the process. Anecdotally, when we have asked them whether the protocol has had an effect, they have said, "No, the tenants still do not communicate with us in the worst-case scenarios." The protocol is therefore perhaps not supporting those who are most in need.

We are on record as supporting the continuation of the pre-action protocol, because we see it as advantageous in providing clear guidance to landlords on what they ought to be doing. A big question that our members have asked us for years is what they should do when a tenant gets into arrears, how they communicate with them and so on. The pre-action requirements go a long way towards supporting landlords and tenants at what is perhaps the most difficult time. In reality, though, is it having an impact in the harder cases? We are not seeing any evidence of that.

Graeme Dey: Presumably, however, it would not have an impact on the harder cases anyway.

John Blackwood: Exactly, and that is why we would support the protocol—you do not want to throw the baby out with the bath water. You never know—in some cases, it might have encouraged a tenant to seek advice or it has signposted them correctly. That sort of thing is in the interests of everyone, both landlords and tenants.

A good news story that I would certainly like to get across is that throughout the pandemic we have seen great evidence of landlords and tenants working together to overcome issues with rent arrears. It has been really encouraging to see that, and it has perhaps resulted in far fewer eviction cases going to the tribunal, too. We should do anything that we can to continue that. If pre-action requirements in some way aid that process, that is fine—let us not get rid of the protocol for the sake of doing so—but what impact is it really having? There is no evidence, as no research has been done on that yet.

Graeme Dey: With regard to your point about people being unsure, perhaps the very existence of the protocol focuses minds.

John Blackwood: As an organisation, we support best practice in the sector. We want to encourage landlords to work with their tenants and build sustainable long-term relationships, because that is in the landlord's interest as much as it is in the tenant's interest.

The pre-action requirements give some form of guidance to landlords that enables them to say, "In these circumstances, this is what I can say to my tenant and this is how I can signpost them." Is that a good thing? Of course it is, and that is why we support the requirements.

Graeme Dey: Does anyone else want to come in on that? If not, I will move on.

Some of the written evidence in response to the Parliament's call for views suggests that the impact of the pre-action protocol is going to be quite limited, because there is no duty on the landlord to comply with it. Is it not the case that landlords would be ill advised not to comply with the protocol, because of the consideration that will be given to their participation in it when it comes to any process that follows?

I see lots of nodding heads, so I will not pursue the point. Can I—

The Convener: John Blackwood wanted to come in on that.

Graeme Dey: I apologise, convener.

John Blackwood: The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 make it very clear that, for an eviction case to be considered by the First-tier Tribunal, it must take into consideration how the

landlord has complied with the regulations. Certainly, any landlord would be ill advised to completely ignore the pre-action requirements, because it will probably result in their not getting the eviction that they desire. Not only that, but, as I mentioned earlier, it is just good practice for every landlord and letting agent in the country, too. Surely it cannot be hailed as a bad thing.

Graeme Dey: Finally, we keep talking about this issue in relation to landlord participation. After everything that I have read on this, I am still a little bit unclear whether there is any expectation of tenant participation in the process. We are told that a landlord's failure to engage in it will be a consideration for the tribunal. Are we of the view that it would be a consideration against the tenant if they failed to engage? Does anyone have a view on that?

Alastair Houston: The issue with any pre-litigation requirements is that they are focused on the party that is bringing the litigation. Whether we are talking about the social sector or heritable creditors, there are similar requirements. They are mandatory—they have to be completed or the action cannot be brought.

As for the exact amount of work that might be involved, if tenant or—as it would be in the repossession sector—home owner participation is non-existent, there is little that the party that wants to bring the litigation can do. Our experience is that if a tenant does not respond to attempts by a landlord to make contact, there is no negative inference on the part of the landlord, and a tribunal can weigh that factor in its assessment of reasonableness against the tenant.

I am personally in favour of harmonisation and of seeing pre-action requirements elevated to mandatory status so that all landlords have to go through that fixed set of requirements. If they do not yield much participation, they are not a high hurdle for landlords to overcome.

10:15

Graeme Dey: Does anybody else want to come in on that question?

Andrew Watson: I will quickly share some of the findings of the recent research. About 95 per cent of landlords with tenants in current arrears at the point of survey had attempted to engage with tenants, and around half had responded. About half of the time, repayment plans were agreed, but tenants adhered to them only about half of the time.

It is important to be realistic about how effective pre-action requirements can be, but it is clear—and the research, as we know, clearly shows—that early engagement with debt problems is a key

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

The Convener: I see that Matt Downie wants to come in, too.

Matt Downie: It is important to say that, in real-life situations, tenants do not always comply in the way that they should. We need to be open and honest about that and say that we need to consider that factor with regard to the balance of responsibilities.

However, there are many cases in which the tenant cannot do much, particularly when it comes to rent arrears. The other day in Edinburgh, I was talking to a tenant whom the local authority had placed away from a domestic abuse perpetrator in a property that she could not afford. In that situation, the landlord was not doing the right things, and we had to step in as a support agency to try to manage the situation.

That is why the system needs discretion and perhaps more of a requirement on local authorities to be able, as John Blackwood suggested, to refer the difficult cases through a homelessness prevention route so that we do not go all the way to somebody being evicted when the situation could have been prevented. It is important to note that the individual circumstances are never cut and dried, which is why discretion is needed.

The Convener: Thank you for those perspectives.

Mark Griffin is joining us on BlueJeans with a couple of questions.

Mark Griffin (Central Scotland) (Lab): I draw members' attention to my entry in the register of members' interests, as I am an owner of a private rented property in North Lanarkshire.

John Blackwood, how aware are tenants and landlords of the temporary requirements regarding the pre-action protocol? Does anything need to be done to improve awareness?

John Blackwood: As an organisation, we promote the protocol to our members and advise them of it through our helpline and our various ways of communicating with them. More needs to be done to raise awareness, because landlords are usually the first people to know that a tenant is in arrears, so they could be the crucial conduit to allow the tenant to get the all-important help that they need. Anything that we can do to give more information to landlords among the wider public in Scotland would be useful and beneficial.

As with most situations around debt—the case of rent arrears is no different—we try to encourage

both landlords and tenants to communicate with each other. When they get into arrears, tenants often do not talk to their landlords and break down any communication that they have with them. We need to try to reverse that situation and encourage tenants to work with their landlords.

Likewise, landlords often come to us and say, "I don't know how to help the tenant. At the end of the day, the tenant needs to get money. If they don't have the money, how do you solve the problem?" They are not aware of the different agencies and organisations that could support tenants. The pre-action requirements go some way in addressing that. I hope that, in at least some cases, those requirements are beneficial to sustaining the landlord-tenant relationship.

I take the point that more information needs to be made available to landlords who are not members of an organisation such as the Scottish Association of Landlords.

Mark Griffin: Matt Downie, among the tenants with whom you come into contact, is there an awareness of the pre-action protocol and their rights?

Matt Downie: I totally agree with John Blackwood that we need more awareness. That applies to tenants, landlords and local authorities' housing and homelessness teams. Only 50 per cent of local authorities commission out such housing, have sufficient access to the private rented sector or have arrangements to work out how full the private rented sector is, so that they can intervene in the ways that they need to.

The system needs to be knitted together. If the system is to be based on any principle, it should be the principle of prevention: prevention of arrears, homelessness and difficulties for individuals. Among the tenants we speak to, almost nobody understands that they have the sort of technical protections that we are talking about. It is the job of skilled individuals, working with tenants and landlords, to make them aware of those protections. Quite often, our work involves matching landlords and tenants in the right circumstances, because it is always the case that a tenancy might break down if the circumstances are not right. I agree with John Blackwood that, following the bill's successful passage, there needs to be much more communication with landlords and tenants about what is available.

Mark Griffin: If anyone has a take on my next questions, please type R in the chat function. Do any specific changes need to be made to the existing regulations? If any change is required in guidance, could you set out in more detail what is required under the pre-action protocol?

Alastair Houston: As I said, I think that we should largely follow the procedures in the social

rented sector, where there are certain mandatory pre-action requirements that have to be followed. As such, those are not factored into an assessment of reasonableness, but rather are mandatory procedural steps that are akin to service of a notice.

I agree with what John Blackwood and Matt Downie have said about the role that local authorities could play in raising awareness. I appreciate that private landlords are not social landlords with their own welfare rights staff. Local authorities could play a bigger role in providing sources of information for agencies to which tenants can be referred in order to try to achieve a sustainable tenancy and to assist landlords in getting housing debt repaid. If the requirements were strengthened and made mandatory, there should be good standards of compliance in every case.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Before I ask my questions—a lot of the questions that I was going to ask have already been asked and answered, which is fantastic—I declare an interest, in that I am a sitting councillor on East Ayrshire Council.

I will direct my first question to Matt Downie. I know that, for many years, Crisis has promoted the responsible use of the private rented sector for those who are homeless or at risk of homelessness. As we have heard, year on year before the pandemic, eviction levels from the private rented sector exceeded those from the social rented sector. How will the proposals in part 4 of the bill address that? Do the proposals capture all the recommendations and outputs from the reconvened homelessness and rough sleeping action group and the social renewal advisory board, especially now that we face the additional pressures of the cost of living crisis?

Matt Downie: The proposals in part 4 of the bill are in line with the recommendations from the homelessness and rough sleeping action group and the social renewal advisory board. They are also in line with the Scotland prevention review group's recommendations and the homelessness prevention proposals on which the Scottish Government is consulting. The proposals work, but they have to work together; there is a set of interlinked issues relating to the sensible protection of balanced rights for tenants and landlords.

The situation, in the here and now, is serious. According to our survey in the "The Homelessness Monitor: Scotland 2021", every local authority in Scotland expects that there will be an increased need to prevent homelessness from the private rented sector. Every day, people come to our services with severe need because of rent arrears, and the increased cost of living is exacerbating the

situation. In some cases, there might be an argument for delaying implementation because of some of the technicalities, but there is no argument for delay on the grounds of human need, as far as we can see. In that sense, the bill's proposals absolutely complete the picture.

We need to make sure that people are aware of the pre-action protocol, that it works and that private landlords are reached, supported and incentivised by the support that is available from East Ayrshire Council and other councils, because that will be important in sustaining private landlords' place in the market. For us, that is part of making sure that homelessness prevention is at the heart of Covid recovery, which is why we support the proposals.

People should not have to reach the very edge of homelessness before they get support and their homelessness rights kick in. Time and again, people have told us that they would rather have the choices that people who do not have a homelessness application in front of them have. That means people being able to speak to their landlord and work out a different path. Sometimes, it might mean a different tenancy or prevention through some other route. From our perspective, should the bill be passed, it would represent a significant step forward, and we fully support it.

Elena Whitham: I will direct my second and final question to John Blackwood. At the height of the pandemic, we met as part of the private rented sector resilience group, which had been set up at the time. I am glad to hear anecdotal evidence that there was great support for landlords to work hand in hand with tenants to prevent homelessness, because, at the time, we spoke a lot about that and the need to distribute information on support. I know that this has already been touched on, but how could we improve that situation?

The Social Justice and Social Security Committee, which I convene, is holding an open inquiry into problem debt and poverty. We know that people who are in that situation often find it difficult to engage with services. There are landlords across the country who are not members of your association, so how do we join up all those services in order that the support agencies, councils and landlords can work on a cross-sector basis to prevent homelessness as far upstream as possible?

John Blackwood: The pre-action requirements were introduced as part of the emergency measures that were needed to deal with an emerging pandemic. As we, I hope, come out of the pandemic and move towards an endemic phase, if the pre-action requirements continue to be in place, we need to look at them again to see what purpose they serve. We can probably agree

that they have a purpose, but we need to consider the shape and form of that purpose.

10:30

At the beginning of the pandemic, I had concerns—as everyone did—about massive rent arrears being built up and landlords having no alternative but to apply for eviction. That did not happen, which delighted us—it was a good news story. The reason why it did not happen is that landlords and tenants worked together. Although landlords and tenants have different vested interests and come from different viewpoints, they were keen to work together to sustain tenancies—we appreciated that everyone was going through a difficult time. The fact that both parties took an approach that involved trying to solve the problem was terrific and resulted in a good outcome for everyone.

When someone gets into rent arrears, for whatever reasons, the relationship between the landlord and the tenant often quickly breaks down. That results in the landlord feeling that they are the wronged party, that they have nowhere to go for help and that they have no alternative but to go for eviction.

I am optimistic that, if we look at the detail of the pre-action requirements, we can refine them to make them more user friendly in relation to situations that might arise in the future. That could just involve appropriate signposting, which might be all that is needed in the very early stages of intervention. As you will know, as rent arrears get higher, the difficulty increases and tenants tend to hide their heads in the sand because they fear that there is no way out or no solution to the problem. We need to intervene early in those difficult situations between the landlord and the tenant. I am hopeful that a refinement of the pre-action requirements might achieve that.

Generally, many landlords look at the pre-action requirements and wonder what they mean and what all the bits of paper are. There are big questions about the processes and how user friendly they are. The processes had to be brought in quickly, but now is the moment for us to look at the detail of the requirements and ensure that we get the right information to the right people when they need it.

The Convener: I have one final question, which is for John Blackwood. Can you explain your concerns about the removal of eviction ground 8 from schedule 5 to the Housing (Scotland) Act 1988? That is a bit technical.

John Blackwood: Yes, it is a bit technical. We just want to flag it up as an issue and to suggest that there might be a requirement to introduce transitional measures. I understand that, if all

grounds are to be discretionary, there is no point in having ground 8; I completely understand the thinking behind that. However, we are conscious that landlords could be issuing evictions on the basis of ground 8 today—if they came to us, we would advise them not to use ground 8 alone, but to use 11 and 12, too, as cited in our response to the consultation—and that runs risks. If notice is given to use ground 8 today, it could well be a year before the case comes before the First-tier Tribunal. If the ground is removed completely, and assuming that the legislation receives royal assent over the summer, the landlord might no longer be able to rely on that ground.

At the very least, some consideration should be given to transitional measures to protect landlords' interests when using ground 8 in the meantime. That is where we are coming from. Leaving it as it is, without repealing it, would have no negative impact on the policy intention of the bill.

The Convener: Thank you for that response and for your answer to Elena Whitham's question, in which you painted a picture of everyone pulling together to try to find solutions. We are trying to find the chinks of light and rays of hope that have come out of the pandemic. People were pushed into a situation in which everyone had to play their part to find a solution that worked.

I thank all the witnesses for joining us this morning and for the evidence that they have given, which will be very useful in helping us to consider our next steps. I will suspend the meeting to allow for a changeover of witnesses.

10:35

Meeting suspended.

10:44

On resuming—

The Convener: We turn to the second evidence session on part 4 of the Coronavirus (Recovery and Reform) (Scotland) Bill, for which we are joined by the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights, Patrick Harvie, who is joined by Scottish Government officials. Greig Walker is the the bill team leader, and joins us online; Yvonne Gavan is team leader in private housing services; and Craig McGuffie is a lawyer. I welcome our witnesses to the committee. As Mr Walker is joining us remotely, I would be grateful if Mr Harvie would make it clear when he wishes him to respond to a specific question, to allow broadcasting staff to bring him in. I intend to allow up to 75 minutes for this discussion.

Before I open up to questions from the committee, I invite Mr Harvie to make a short opening statement.

The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights (Patrick Harvie): Good morning. I am grateful for the opportunity to say a few words about the tenancy provisions in the bill.

I thank everyone—individuals and organisations—who engaged in the consultation process, which helped to inform the development of the bill, or who provided comments in response to the committee's call for evidence.

Before I turn to the detail of the tenancy provisions, I will give a general overview of the bill. The Scottish Government's priorities are to continue to lead Scotland safely through and out of the Covid pandemic and to address the inequalities that have been made worse by Covid, progressing towards a wellbeing economy and accelerating inclusive person-centred public services.

As part of the process of learning lessons from the pandemic, the Government is committed to reviewing the impact of Covid on the Scottish statute book. The bill extends to around 30 different topics, most of which are being scrutinised by the COVID-19 Recovery Committee or other subject committees.

I turn to the tenancy provisions in particular. Part 4 relates to eviction from properties in the private rented sector. The effects of the coronavirus pandemic have undoubtedly led to a reduction in income for many households across Scotland. We already know that some of our most financially vulnerable citizens live in the private rented sector, and the impacts of the pandemic—immediately and in the longer term—mean that some private tenants are finding themselves in significant financial difficulty.

In recognition of that, the two emergency coronavirus acts—the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020—introduced a number of key provisions to protect tenants, and we are now seeking to introduce two of those on a permanent basis, because they have improved fairness in the system and better balanced the needs of tenants and landlords, and they explicitly give tenants support when it is most needed. The first concerns the private landlord pre-action protocol in relation to evictions on the grounds of rent arrears, while the second is to ensure that all eviction cases that go before the housing and property chamber of the First-tier Tribunal are considered on a discretionary basis, when previously some eviction grounds would have resulted in a mandatory eviction order being issued.

I will address the pre-action protocol provisions first. They formalise the steps that a private landlord should take as early as possible to

support a tenant who has fallen into rent arrears. That aims to ensure that all steps have been taken to sustain a tenancy before the landlord takes action to evict.

The protocol sets out three key areas of action a landlord should take to support a tenant in rent arrears. The first action is for landlords to give tenants clear information relating to their rights in relation to eviction, how they can access information on financial support and debt management and an overview of their tenancy agreement; the second action is for landlords to make reasonable efforts to agree with the tenant a reasonable repayment; and the third action is for the landlord to give reasonable consideration to the steps that the tenant has taken. The tribunal must take into account the landlord's compliance with the pre-action protocol when deciding whether to issue an eviction order.

Pre-action protocols have been in place in the social rented sector in Scotland for a number of years. Therefore, making the provision permanent for the private rented sector is an important step towards ensuring that there is a parity of rights across the rental sector in Scotland.

During the consultation on the bill, some private landlords and their representative bodies advised that they already take such action to support a tenant who has fallen into rent arrears. Therefore, the provision formalises what is already seen to be best practice by professional landlords within the private rented sector.

The second provision that we are seeking to make permanent is one to ensure that, in all cases that go before the First-tier Tribunal, eviction is ordered only where it is reasonable to do so. All eviction grounds would, therefore, become discretionary. Prior to the emergency legislation being introduced, if eviction was sought on certain grounds—such as the person being three or more consecutive months in rent arrears—the tribunal was obliged to issue an eviction order.

By ensuring that every ground for eviction is discretionary, we ensure that the tribunal is able to consider all relevant factors in eviction cases and determine whether eviction is reasonable. That would include consideration of whether a private landlord has undertaken all the steps that they should have taken as part of the pre-action protocol stage, or of any proactive steps that a tenant might be taking to reduce rent arrears. Again, it is worth highlighting that similar provisions have been in place in the social sector for many years.

I am aware from the responses that were received during the 12-week consultation period for the bill, and the responses that the committee received to its call for evidence, that diverging

views exist on the tenancy provisions that we are seeking to make permanent. Tribunal discretion, in particular, is seen by some private landlords to create an unfair balance of rights between tenant and landlord. Private landlords argue that that provision will drive up costs, increase risk and dent investor confidence.

It is important to note that the tenancy provisions do not prevent a private landlord from seeking to recover possession of their property. Instead, the provisions introduce additional layers of protection to ensure that all avenues have been exhausted in sustaining a tenancy and that the eviction itself is reasonable, given the individual circumstances of the case. The fact that the tribunal has discretion allows it to take into account all the circumstances of the tenant and the landlord in order to come to a fair and appropriate conclusion.

Conversely, tenant representative groups have strongly welcomed our intention to introduce a private landlord pre-action protocol and tribunal discretion on a permanent basis. You will be aware that organisations such as Shelter Scotland, Citizens Advice Scotland, Living Rent, Public Health Scotland and Police Scotland support the move. They highlight that the negative financial impacts of Covid are on-going and that the tenancy provisions will help to deliver a recovery from the impacts of the pandemic. Indeed, Shelter Scotland specifically states that the tribunal discretion provisions will disproportionately impact people on lower incomes for the better and help to deliver a wellbeing economy.

Part 4 of the bill supports the Scottish Government's Covid recovery strategy and its overall objective of addressing harms that have been caused by the pandemic and tackling systematic inequalities that have been made worse by the pandemic. It also supports the Scottish Government's draft rented sector strategy, which, as you will be aware, we are currently consulting on. That aims to deliver a new deal for tenants, giving them more secure, stable and affordable tenancies, with improved standards of accommodation, new controls on rent and more flexibility to personalise homes. We have already committed to introducing a new housing bill in the second year of this parliamentary session in order to deliver on some of the legislative commitments that are contained in the strategy.

As I set out at the beginning of my statement, many of the people who live in the private rented sector are among the most financially vulnerable people in our society. In particular, that applies to people who have an income but are still living in poverty due to the longer-term impacts of the pandemic, coupled with ever-increasing living

costs. I think that we are all painfully aware that that situation might continue to be exacerbated.

Making the tenancy provisions permanent will, therefore, provide an important extra layer of security for such households, as well as helping to ensure a parity of rights for renters, no matter whether they are in the private sector or the social rented sector. I also emphasise that the provisions will still enable landlords to recover possession of their property in circumstances in which a tenancy is genuinely unsustainable.

The Convener: Thank you for laying out clearly the intentions of part 4 of the bill with regard to making the two measures in question permanent.

How do the reforms that you have presented fit into the programme of work that is outlined in the new deal for tenants consultation and in relation to the forthcoming housing bill? What more needs to be done to increase awareness among tenants?

Patrick Harvie: The new deal for tenants consultation, which was launched in December, made it clear that we have more work to do to strengthen tenants' rights and improve quality in the private rented sector. It included the two changes that we are considering, which are consistent with the broader direction of travel towards having rights in the private rented sector that are more comparable to those in the social rented sector.

To have the provisions in place now and to fail to make them permanent would create confusion for landlords and tenants if we revisited the question in the year 2 housing bill. The learning from the exercise of the provisions on a temporary basis is that they give additional protection.

Any negative consequences are extremely slight and entirely reasonable. The costs are pretty low if the tribunal takes a little longer to consider the circumstances of an individual case when there is discretion that previously had not applied.

Any negative consequences are extremely slight in comparison with the strong advantages of having the additional protection. The clear argument is to make the provisions permanent now rather than to allow them to lapse, then consider reintroducing them in the year 2 bill.

Raising awareness is an extremely significant issue that will never go away. We know that landlords in the private rented sector ebb and flow over the years—they move into and out of the sector, and tenants move into and out of the sector all the time. For a great many younger people, their first home might be in the private rented sector. Given that, there will always be a need to ensure a high level of awareness of rights and the law, to protect people in the private rented sector.

We are part way through a tenant rights awareness-raising campaign, which has been an important way to give people basic facts in the top-line messages and to point them in the direction of much more significant and detailed information, should they need it. We also work closely with organisations such as Crisis and Shelter Scotland, which work much more closely with tenants who need the additional support that those organisations provide.

The issue of awareness will never go away. We will always need to keep ensuring that people who move into the private rented sector as landlords and as tenants become aware of their rights and obligations.

The Convener: The sector is fluid—people come and go. From hearing your response, what rose up in my mind was a thought about looking to other countries. Is the private rented sector a common thing in other countries? How do they do it? In Scotland, we see as normal the combination of the private rented sector and the social rented sector, but is it normal in, say, the Netherlands? Do other countries tend to go down the line of more socially provided housing? Do other countries always have such a mix?

Patrick Harvie: In the European context, there is always a mix, but the mix is different in different places. Germany has a much bigger private rented sector, but it has had in place for quite some time some of the rights and protections that we will explore and develop in the year 2 housing bill.

In some European countries, there is little difference in the rights and protections for tenants between what we call the social rented sector and the private rented sector. In other places, the distinction that is made over who the housing provider is—whether that is a private or a social organisation—does not have the significant impact in producing a different experience for tenants that it has in this country. The consultation on the new deal for tenants and the development of the year 2 housing bill will be informed by consideration of all the examples and experiences from other contexts.

The Convener: Thank you for that. I will follow up with another question.

Some respondents to the Parliament's call for views on the bill thought that the proposals could negatively affect investor confidence and the supply of privately rented homes. You touched on that a little bit in your opening remarks. What estimate have you made of the impact of the changes on the supply of privately rented accommodation?

11:00

Patrick Harvie: We have, of course, engaged extensively on the provisions in the bill. In my opening remarks, I touched on the consultation that took place. It is possible that making all eviction grounds discretionary could lead to some increase in costs for landlords in certain circumstances—for example, as I mentioned earlier, if the consideration of a particular case takes a little longer due to the need to take individual circumstances into account. We think, however, that that is highly unlikely to lead to significant additional costs for landlords.

On the pre-action protocol provisions, the Scottish Association of Landlords pointed out during the consultation that many landlords already take that course of action to support tenants in rent arrears. Compliance with those provisions would not increase costs at all or even increase the amount of work or the action that is necessary for those who follow best practice. It would bring the additional advantage of encouraging and requiring good practice by those who have not previously taken that approach, but we do not believe that the provisions would create any significant additional costs for landlords.

Graeme Dey: Good morning, minister. One of the key issues in the debate on the introduction of the private residential tenancy was about ensuring a balance between the rights of tenants and the rights of landlords. That is why some eviction grounds remain mandatory. How does the proposal to make all eviction grounds discretionary retain an appropriate balance between the rights of tenants and the rights of landlords?

Patrick Harvie: Most fundamentally, and to put it at the simplest level, that will allow the tribunal to consider all circumstances relating to the landlord and the tenant. If tribunal discretion is made permanent—if the committee agrees with our proposal—landlords will still be able to pursue eviction when they believe that it is necessary. The proposal will not fundamentally end or curtail the rights of landlords. However, being able to take into account individual circumstances, which include, but are not limited to, those that have been caused by the pandemic, will provide a far fairer balance of rights for everybody involved.

In the committee's earlier evidence session, the example was given of a private tenant who had to be moved in order to escape an abusive or violent situation at home and faced additional costs because of the price of the property that they were moved into. Such circumstances need to be taken into account and understood. There will be other such circumstances that members from all parts of the country will recognise from their constituency and regional work. For example, in a rural area, there might be very little alternative housing

available. Even if a landlord has a reasonable case to make, they will need to balance that against the experience of the tenant, if no alternative housing is available.

Individual circumstances need to be balanced and taken into account. We believe that giving discretion to take into account individual circumstances on all grounds will allow the proper balance to be struck—as it has been during the period when emergency legislation has been imposed.

Graeme Dey: I seek some clarity on a point that I raised with the previous panel. The matter is not clear in anything that I have read. When sitting and making a judgment in a case, is the tribunal's discretion sufficient when, say, a landlord has fully followed, or has sought fully to follow, the pre-action protocol, but the tenant has ignored all approaches, and there were no reasonable grounds for that? I am not talking about the sorts of circumstances that you touched on. Would the tribunal have discretion to take into account the fact that the tenant had not engaged with attempts to find a resolution?

Patrick Harvie: The requirement to comply with the pre-action protocol rests with the landlord, who is required to take reasonable steps. If they do so and are then met with a tenant who will not engage, they have clearly still met the test of taking reasonable steps and making the effort to, for example, make information available, explore repayment schedules and so on. If they have made such efforts, they will have met the test, which will be taken into account at the tribunal's discretion.

Graeme Dey: Would the tribunal also take into account the fact that a tenant had, perhaps for no good reason, failed to engage?

Patrick Harvie: I guess that the ideal is that we increase the number of situations in which an alternative route or resolution is found. One would hope that if a landlord made such an approach and the tenant engaged constructively, the case would never have to reach the tribunal stage, because a way of resolving the situation and sustaining the tenancy would be found. That is what we are looking to achieve. It seems to be fairly clear that if a landlord has taken the steps and is still, because the tenant has refused to do so, unable to engage properly with their tenant, the tribunal will be able to take that into account.

Graeme Dey: Thank you.

The Convener: I call Willie Coffey, who is joining us on BlueJeans.

Willie Coffey: Good morning, minister and colleagues. The Scottish Association of Landlords told us that the temporary change to make all

evictions discretionary has had little impact in terms of the tribunal's refusal of eviction orders. If that is the case, why would making that a permanent arrangement benefit tenants?

Patrick Harvie: The Scottish Association of Landlords has set out in its submission some figures that suggest that the number of cases in which the outcome was altered as a result of the mandatory grounds being made discretionary under the emergency legislation was very small. It is important to recognise, however, that the impact in that small number of cases was extremely significant. Even if only a small number of people get different outcomes in their tribunal cases, the impact on their lives will be extremely significant.

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

This is related to the point that I made to Graeme Dey. We are looking to maximise the opportunities for negotiated outcomes, reasonable settlements and actions being taken that sustain rather than end tenancies. Whether we are talking about requiring compliance with the pre-action protocol and taking reasonable steps to engage, or ensuring that landlords know that they are more likely to get some kind of resolution if they try to sustain a tenancy instead of going straight for eviction, we are likely to have a sector that sees the resolution of any such problems as the first option.

As I have said, the approach is already good practice in the private rented sector. Landlords who follow best practice will already be taking such steps and will not pursue eviction if they think that there might be a chance of a tribunal considering the pursuit to be unreasonable.

Willie Coffey: Some respondents to the committee have said that there is little evidence to support the claim that pre-action protocols will have a positive impact. How do you see such measures working? Will they help us to reduce overall rent arrears or prevent eviction cases going to tribunal? Can you say a little about that?

Patrick Harvie: That might be a little hard to quantify with precise or objective numbers, because the nature of pre-action protocols is that they are used prior to cases appearing before the

tribunal. As such, we do not necessarily have official statistics on when actions have led to successful resolution of a problem.

However, there has been an overall reduction in the number of eviction cases coming before the tribunal during the pandemic, so it is fair to say that the provision has contributed to supporting tenants and landlords in achieving positive resolutions to problems and in sustaining tenancies. For example, when tenants have been able to secure additional sources of financial support as a result of signposting by landlords during the pre-action protocol process, that support will have helped to resolve problems.

The committee will be well aware of the tenant hardship grant fund, which is a source of additional support that was available during the pandemic. There are also discretionary housing payments and other forms of money and financial advice that tenants can access from the voluntary sector or community organisations. It might well be that we never have to count cases of landlords actively signposting tenants to support. We should see that as a positive thing.

Willie Coffey: I can see that. Would you say that formalising the process will give us consistent practice across the sector so that tenants get the same treatment across the board?

Patrick Harvie: Indeed. The proposal will not only close a gap between the social and private rented sectors—by making provision that is permanent in the social rented sector permanent in the private rented sector—but will normalise what, as it made clear in its evidence, the Scottish Association of Landlords considers to be best practice. That is consistent with the general direction of travel; we are looking to close the gap in outcomes generally between the public and private rented sectors, so that outcomes do not depend on where people rent, and we want to raise standards across the board. The measure has received support across the board because it is clear that it will achieve that objective.

Paul McLennan: I have a few more questions on the pre-action protocol. Some written evidence suggests that the protocol's impact will be limited because there will be no duty on the landlord to comply with it. Why will there be no legal duty? Would not that ensure greater compliance with the protocol?

Patrick Harvie: I heard the discussion during the first evidence session. If I remember rightly, John Blackwood from the Scottish Association of Landlords said that a landlord would be poorly advised to pursue a request for eviction with the tribunal if they had not gone through the pre-action protocol, because there is an expectation that the

tribunal would consider whether the landlord had complied with it.

We are looking to make permanent the temporary provisions that were put in place during the pandemic, because that will be the simplest and cleanest way to achieve continuation. At some point in the future, perhaps in the housing bill in year 2 of the session, we might be able to consider whether there are wider views. If the evidence that we gather between now and then shows that the protocol should be amended to create a stronger legal duty to ensure compliance, we could consider that. At the moment, making the current temporary provisions permanent is the cleanest and simplest way to ensure that we retain the additional level of protection.

It is pretty clear that we can have confidence that any landlord who feels the need to pursue an eviction, and who genuinely believes that they are acting reasonably in the circumstances, will have gone through the pre-action protocol steps in the first place, in order to demonstrate to the tribunal that their actions have been reasonable.

11:15

Paul McLennan: The Scottish Government has already introduced financial support measures, including the tenant hardship grant, to support tenants throughout the pandemic, and that support has been gratefully received. Will the Scottish Government provide tenants with any financial help to support their recovery from the pandemic, as we come out of it? Obviously things will not change overnight with one click. Is such support being considered?

Patrick Harvie: Yes. The grant fund is focused on helping tenants who are struggling financially. It is fair to say that, given the current circumstances, which apply more widely than to the operation of the private rented sector, we are all very conscious that the cost of living crisis is already severe and might continue to be exacerbated. Some of the actions that we can consider will go beyond my brief. I know that the Cabinet Secretary for Social Justice, Housing and Local Government wrote to councils in December—she followed up with them last week to reiterate it—to say that payments from the tenant hardship grant fund should be made to those who are in most financial need and who face the risk of homelessness, in particular people in the private rented sector who may be at risk of eviction. People in the social rented sector whose incomes were already low and have been hit hard by the pandemic can also get help through the scheme.

Under the pre-action protocol, landlords should make tenants who are at risk of losing their home as a result of rent arrears aware of all the forms of

financial support that are available, and not just the tenant grant fund.

There will continue to be on-going debate across Parliament, and there will be discussions across a number of portfolios in Government, to ensure that we take the most ambitious approach that we can to supporting people through the cost of living crisis. That will apply to ministers who have a housing brief, but it will certainly go beyond that.

Graeme Dey: You are right to say that John Blackwood of the Scottish Association of Landlords was quite positive about the protocol. However, he suggested that the SAL would be keen to have dialogue on refinement of the protocol, on some of the detail and on how it is presented. Would you be open to that?

Patrick Harvie: Yes, indeed. We are seeking to make our temporary provisions permanent and currently have a live consultation, with the introduction of a housing bill expected in year 2 of the current session of Parliament. That gives us the opportunity not only to continue the current system that was put in place temporarily, but to gather evidence and to gain understanding, and to learn from our experience of the system's operation. That will inform our consideration of proposals to refine or adjust the system in the year 2 housing bill.

Meghan Gallacher: Good morning. We have spoken a little this morning about the tribunal's workload. We know that, during the pandemic, there was a decrease in the number of applications for eviction orders, as would be expected. As we move out of the pandemic, will the workload increase? Will cases therefore take longer to consider?

Patrick Harvie: It is up to the tribunal to decide what circumstances it takes into account, which will determine how long it might take for a case to be considered. It is possible that it will take longer for some cases to be considered, if there are exceptional or unusual circumstances. However, that will not always be the case.

The evidence that we have to date suggests that the effect will be modest. The most important thing is to ensure that most tenancy exits do not go to the tribunal. We need to recognise that, and acknowledge that the intention of the provisions is to encourage negotiation and agreement between tenants and landlords when there is a problem. If we are successful in doing that—I think that the evidence shows that the temporary provisions have been successful—any additional workload burdens would be manageable and the effect would be modest.

The financial memorandum that accompanies the bill explores the costs to the tribunal in detail.

On there being quantifiable costs to discretionary decision making, it is worth noting that the introduction of the pre-action protocol, and the obligation of the tribunal to consider a landlord's compliance with it before making its decision, will again reinforce that it is in the landlord's best interests to engage with their tenant early to prevent arrears from building up in the first place. Again I note that that early engagement could prevent altogether the need for eviction proceedings, which ultimately would reduce the costs for the tribunal.

Meghan Gallacher: You used the term "modest" in relation to the backlog that could happen on the back of the bill. Does the Scottish Government expect a backlog, regardless of whether the bill is progressed?

Patrick Harvie: I think that when I used the word "modest", I was referring to any increase in the cost of consideration of individual cases. We are all very aware, as some of your witnesses in the earlier session pointed out, that there is a significant concern across a number of local authorities about the scale of rent arrears that have built up during the pandemic. That is why we are so committed to ensuring that a range of financial support is available.

There is the tenant hardship grant fund and the £82 million that has been provided for discretionary housing payment to support mitigation of the bedroom tax and housing costs, and there is additional funding to local authorities to ensure that they have the resources available to support people in their areas. There is also a range of support and intervention measures in response to the pandemic itself, and there is additional funding that has been passed in this year's budget to ensure that we are supporting people with their housing costs.

There is no getting away from the fact that the financial impact that the pandemic has had on people has not yet fully played out. This is happening in the context of the wider cost of living crisis, so it is going to be a challenging period for tenants and for landlords, as well as for the organisations that are working to support them.

However, I think that the permanence of the provisions in the bill will help to ensure the greatest opportunity to resolve disputes between landlords and tenants constructively and to avoid the need for eviction proceedings wherever that can be done and tenancies can be sustained.

Meghan Gallacher: Thank you, minister.

The Convener: We move on to questions from Mark Griffin, who joins us on BlueJeans.

Mark Griffin: Good morning, minister. What is the Government's view on whether the bill's

proposals will have an impact on local authority homelessness services? What is your view on how the proposals link in to the Scottish Government plans to improve homelessness prevention?

Patrick Harvie: That is hugely important. There have been periods when evictions in the private rented sector were the largest route into homelessness. That has perhaps declined proportionately but there is a real concern and a desire to make sure that that does not become a problem of the scale that Mark Griffin is are rightly concerned about.

The pre-action protocol and the tribunal discretion provisions are both safeguards that can help to prevent eviction into homelessness. The protocol, in particular, encourages and supports the dialogue that I referred to earlier between landlords and tenants so that they can work towards the establishment of repayment plans to help clear rent arrears and sustain a tenancy and to make sure that tenants have access to the financial support that can also help them.

The organisations that you have heard from have made similar points. Shelter in particular says:

"The pre-action requirements (PARs) for eviction proceedings on the grounds of rent arrears introduced another important preventative measure for eviction and homelessness ... this extra protection for renters"

against evictions

"should be made permanent. The PARs encourage landlords to help their tenants access support and advice on rent arrears management before any eviction action is taken, thus helping them to manage their debt and remain in their home."

There is a pretty clear sense from the organisations that work most closely on homelessness and that rightly challenge the Government to continue to do more on homelessness prevention that the measures will be a positive step in that direction. I by no means suggest that they are the only steps that we need to take, but they will certainly be positive in helping to achieve that.

Mark Griffin: I want to ask about provisions in the temporary coronavirus legislation that are not being introduced on a permanent basis in the bill. Specifically, they are the extended notice periods that landlords needed to give tenants to end their tenancy, and the ban on evictions. What discussion or debate has there been in Government on making the extended notice periods permanent and on aspects of a ban on evictions in certain circumstances?

Patrick Harvie: Obviously, that is a hugely important question, and we have actively considered it in Government. There were four key

measures during the pandemic, two of which we are discussing making permanent today. As Mark Griffin said, the others were the eviction ban, which came to an end last year as areas dropped out of tiers 3 and 4, and the extended notice periods, which came to an end at the end of this month. I would however note that we have put in place transitional protection for tenants who are already facing action.

The emergency legislation that was put in place was a temporary public health protection measure. In introducing legislation of that nature, the Government needs to demonstrate the requirement for it. That legislation was introduced on the basis of public health protection and was aimed at ensuring that people could stay safe in their homes for as long as possible in the unprecedented circumstances of the pandemic.

Just because a measure is not being retained right now does not mean that the logic of it is lost. The on-going consultation on a new deal for tenants asks for views on winter evictions and on reviewing the grounds for eviction in the private residential tenancy. The experience that we have had during the pandemic will inform those reforms. However, provisions that we introduce need to be demonstrated as necessary and proportionate on their own terms, so simply extending the measures when the pandemic circumstances do not pertain is not an automatic given.

We believe that, in the case of the two provisions that we are seeking to make permanent, the experience is clear that that will have an on-going value and that it is proportionate and reasonable as a means of achieving the Government's legitimate policy objectives of reducing the gap in outcomes between the private and social rented sectors and raising standards across the private rented sector. If we seek to make changes in relation to the issues that Mark Griffin has raised, we will do so as a result of the consultation that is under way and the proper development of a full bill on housing in year 2 of this parliamentary session.

I hope that that is enough to answer Mr Griffin's question.

Mark Griffin: Yes—thanks, minister.

The Convener: That was a good answer that really illuminated for the committee why the Government is not taking forward that provision.

Miles Briggs has some questions.

Miles Briggs (Lothian) (Con): Good morning, minister and officials. I want to go back to where we started and the rationale for the measures in the bill. In a number of your answers, you have described different workstreams that are out to consultation or on which consultation will be

launched next year. Analysis of the consultation on the bill shows that a majority of responders were opposed to the proposals. Why has the Government decided to introduce the proposals now when, next year, there could be an opportunity to look at the issues and potentially widen out the approach to include more housing matters? It seems to be a bit of a dog's breakfast to introduce all these different measures at this stage, when there will be an opportunity to do it next year.

11:30

Patrick Harvie: Again, I recall some of the discussion that you had on this with the earlier panel this morning. I noticed that some of the discussion on whether the permanence of the provisions should be considered in the year 2 housing bill considered the current course of action almost in isolation, instead of comparing it with the alternative course of action.

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

The evidence and experience that we have had from the operation of those two specific temporary provisions indicate that they are both proportionate means of achieving a legitimate objective of the Government, and that they have demonstrated a wider long-term value that transcends the particular circumstances of the pandemic. Having that in-out, in-out approach of letting them lapse and then bringing them back in again would, I think, cause far more confusion than any additional clarity that would come from consultation. I would reinforce the fact that the strong support for those measures—in particular, from organisations that are concerned with the rights and interests of tenants as well as the prevention of homelessness—gives us confidence that the measures will have a positive effect.

Miles Briggs: I want to move on to an issue that relates to the important points on preventing homelessness that Mark Griffin raised but which does not seem to have become a key part of what is being done. For example, with regard to responsibility for homelessness services, the City of Edinburgh Council is currently missing out on about £9.3 million of funding, because those services are administered by the council and not

by the integration joint board. I have raised the situation about five times with ministers and have not got an answer on why it is being allowed to occur. I believe that the council is also still trying to get answers.

Why has something like that, which is really important, not been part of these measures, in order to try to fix that sort of problem, which we see across Scotland? I imagine that I will try to have that dealt with in relation to the housing bill, but lots of things have been highlighted to us, and it is only the specific issue that we are dealing with today that ministers have taken forward in this bill, when, in fact, there are lots of other things that we should be looking at.

Patrick Harvie: There is a great deal that we are actively looking at in the development of the housing bill and the consultation on the new deal for tenants. I welcome any constructive proposals for the ideas that we should be considering for inclusion in that bill.

I am not sure whether Miles Briggs is referring to correspondence that he has had with me; it does not immediately ring a bell. It might be that other ministers have dealt with it, and I am not going to try to answer on their behalf correspondence that I have not seen. If Miles Briggs wants to write to me about it, I will certainly explore that matter and discuss it with other colleagues who might have already considered his correspondence.

The fundamental point about the Coronavirus (Reform and Recovery) (Scotland) Bill is that it gives us the opportunity to make permanent some provisions that were introduced on a temporary basis during the pandemic. That is the fundamental opportunity that it presents. Of the four provisions that I mentioned earlier in discussion with Mark Griffin, the two that the bill deals with have clearly demonstrated themselves to be positive in terms of the impact that they have on people's lives by resolving some disputes between landlords and tenants. They are also proportionate measures that can help the Government to achieve its policy objectives beyond the pandemic. The bill is the opportunity to take the relatively modest step of making permanent those successful temporary provisions.

On the wider question of other considerations that we need to address, the Government will, of course, be open to constructive suggestions from all sides as we develop the next piece of housing legislation.

Miles Briggs: I appreciate that. I will take up your offer and will write to you about that.

To go back to Graeme Dey's point, there are significant concerns among landlords in the private rented sector. They do not feel that they have had

the minister's ear with regard to what the impact on them will be. What plans do you have to include the sector as you draw up guidance? The devil will be in the detail, and it is important that guidance is developed that goes beyond what is in place in relation to the public health emergency legislation that the Parliament passed. The sector should be able to influence that. You gave Mr Dey a commitment that you would listen to the sector, but I would like an assurance that its suggestions will be taken on board in the guidance.

Patrick Harvie: We will continue to listen to the sector and to recognise the very different circumstances—or heterogeneity, as I think one of the witnesses on the previous panel described it—of landlords in the private rented sector. I have met the Scottish Association of Landlords and other organisations that represent the sector on the landlords' side, as well as those who represent the interests of tenants.

There is probably a need to recognise that there is a shared interest here in achieving the two goals that I set out earlier: closing the gap in outcomes between the social rented sector and the private rented sector; and raising standards across the board. Good-quality, responsible, professional landlords will see that as being in their interests, too. They do not want to have low-quality landlords—those who are sometimes called “rogue landlords”—operating in the sector. The professional and high-quality parts of the private rented sector want there to be good standards across the board and want an end to unscrupulous or unacceptable behaviour.

Beyond the specific measures that we are talking about today, we need to recognise that there are concerns around a wide range of other issues. For example, as the committee heard from the previous panel, there are concerns around energy efficiency and the move to net zero. All political parties support the move to net zero, and I think that the private rented sector recognises that there is work to do. On average, its stock has a lower level of energy efficiency than the rest of the housing stock, which impacts on the affordability of housing for tenants. We need to make sure that we support the whole sector to move forward with that agenda, as we do with the rest of society.

The Government continues to commit to working with the sector in all its diversity, listening to it and understanding its concerns, and we will do that, in particular, with landlords who want to work with us to raise standards, while taking on board the perspective of tenants.

The Convener: I bring in Elena Whitham.

Elena Whitham: Thank you, convener. I was reflecting on your suggestion about looking across the world for examples of how different countries

operate. I can give an example that we should never follow. I grew up in Montreal, which is predominantly a city of renters, most of whom rent from the private sector. Leases run to 1 July every year. Every year on 1 July, about 70,000 households move. It is called Montreal moving day madness. We should never seek to emulate any such system.

My question reflects the issue that Miles Briggs raised, which Mark Griffin also touched on. We know that the private rented sector is a huge help to us in addressing homelessness. For many years, those who have been at risk of homelessness or who have been homeless have used the private rented sector to get secure tenancies. The changes that were made in 2016 strengthened those arrangements.

However, we know that, before the pandemic, there were a lot of evictions in the private rented sector. Do you think that the two specific provisions that we are considering will help to reduce that number? Do you think that they capture the recommendations from the reconvened HARSAG group, the social renewal advisory board's housing policy circle and the Scotland prevention review group, which is now consulting on the prevention duties? I wish that those had been looked at in the early 2000s, when the Homelessness etc (Scotland) Bill was first considered. I would like to hear your thoughts on those issues.

Patrick Harvie: I take on board the cautionary tale about Montreal. I will make a note not to seek to learn too many lessons from the circumstances there.

That said, the longer-term work, beyond these particular measures, will include looking at the issue of winter evictions. Again, across European countries, there are a range of approaches to that. We will consult on the options to recognise the particular circumstances in winter, including the increased financial costs that people face at that time of year, as well as the lack of access to services at short notice that people might experience during some parts of the season.

Of course, if there is a protected period for evictions during winter, there will be similar concerns about what happens when that comes to an end and whether there might be unintended consequences. Therefore, we want to understand everybody's perspective on such proposals so that we can ensure that we design provisions that are right for Scotland's circumstances.

With regard to the picture that you paint of the role of the private rented sector in relation to homelessness, we should be aspiring to a situation in which the private rented sector provides flexibility and gives people who are facing

homelessness ways of resolving their issues and avoiding that risk but also gives people the opportunity to move out of homelessness and get a tenancy that will be right for them, will support them, is in the right place and is at an affordable price. That is what we should be aiming for, and it can do that. As I said earlier, at other times the private rented sector has been the biggest source of newly homeless people, and that is what we need to avoid.

The requirement for pre-action protocols is in line with what has already been acknowledged as being best practice by good landlords who want to avoid evictions. We should recognise the fact that good professional landlords do not like the idea of instability in their tenancies. They want stable tenancies that work, and having that goal of avoiding eviction and trying to reach a way of sustaining a tenancy, where possible, through discussion with the tenant and pointing them in the direction of money advice services and financial support is a clear way of ensuring that we avoid a situation in which people are evicted into homelessness, where that is avoidable. The tribunal having the discretion to take into account the circumstances in which the landlord has attempted to go through the steps of the pre-action protocol is part of that.

Those steps will not be a magic bullet—no one is suggesting that this is the only thing that we need to be doing—but they will clearly be positive and beneficial with regard to our attempts to prevent homelessness, and are very much in line with the work of the groups that you mentioned that are concerned with these issues.

Elena Whitham: We heard from John Blackwood of the Scottish Association of Landlords that its members sought to do that collaborative work with their tenants, and we know that there is a varying picture across the sector, with landlords who are perhaps not involved in that association taking a different approach. What more can the Government do to ensure that the support services on the ground are adequately resourced and that there is clear guidance around what landlords, housing associations, support services in the wider area and, indeed, local authorities can do to work together across the sector to ensure that those pre-action protocols deliver the results that we need in order to prevent homelessness upstream?

Patrick Harvie: In some circumstances, the awareness-raising work is important in that regard. As we said earlier, the diversity of the private rented sector is significant. There will be landlords—perhaps those who are more likely to join organisations such as the Scottish Association of Landlords—who are aware of best practice and of the range of places where they can signpost a

tenant for additional support if they need it. There will also be landlords who might not necessarily have encountered that before—they might not have intended to become a professional landlord and they might never have had a tenant before, let alone one who is in difficulty. If that is a new experience for them, they need to have access to information about how they can support their tenant as well as being aware of the requirement and expectation that they should try to do so.

I mentioned earlier some of the ways in which the Scottish Government funds, supports and works with organisations in the public and voluntary sector to provide those services, but we also have to ensure that landlords and tenants are aware of those sources of support, can confidently engage with the steps that we describe in the pre-action protocol, know what is required of them and are aware of where they can get additional help if they need it.

11:45

Elena Whitham: That could perhaps be considered in relation to the landlord registration scheme. There might be a role for local authorities in communicating that information to landlords when they register with them—that duty could be placed on local authorities.

My final question, which follows on from Graeme Dey's comments, concerns a possible unintended consequence of the policy.

We heard from John Blackwood that, if mandatory grounds are removed, landlords might find themselves in difficult circumstances in which the prevention of homelessness for that landlord becomes an issue. For example, they might need the property back because their financial circumstances mean that they have to sell it or move into it. To what extent will the tribunal take cognisance of that fact?

Patrick Harvie: That is where what I said earlier about striking a balance between the interests and rights of landlords and tenants comes in. The tribunal will take into account the circumstances that pertain to landlords and tenants. Having some grounds where a tribunal is required or mandated to produce an eviction order shifts things heavily in one direction—it overbalances things in terms of not taking account of the tenants' circumstances. However, giving the tribunal discretion does not take things to the other extreme; rather, it sets things in balance and ensures that the circumstances that apply to the tenant and the landlord are taken into account fairly.

The Convener: That brings us to the end of our questions. I thank the minister and his officials for their evidence. That concludes our evidence

taking on the bill, and the committee will be invited to consider a draft report in the coming weeks.

We will have a brief suspension to allow our witnesses to leave the room.

11:47

Meeting suspended.

11:51

On resuming—

Subordinate Legislation

Non-Domestic Rate (Scotland) Order 2022 (SSI 2022/36)

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2022 (SSI 2022/37)

The Convener: The third item on our agenda concerns consideration of two instruments that are subject to the negative procedure. There is no requirement for the committee to make any recommendations on negative instruments.

As the committee has no comments to make on the instruments, do we agree that we do not wish to make any recommendations in relation to either instrument?

Members indicated agreement.

The Convener: Earlier, we agreed to take the next item in private. As we have no more public business today, I close the public part of the meeting.

11:52

Meeting continued in private until 12:45.

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