

PRIVATE HOUSING (TENANCIES) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Private Housing (Tenancies) (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2.¹ This memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.²

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 30 – Power to designate a rent pressure zone

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Revised or new power: revised
Parliamentary procedure: affirmative or negative procedure (as explained below)

Background

3. Amendments were made at Stage 2 which relate to the process for making regulations under section 30, the essence of the power itself was not changed.

4. Section 30 of the Bill as introduced would allow the Scottish Ministers to designate an area as a rent pressure zone by regulations. Put briefly, the effect of designating an area as a rent pressure zone will be to set a limit on the amount by which the rent for properties let under private residential tenancies within the zone can be increased.

5. In terms of the procedure for making regulations under section 30, the Bill as introduced:

¹ Stage 2 proceedings took place on a single day, see [SP OR ICI 10 February 2016, col 4 onwards](#).

² [SP Bill 79-DPM Private Housing \(Tenancies\) \(Scotland\) Bill \[delegated powers memorandum\] Session 4 \(2015\)](#).

- provided that any regulations would be subject to the affirmative procedure (section 60(3)),
- required consultation prior to any draft regulations being laid before the Parliament for approval (section 33), and
- required that a report be laid before the Parliament alongside any draft regulations (section 33).

6. As the designation of an area as a rent pressure zone will have financial consequences for the landlords and tenants of properties in the area, the Government's view at the time the Bill was introduced was that these rules about the process were appropriate. It is noted that the Delegated Powers and Law Reform Committee did not disagree with that view in its Stage 1 report on the Bill.³ And the Government remains of the view that the process set out above is appropriate in relation to regulations that designate a rent pressure zone.

Duty to consult and lay a draft report

7. However, section 30 may also be used to make regulations revoking or amending regulations that designate a rent pressure zone.⁴ The requirements for consultation and the laying of a report alongside any draft regulations were intended by the Government to operate only in relation to regulations that designate a rent pressure zone. Section 33 has been amended at Stage 2 to give effect to that intention; this has been achieved by the addition of a new subsection (A1).

Parliamentary scrutiny procedure

8. Changes in market conditions may mean that it is necessary to lift or adjust a rent pressure zone quickly. Subjecting revoking or amending regulations to the affirmative procedure may be a barrier to expeditious action, because it would effectively prevent regulations from being made when Parliament is in recess or dissolved. Section 60 has been amended at Stage 2, so that regulations under section 30 that do not themselves designate a rent pressure zone (i.e. amending or revoking regulations) are subject to the negative procedure instead of the affirmative procedure. This means that amending or revoking regulations can be made at times when Parliament is not sitting.

9. Subjecting amending or revoking regulations to the negative procedure rather than the affirmative procedure does not of course mean that the regulations evade parliamentary scrutiny. Far from it. If regulations have to be made urgently at a time when Parliament is not sitting, members will still be able to scrutinise them at the earliest possible opportunity and the Government will have to account to Parliament for the breach of the 28 day rule set down in [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#). Naturally at times when Parliament is in session, or even when it is not but there is no especially acute need to lift or alter the operation of a rent pressure zone, the expectation is that the Government will follow the ordinary course of allowing time for parliamentary scrutiny before having the regulations

³ [Delegated Powers and Legislative Reform Committee 75th report, 2015, Report on the Private Housing \(Tenancies\) \(Scotland\) Bill at Stage 1 \(SPP 843\)](#).

⁴ By virtue of [section 6 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), a power to make regulations includes the power to amend or revoke them.

come into force; given that Parliament will be able to annul the regulations within 40 days of their being laid before it, to do otherwise may well be imprudent. In practice, because landlords will be unable to raise rents without giving a tenant a minimum of three months' notice (see section 19 of the Bill), it should never be the case that any tenant's rent is affected by an alteration to, or the lifting of, a rent pressure zone without Parliament first having had an opportunity to vote to annul the amending or revoking regulations.

10. Amending or revoking regulations under section 30 undoubtedly have the potential to be important for landlords and tenants in a designated rent pressure zone. But, as discussed above, applying the affirmative procedure to them could cause serious economic problems in a way that is not true in the case of regulations under section 30 which designate a rent pressure zone. That being the case, the Government is of the view that it is appropriate for amending or revoking regulations under section 30 to be subject to the negative procedure. The Government is content that members will still be well able to scrutinise any such regulations and hold the Government properly to account for them under the negative procedure.

Range of persons to be consulted

11. A further change made at Stage 2 to the procedure for regulations under section 30 is that the range of persons who must be consulted has been extended. Rather than consulting persons representing tenants and landlords in the proposed rent pressure zone only, Ministers will be obliged to consult persons representing tenants and landlords in the wider local authority area before making regulations which designate a rent pressure zone.

Section 34B – Further provision about making and determining an application under section 34A

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by Scottish statutory instrument
Revised or new power:	new
Parliamentary procedure:	negative procedure

The new power

12. Sections 34A and 34B were added to the Bill at Stage 2. Section 34A allows a landlord to apply to a rent officer for permission to increase the rent payable for a let property by more than the amount that would ordinarily be permitted in a rent pressure zone as a consequence of some improvement having been made to the property. Section 34B(1)(a) gives the Scottish Ministers the power to prescribe by regulations the form in which landlords are to make their applications. The point of this is to ensure that landlords' applications provide the information that rent officers will need in order to make their decisions.

Choice of procedure

13. Regulations prescribing a form under section 34B(1)(a) will be subject to the negative procedure (section 60(4), as amended at Stage 2). This is consistent with the level of procedure that applies to regulations which prescribe forms under other powers conferred by the Bill (i.e. sections 15, 19, 20, 50 and 52). The Government considers the negative procedure to be the

appropriate level of parliamentary scrutiny for regulations setting out this sort of low-level administrative detail, and notes that in its Stage 1 report on the Bill the Delegated Powers and Law Reform Committee did not disagree with that view in the context of the other form-prescribing powers.

Section 62 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Revised or new power: revised
Parliamentary procedure: no procedure apart from laying before Parliament

The extended power

14. Section 62(2) of the Bill as introduced will provide a power for the Scottish Ministers to bring the Bill's provisions into force by regulations. As is usual, this commencement power is subject to no parliamentary procedure beyond the requirement to lay any Scottish statutory instrument made in exercise of it before the Parliament.⁵

15. At Stage 2 the power under section 62(2) was extended (by the addition of a new subsection (4)), so that regulations appointing the day that section 1 comes into force can also be used to make some very minor adjustments to certain other enactments. Specifically:

- regulations made by virtue of section 62(4) will be able to replace references in certain enactments to the date that section 1 comes into force with the actual date that section 1 comes into force. This will spare anyone reading one of the amended enactments from having to look up the commencement regulations in order to comprehend the reference to the date that section 1 comes into force.
- Similarly, regulations made by virtue of section 62(4) will be able to repeal section 6(5). Section 6(5) is a transitional rule that operates only in the period prior to section 1 coming into force. As it will be spent on the day that section 1 does come into force, section 62(4) allows for section 6(5) to be removed from the statute book with effect from that day.

Choice of procedure

16. Commencement regulations under section 62(2) will be subject to no additional parliamentary procedure if they also make modifications to other enactments by virtue of section 62(4).

17. While section 62(4) allows regulations under section 62(2) to modify primary legislation, the Scottish Ministers will have no meaningful discretion over the modifications that are made. In exercise of the powers, Ministers will merely be able to insert the date that is being appointed for section 1 to come into force or in the case of section 6(5) repeal it with effect from that date. The only matter over which Ministers will have any discretion in framing the regulations is the

⁵ The legal source of the requirement in question is [section 30 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

This document relates to the Private Housing (Tenancies) (Scotland) Bill as amended at Stage 2 (SP Bill 79A)

format in which the inserted date is expressed. As is usual in primary legislation, the expectation is that it will be expressed in the day-month-year form (e.g. 1 January 2016). This is too trivial a matter to merit any formal parliamentary scrutiny process.

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(SP Bill 79A)*

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