

**Coronavirus (Recovery and Reform) Bill Consultation**  
**Response from Propertymark**  
**February 2022**

**Background**

Propertymark is the leading professional body for estate and letting agents, commercial agents, inventory providers, auctioneers and valuers, comprising nearly 18,000 members across the UK. We are member-led, with a Board which is made up of practising agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

**Removal of mandatory eviction grounds (Part 4, Clauses 33-35)**

**Question: Do you support these provisions?**

1. Propertymark does not support the removal of mandatory eviction grounds. This proposal does not help the private rented sector recover from the impacts of COVID-19, as it is generally considered that the sector and wider economy have already returned to pre-pandemic operational levels. Our most recent Private Rented Sector Report indicated that prospective tenants reached their highest level on record for the month of December in 2021<sup>1</sup>, and Gross Domestic Product (GDP) figures for the same month equalled pre-pandemic levels reached in February 2020.<sup>2</sup>
2. Temporary measures were introduced to protect tenants from the unknown, as there were fears of increased homelessness, mass rent arrears and high unemployment levels. But landlords and tenants took a pragmatic approach to the temporary measures on the understanding they were only that – temporary. Those fears have dissipated, there are not the perceived levels of rent arrears, and the unemployment rate is 4.1 per cent, just 0.3 per cent higher than its pre-pandemic rate of 3.8 per cent in February 2020.<sup>3</sup> As of mid-November 2021, only 6 per cent of the £10 million Tenant Hardship Loan Fund had been awarded – a total of £654,222 to 245 households.<sup>4</sup> There is simply no evidence to support the need to make discretionary eviction grounds permanent.
3. Existing legislation, particularly The Private Housing (Tenancies) (Scotland) Act 2016, which was only introduced in December 2017, adequately covers the sustainment of tenancies and protection of tenants’ rights and the intended outcomes of this Bill should revert to the measures found in the existing legislation. Propertymark therefore believes that sections 33, 34 and 35 of the Bill should be removed. The Scottish Government has not been transparent in warranting the inclusion of these provisions on a permanent basis and it appears the COVID-19 pandemic is being used as an opportunity to reach a long-term goal.

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<sup>1</sup> Propertymark, January 2022: PRS Survey December 2021: <https://www.propertymark.co.uk/resource/large-decrease-in-london-rental-properties.html>.

<sup>2</sup> ONS, February 2022: GDP Monthly Estimate December 2021: [www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/gdpmonthlyestimateuk/december2021](http://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/gdpmonthlyestimateuk/december2021).

<sup>3</sup> Scottish Government: Labour Market Trends February 2022: [www.gov.scot/publications/labour-market-trends-february-2022/](http://www.gov.scot/publications/labour-market-trends-february-2022/).

<sup>4</sup> Meeting of the Scottish Parliament, 15 December 2021: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-15-12-2021?meeting=13475>.

4. There has been no evidence to show this is a major issue that requires addressing and further questions must be answered: How will lenders view these changes if they are implemented? Will there still be an appetite to provide buy-to-let mortgages for properties in Scotland when a lender knows they will be unable to recover vacant possession of the property should they require it? What will be a lenders' position if the new rules are implemented? The terms of a mortgage agreement effectively allow the lender to ask for return of their lending should the terms of borrowing change. Has the Scottish Government sought legal opinion on the legality of changing these terms which will constitute changing the terms of their contracts mid-term?
5. When landlords issued a tenancy agreement, they did this in full knowledge of the regulations and how they could recover their property if required. But leaving the grounds for possession based on a 'reasonableness' test is likely to generate inconsistent decisions and uncertainty in a system, which is a particular concern when the most recent report by the Housing and Property Chamber First Tier Tribunal for Scotland shows an alarming increase in the number of cases being referred to the Upper Tribunal on the grounds of appeal.<sup>5</sup>

### **Pre-action requirements**

#### **Question: Do you support these provisions?**

6. Propertymark does not support the pre-action requirement provisions outlined in the Bill. The introduction of the Pre-action protocols in respect of evictions relating to rent arrears was accepted as a temporary measure during the COVID-19 pandemic as the Scottish Government introduced them alongside measures of financial support to tenants and to sustain tenancies. However, it has not been made clear what, if any, financial support the Scottish Government intends to introduce should the protocols become a permanent feature.
7. Prior to any temporary measures being introduced on a permanent basis, the Scottish Government must be transparent and provide the evidence that has led to this decision. But no analysis of the successes and failures of the protocols have been presented. How many payment plans were entered into and maintained by tenants, how many payment plans were not adhered to? SafeDeposits Scotland offered tenants and landlords a resolution service during the pandemic to mediate for rent arrears cases and provide landlords with certification they had attempted to successfully resolve arrears issues. The Scottish Government must present the figures of the resolution scheme to establish how successful this was.
8. Propertymark questions the motivations of the Scottish Government in attempting to make permanent these temporary measures and is concerned that the pre-action protocols may simply 'trip up' landlords and delay processes, as opposed to benefitting and supporting tenants. This is reinforced by the overview of the Bill, which suggests the provisions are about landlords having adhered to protocols rather than having attempted to engage with their tenants.

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<sup>5</sup> Housing and Property Chamber, First Tier Tribunal Scotland Annual Report: <https://www.housingandpropertychamber.scot/who-we-are/annual-reports>.