



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

9th Meeting, 2021 (Session 5)

Wednesday 24 February 2021

The Committee will meet at 9.00 am in a virtual meeting which will be broadcast on www.scottishparliament.tv.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Fair Rents (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

John Blackwood, Chief Executive, Scottish Association of Landlords;

Tony Cain, Policy Manager, Association of Local Authority Chief Housing Officers;

Gordon Maloney, National Committee Member, Living Rent;

and then from—

Nina Ballantyne, Strategic Lead, Social Justice, Citizen's Advice Scotland;

Professor Douglas Robertson, Consultant & Housing researcher, Stirling University (retired).

3. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).
4. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2021 (SSI 2021/59);
 - Non-Domestic Rate (Scotland) Order 2021 (SSI 2021/63);

Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021 (SSI 2021/64);

Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/65).

5. **Fair Rents (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

Peter McGrath
Clerk to the Local Government and Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

Agenda item 2

Clerks paper

LGC/S5/21/8/1

PRIVATE PAPER

LGC/S5/21/8/2 (P)

Agenda item 4

Note by the Clerk

LGC/S5/21/8/3

Local Government and Communities Committee

9th Meeting, (Session 5) 24 February 2021

Fair Rents (Scotland) Bill – Note by the clerk

Background

1. The Fair Rents (Scotland) Bill is a Member's Bill introduced by Pauline McNeill MSP (the Member in charge) on 1 June 2020. A Member's Bill is introduced by an individual MSP, not the Scottish Government. The Local Government and Communities Committee is leading on scrutiny of the Bill at Stage 1 (scrutiny of the general principles of the Bill). You can read the Bill and accompanying documents [here](#).
2. The Bill and accompanying documents have been prepared by Govan Law Centre on behalf of the Member of charge. The Member in charge undertook a [consultation on her proposals](#) as part of the process of developing the Bill in May 2019. There were 98 responses to the consultation; 38 from organisations and 60 from individuals. A [summary of the consultation responses](#) was prepared by the Scottish Parliament's Non-Government Bills Unit with commentary on the results by the Member in charge.

Overview of the Bill

3. In recent years, there have been various legal changes to the landlord-tenant relationship and some tax changes that have affected landlords. The Member in charge considers that more legal changes are needed to make private rents fairer and to create a better balance of power between landlords and tenants. She also wants to increase the amount of public data about rent levels. In pursuit of this, the Bill is split into four sections:
4. Section 1 prevents a landlord in a private residential tenancy from increasing rent in any year by more than the Consumer Price Index (CPI) plus 1%. (This mirrors rules for areas declared as [rent pressure zones](#).) There is a power in the Bill to modify the 1% amount up or down. The [CPI](#) is a measurement of changes in the price of a "basket" of goods and services and is used to calculate inflation.
5. Section 2 allows a tenant in a private residential tenancy to apply at any time to a Rent Officer, a public employee working for [Rent Services Scotland](#), for a 'fair open market rent' set for the property. The tenant may appeal a determination to the [First-tier Tribunal for Scotland \(Housing and Property Chamber\)](#). The Tribunal is a judicial body set up to decide on private landlord-tenant disputes. The Bill sets out criteria for determining a "fair open market rent". This is based partly on the criteria for determining an "open market rent" under the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) but includes a list of further matters to which "paramount consideration" should be given in determining whether to reduce the rent. These include matters such as poor energy efficiency, inadequate internal décor and furniture, etc.
6. Section 3 requires landlords to enter additional information in the [Scottish Landlord Register](#) when they join the Register or re-register on it. (A landlord must re-register every three years.) As well as providing information about property they rent out (or wish to be able to rent), and any agent for the property, they would also have to state

“the monthly rent charged, the number of occupiers, and the number of bedrooms and living apartments”.

7. Finally, at section 4, the Bill places a duty on the Scottish Government to report on the impact of section 1 of the Bill on the affordability of rents for tenants and on the operation of section 2.
8. The [SPICe briefing on the Bill](#) contains more information.

Committee Scrutiny

9. The Committee issued a [call for views on the Bill](#) on 12 October 2020, which closed on 24 December 2020. [Two hundred and three responses were published](#).
10. During a recent work programme discussion, the Committee agreed to take oral evidence on the Bill from a number of interested organisations and individuals. At its meeting on 24 February, the Committee will hear from—
 - [Living Rent](#)
 - [Scottish Association of Landlords](#)
 - [ALACHO](#)
 - Douglas Robertson; Honorary Professor at Stirling University
 - [Citizens Advice Scotland](#)
11. Written submissions from the four organisations are annexed to this paper. Professor Robertson has carried out research on rent regulation regimes. He co-authored [An Evaluation of Rent Regulation Measures within Scotland’s Private Rented Sector \(2018\)](#), commissioned by Shelter Scotland. He is also part of a three-year project funded by the Nationwide Foundation looking at the impact of private rented housing reforms in Scotland. Wave 1 Findings, [Research on the impact of changes to the private rented sector tenancy regime in Scotland](#) were published in 2020.

Next Steps

12. The Committee will take evidence from the Member in charge at its next meeting, before considering its next steps.

Fair Rents (Scotland) Bill

Submission from Scottish Association of Landlords

- 1. The Member in Charge thinks there is a need to make private rents fairer for tenants and to create a better balance of power between private landlords and tenants. Do you agree with this overall policy aim? If so, do you think the Bill will help achieve this outcome?**

We do not agree with this policy aim. Rent levels are determined not by landlords and what they would like to achieve but by simple supply/demand economics. Landlords don't set rents, they are set by the market. If a landlord advertises a property at above market value he/she will struggle to let the property. The effectiveness of market forces has been shown in the Aberdeen market where, according to data from the web portal Citylets, the average monthly rent fell by 37% from £1110 to £696 between Q4 2014 and Q2 2020 after many years of significant increases in response to local market conditions. Prior to this Aberdeen had the highest rent levels in Scotland. They are now below the Scottish average (£844 in Q2 2020).

- 2. Section 1 of the Bill prevents a landlord of a private residential tenancy from increasing rent in any year by more than the Consumer Price Index plus 1%. Do you agree with this? Section 1 also gives the Scottish Government a power to vary the cap by order. Do you agree with this?**

We do not agree with the proposal to cap rent increases at CPI + 1%. Setting artificial controls on rent levels is likely to have unintended consequences including:

1. Higher rent increases – as landlords try to increase rents to the maximum possible to protect themselves against open market rents increasing above CPI + 1% in the future. Landlords are currently unlikely to impose market value increases mid tenancy. A survey of 7,400 tenants in Scotland by the web portal Lettingweb in November 2014 found that 90% had never experienced a rent rise that they deemed to be unreasonable.
2. More frequent rent increases – where there is a formal process set out in law for rent increases landlords are more likely to follow it whereas historically the majority of landlords did not increase rents mid tenancy. A survey of 7,400 tenants in Scotland by the web portal Lettingweb in November 2014 found that 86% of tenants surveyed had never received a request for a rent increase during a tenancy and 91% of tenants thought that the frequency of rent reviews on their property has been reasonable. In July 2014 the Scottish Association of Landlords conducted a survey of landlord and agent members, asking for their attitudes to rent increases. The landlord survey showed that 78% of landlords do not increase rent mid tenancy. Amongst those who

do, 70% last did so more than 12 months ago. 36% said they would be more likely to increase rents if the government introduced controls on how often increases could be carried out. Amongst our letting agent members only a third review rents periodically mid tenancy. 39% don't generally review rents mid tenancy and 28% do so only when the landlord requests it. 47% said they would be more likely to increase rents if the government introduced controls on how often increases could be carried out as reflected in these comments from members who took part in the survey:

"If rent increases are limited and not related to market a landlord would be foolish not to raise the rent whenever possible."

"If there is legislation in place stating how often and by how much rent can be increased landlords will expect it to be done."

During the coronavirus crisis we have seen many landlords reducing rents to help their tenants. At the start of August 2020 SAL conducted a survey of member landlords to explore the impact of Covid-19 on their businesses. We received 518 responses from landlord members (a 21% response rate). Of the landlords who responded to the survey, 41% have reduced rents for their tenants. The most common discount given by landlords was 20% corresponding to the reduction in income of those tenants on furlough but there were several instances of 100% discount where tenants in need were granted a rent free period. The proposal to cap rent increases would act as a barrier to those considering reducing rents to help their tenants. Below is an illustration of this, based on true stories from our members:

Case study: discounting rent for existing tenants

Paul lets a property to a couple with two children. They pay rent of £750 per month. This is already well below market rate as the tenants have been in the property for a long time and, in common with many landlords, Paul doesn't like to do rent increases mid tenancy. The tenants contact him to let him know they have fallen on hard times as one of their children is seriously ill and they are having to work reduced hours to care for the child. Paul offers to reduce their rent to £600/month for the foreseeable future as they are good tenants and he doesn't want them to get into rent arrears or have to move elsewhere at such a difficult time. If the Fair Rents Bill proposals became law Paul would not be able to increase the rent back up the original rent of £750 so is much less likely to offer a reduction to tenants in hardship.

3. Supply shortages leading to homelessness – rent caps will increase the risks and costs to unacceptable levels for many existing landlords who will have no choice but to sell their properties. Furthermore, potential new landlords will be put off from entering the market. This will reduce the supply of properties even faster, making it very difficult for tenants to find homes. This is at a time when there is increasing demand for homes in the PRS due to the shortage of social housing and a difficulty or unwillingness to purchase property, with the PRS the only sector able to house some of the country's most vulnerable households.

Rent caps as proposed in the consultation paper are likely to lead to a reduction in investment and supply shortages for the following reasons:

- a) The CPI bears no resemblance to the increases in costs that landlords incur. For example, CPI is not connected to mortgage rates which are a key driver of the viability of a landlord's business. Therefore any kind of rent increase restriction would mean that landlords would then be at risk of being unable to service their mortgage payments and other operational costs, particularly if there is an increase in mortgage rates.
- b) Mortgage companies will further restrict the supply of mortgage finance available to potential landlords in Scotland as they will be very concerned at the new risk exposure of landlords not being able to service mortgage payments in a scenario where interest rates rise significantly. This may mean for example that they limit their maximum LTV ratios thus requiring landlords to find larger deposits.
- c) If rent increases are limited to an arbitrary factor such as CPI, then the only way that landlords can even begin to absorb unexpected costs, such as replacing boilers, roof repairs, or being required to install carpets etc, will be to stop investing in other aspects of the property, e.g. redecoration and improvements. Over time the condition of rental properties in Scotland will steadily deteriorate. This will also happen if mortgage rates rise.

A shortage of supply will drive open market rents even higher in the areas the legislation is most designed to help.

Below is an illustration of how rent caps can affect the supply of properties, based on true stories from our members:

Case study: discounting rent for new tenants

Janet has a 5 bedroom HMO property where the market rent is £2000 per month and the tenants are usually students. With the tenancy regime being open ended she has no control over when tenants move out. Tenants usually move in and out over the summer months when it is easy for Janet to find new tenants.

However, her current set of tenants have moved out in January. There is not much demand for student properties in January so Janet struggles to re-let the property. Under the current system she can heavily discount the rent down to £1000 per month to get the property occupied, knowing that she can at some future date increase the rent back to the open market rental value. If the Fair Rents Bill proposals became law Janet would be faced with a difficult choice of whether to let the property at £1000 per month, knowing the legislation would prevent her from increasing it back to the open market rent or leave the property empty from January until the summer in order to preserve her ability to charge a higher rent.

The only effective solution to increasing rents is to supply more homes. Secondary to that a less damaging short term solution would be to work with the industry to produce better data on rent increases which will allow the existing RPZ legislation to be used where necessary at a local level.

Varying the cap:

For the reasons set out above, we don't agree with the proposal to artificially restrict rents at any level. Giving Scottish Ministers power to vary any cap introduces further uncertainty for landlords and investors and any decrease in the cap will exacerbate the negative impact of the proposals set out above.

2. Section 2 allows a tenant in a private residential tenancy to apply to have a "fair open market rent" determined by a Rent Officer. Do you agree with section 2?

Whilst we have no objection to giving tenants the right to have the market rent determined, we don't consider it fair to artificially restrict the amount that can be determined by preventing a rent officer from increasing the rent where it is below the open market level. We also have concerns about the number of applications that might be received from tenants if this proposal was introduced in its current form and the consequent cost to the public purse.

We are particularly concerned about section 22B(6) which proposes that the landlord cannot increase the rent within 12 months of an order from the rent officer setting the rent. Along with clause 22B(5) which prevents the rent officer from increasing the rent, these measures could be used by tenants to prevent a landlord from ever increasing the rent on a PRT. The tenant would simply need to apply to the rent officer once a year for a determination of a fair rent.

a) We do not have any objection to a rent officer's determination being appealed to the First-tier Tribunal provided that the tenant is required to pay the rent determined by the rent officer while the appeal is ongoing.

b) We dispute the justification for section 22B(3) as any of these points which affect the market value of the property would already be taken into consideration by a rent officer exercising their powers under 22B(1). We do not consider it appropriate to reduce the rent below what a hypothetical willing tenant would be prepared to pay for the property. At the very least this section should be amended to require the rent officer to disregard any aspects of the points (a) to (e) that have been caused by the tenant's failure to adhere to the tenancy terms or to look after the property in a tenant-like manner.

3. Section 3 requires the following to be entered into the Scottish Landlord Register: the monthly rent charged for a property, the number of occupiers, and the number of bedrooms and living apartments. The MSP who introduced the Bill thinks this change will help ensure we have more public data about private rent levels. Do you agree with section 3?

We agree that better data is needed on rent levels and we are confident that if this is obtained it would show that landlords don't regularly increase rents for existing tenants.

However, the data that is required to be supplied by this proposal will not assist in determining whether rents are increasing between tenancies or mid tenancy and so will have limited use in determining whether it is necessary to place controls on mid tenancy rent increases. It may be more beneficial to require landlords to state whether they have issued a PRT rent increase notice in the preceding 3 years and if so what the rent was before and after that increase.

We don't consider it necessary to collect data on the number of occupiers as this is not relevant to determining rent level and can vary from tenancy to tenancy for the same property.

4. What financial impact do you think the Bill will have – on private tenants, on landlords in the private rented sector, on local authorities, on Rent Services Scotland, on the First-tier Tribunal, or on anyone else.

We believe the Bill will have a significant financial impact on all those involved in the private rented sector, as detailed below:

Government/local authorities:

- the cost of housing those made homeless by a reduction in the supply of PRS accommodation and more frequent and higher rent increases in rent brought about by caps on rent increases
- the cost of enforcement of/training on the new legislation
- the cost to the public purse cost of covering more frequent rent increases for those in receipt of housing benefit/universal credit
- the cost of amendments to the landlord registration system
-

Rent Service Scotland/First-tier Tribunal:

- the cost of overseeing a large number of applications for determination of a fair rent/appeals
-

Landlords/letting agents:

- the cost of compliance and training
- the cost of subsidising properties where rent becomes well below the market level and no longer covers the operating costs of the business
- the cost of having to be involved in regular fair rent determinations/appeals

Private tenants:

- more frequent and higher rent increases to “keep up” with the market
- costs associated with difficulties in finding accommodation when rent control legislation leads to a shortage in the supply of properties in the sector
- more frequent rent increases leading to an increased risk of tenants getting into debt resulting in eviction and debt recovery action.

6. We welcome any other comments you may have on the Bill that you think are relevant and important, including its likely impact (positive or negative) on equalities, human rights and quality of life issues.

We believe the bill will have a negative impact particularly on young people, low income households and families with children because they are disproportionately represented in PRS housing and will face the unintended consequences of a cap in rent increases which we have highlighted elsewhere in our response including higher and more frequent rent increases and a shortage of available properties.

Fair Rents (Scotland) Bill

Submission from Association of Local Authority Chief Housing Officers (ALACHO)

- 1. The Member in Charge thinks there is a need to make private rents fairer for tenants and to create a better balance of power between private landlords and tenants. Do you agree with this overall policy aim? If so, do you think the Bill will help achieve this outcome?**

We agree that there is a need to rebalance the relationship between landlords and tenants, many tenants are and feel vulnerable and many landlords and agents pay too little attention to customer service and customer care. Many tenants feel that they have limited power to influence or challenge their landlord.

However, this problem is for the most part caused by weaknesses in current tenancy regime, the lack of effective enforcement were landlords break the law and the consistent under resourcing of the regulatory regime. Rent setting and limited protection from rent rises driven by market failure and supply shortages are just one aspect of the problem.

To this extent we do not think that the bill will achieve its objective.

- 2. Section 1 of the Bill prevents a landlord of a private residential tenancy from increasing rent in any year by more than the Consumer Price Index plus 1%? Do you agree with this? Section 1 also gives the Scottish Government a power to vary the cap by order. Do you agree with this?**

No. A cap of CPI+1% applied nationally is not appropriate, it will have no impact at all in most of Scotland where rents have risen significantly in the past but where rental growth is relatively low; it will enshrine above inflation increases in the overall approach and even where it does constrain rent rise decisions, rents will still rise ahead of other costs.

The provisions around annual rent rises and no “catch up” between tenancies may encourage some landlords to raise rents every year where, as things stand most do not increase rents during the course of a tenancy.

- 3. Section 2 allows a tenant in a private residential tenancy to apply to have a “fair open market rent” determined by a Rent Officer. Do you agree with section 2?**

Rents and rent setting is a matter between tenants and landlords but given the significant imbalance in power between the two under the current tenancy and regulatory regime and market conditions in some areas we agree that private tenants

should have access to an independent process that protects them from excessive rent rises and exploitative rents.

To that extent we agree that the option to appeal to a rent officer and the FTT to set a “fair” rent should be available. We would go further and say that this approach is preferable to a blanket approach to setting a national rent cap not least because it would contribute to a shift in the balance of power between tenants and landlords.

We are not convinced however, that the approach proposed in this bill is the right one. We have significant concerns about a rent review process that will, in effect provide a justification to landlords who continue to offer properties for rent that do not meet the statutory minimum standards or that are, in other ways inadequate.

The existing legislation already includes a mechanism for tenants to challenge landlords that fail to carry out essential repairs and a process for abating or suspending rents where the landlord fails to do so.

Setting aside the definitional issues, not to mention how condition deficiencies will be “priced” to reduce a proposed rent it seems to us that it is simply not fair to tenants that they should have to continue to occupy a property in poor condition even if the rent is adjusted downwards to reflect the failure to meet minimum standards.

Worse still the approach set out in the bill will cut across existing tenants rights and create a process that could trap them in properties in poor condition because they know that any improvement will result in an unaffordable rent rise. Landlords will also be encouraged to take the view that the completion of what should be essential repairs should be rewarded by a rent rise.

In our view the appropriate response to poor housing conditions is action to improve them.

We are also concerned by the implication in the bill that market outcomes driven by an excess of demand over supply and the weak bargaining position of tenants generally can result in rents that are “fair” to tenants. If a genuinely “fair market” rent is the objective, then it would make more sense to return to an approach focused on setting rents based on a “balanced” market rather than one based on shortage.

4. Section 3 requires the following to be entered into the Scottish Landlord Register: the monthly rent charged for a property, the number of occupiers, and the number of bedrooms and living apartments. The MSP who introduced the Bill thinks this change will help ensure we have more public data about private rent levels. Do you agree with section 3?

Yes. We agree that there is need to improve the data we collect on the private rented sector and accurate and up to date information on passing rents rather than asking prices (which is all we have now) would be an important first step.

We are unconvinced that it is necessary to collect data on how many folk live in a home other than in relation to HMOs where a maximum occupancy level may be set through the licencing process.

That said, the proposals set out in the bill are limited and do not address some of the key data gaps. By way of one example; as things stand it isn't possible to track properties or landlords through the system. The system only captures the date of current registration. As a result, it isn't possible to be certain about the extent and rate of growth or contraction across the sector, particular local trends in investment or the impact of local social and economic changes on supply. Nor do we have any detailed information on PRS cases being taken to the FTT or their outcomes.

Whilst we agree that the limited additional data required by the bill would be useful our view is that a full review of all the data sources, what they produce and the data needs arising from policy development, implementation

5. What financial impact do you think the Bill will have – on private tenants, on landlords in the private rented sector, on local authorities, on Rent Services Scotland, on the First-tier Tribunal, or on anyone else.

We think it unlikely that the bill will have any substantial benefit to significant numbers of tenants, it will make the process of keeping the landlord register up to date more complicated and require some additional investment to support the data collection requirements.

Whilst we would regard that as a price worth paying for the additional data and there will be additional work in supporting tenants and to challenging landlords who are slow to comply.

Automatic financial penalties within the registration system for failing to provide data will be a better option than other forms of enforcement but the ultimate sanction for not complying with the requirements of the registration regime is deregistration of the landlord. Under the existing legislation this would create a mandatory ground for evicting the tenant. This is clearly inappropriate and simply reinforces the imbalance in power and advantage in the system. These problems will not be resolved by piecemeal changes. A better option would be a comprehensive review of the impact of the 2016 act once the current public health emergency is over.

The bill is likely to increase the workload of the FTT and the rent officer service, they need to be resourced to cope. Additional resources will also be required to provide a regular and comprehensive analysis on the case load and outcomes from the FTT.

6. We welcome any other comments you may have on the Bill that you think are relevant and important, including its likely impact (positive or negative) on equalities, human rights and quality of life issues.

From a strategic perspective our view is that the private rented sector in Scotland is now providing housing for a much wider range of households including an increasing number of lower income and vulnerable families.

As a result, we agree that there is a continuing need to reform of the private rented sector to provide better protection for tenants; significant improvements in the professionalism and compliance of many private landlords; better enforcement of criminal sanctions where they exist; more effective regulation across the board and better data collection on the sector as a whole and its occupants. The measures set out in this bill will not address any of these problems.

A better approach would include strengthening the regulatory regime, requiring higher standards of knowledge and qualification on the part of those delivering services and better advice and advocacy services available to tenants. In the medium to long term our view is that it would be better to expand the social rented sector substantially and reduce the role of the PRS to a market driven sector providing high quality services to those who chose it as a preferred option rather than as now, a less than best option for many households who can't access either owner occupation or the social rented sector.

Fair Rents (Scotland) Bill

Submission from Living Rent

- 1. The Member in Charge thinks there is a need to make private rents fairer for tenants and to create a better balance of power between private landlords and tenants. Do you agree with this overall policy aim? If so, do you think the Bill will help achieve this outcome?**

Agree.

We say daily that the balance of power between private landlords and tenants is dangerously skewed in favour of landlords and we believe that the pandemic has only further illustrated this.

We believe that this bill represents an important step towards achieving this outcome, but remain concerned that in a number of respects it does not go far enough.

- 2. Section 1 of the Bill prevents a landlord of a private residential tenancy from increasing rent in any year by more than the Consumer Price Index plus 1%? Do you agree with this? Section 1 also gives the Scottish Government a power to vary the cap by order. Do you agree with this?**

Partially agree.

We **do** agree with the principle of preventing the landlords of private residential tenancies from increasing rents by set amounts, but we are concerned that the stated metric of the Consumer Price Index plus 1% is too high a benchmark. We would, though, support the legislation stipulating that annual increases could not be **more** than CPI + 1%, but believe that there should also be no minimum level for caps, and that both local and national limits could be set at lower limits.

On the metric itself, we believe that CPI is a flawed measure. We have previously called for the creation of a specific metric - a "Rent Affordability Index" - that would be designed specifically to assess what is affordable for tenants.¹

We also agree with giving the Scottish Government the power to vary the cap by order, but believe that this process should also involve local authorities, and that in some regions, where affordability issues persist despite rent increases rarely exceeding CPI + 1%, the case for specific localised caps, to reflect local incomes, is strong.

¹ Living Rent: The Rent Controls Scotland Needs:
<https://commonweal.scot/policy-library/rent-controls-scotland-needs>

Furthermore, we believe it is vital that any limits are ‘grandfathered’ and carry over from tenancy to tenancy. We have long argued that, unlike the ‘rent pressure zone’ model, it is important that rent levels are linked to the *property*, not the *tenancy*.

Without this, and if increases are only capped within a tenancy (sometimes referred to as “third-generation rent controls”), it means that a tenants model would have rent increases limited while in their tenancy, but that their landlord would be able to increase rents without any limit if that tenant moves out and another moves in. This limitation creates three challenges:

- It disincentivises tenants from moving. This creates problems for tenants if and when their circumstances change, as well as creating potential barriers for new tenants to find accommodation. Additionally, it can create incentives for landlords and letting agents to find ways to seek out ways to evict their tenants. Within-tenancy controls are a heavily criticised feature of the rent control models in New York and San Francisco². Far from constituting an argument against rent controls, however, this evidence, is an argument for stronger regulation, not weaker, and ensuring that limits are carried over from tenancy to tenancy.
- It creates a situation where RPZs offer no protection to more precarious tenants who, for whatever reason, cannot or do not want to stay in properties for longer periods of time than 12 months. There is even a danger that limits on increases within RPZ tenancies could lead to landlords artificially increasing rents in between leases to compensate for limits to increases within tenancies. That would mean that while the regulations may protect tenants who stay for the maximum period of five years of an RPZ, tenants who move regularly could end up paying more. This point is noted by the Cambridge Centre for Housing Policy & Research in an extensive comparative study of rent regulations across Europe, concluding that tenants who stay longer than the average may benefit, while “those who stay for a shorter-than-average period will pay ‘too much’”.³
- There is little evidence that this model of rent controls will do anything to limit rent increases in the long term. This point is also noted by Shelter Scotland, which notes that “with above inflation rent increases still possible during tenancies, and with no controls on initial rents, upward pressure on housing costs could continue under this model”.⁴

² National Bureau of Economic Research: The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco: <http://www.nber.org/papers/w24181>

³ Cambridge Centre for Housing & Planning Research: The private rented sector in the new century – a comparative approach: <https://www.cchpr.landecon.cam.ac.uk/Projects/Start-Year/2010/Private-Rented-Sector-New-Century-Comparative-Approach/Project-Report>

⁴ Shelter Scotland: Rent Pressure Zones: What next?: <https://blog.scotland.shelter.org.uk/rent-pressurezones-next/>

3. Section 2 allows a tenant in a private residential tenancy to apply to have a “fair open market rent” determined by a Rent Officer. Do you agree with section 2?

Agree.

We strongly support the ability of tenants in private residential tenancies to apply for a “fair open market rent” to be determined by a Rent Officer, and for tenants to be able to appeal these decisions to the First Tier Tribunal.

We also strongly support the inclusion of quality issues as determining factors in these judgements. We regularly see tenants living in properties in an appalling state of disrepair, and the measures available for tenants to seek redress of this are too limited and cumbersome.

We do believe, however, that in determining a ‘fair’ rent, consideration should be given to more than just quality - and certainly more than wider market rents. We have long argued for the creation of a ‘rent affordability index’ that would attempt to establish not just what are fair rents, but what are genuinely *affordable* rents, taking into account local earning conditions and the income distribution of private renters.

Furthermore, we believe it vital that for tenants to have confidence in any such system, that while a Rent Officer should be entitled to reject a request to determine a ‘fair open market rent’, they should *not* be able to set, suggest or indicate that the rent should be *higher* than it currently is.

We further believe that it is important for the timescales involved in this to be as rapid as practically possible. Rent increases can cause extreme distress to tenants, and we would be concerned that a slow, unclear or difficult process would render this important measure unworkable. If tenants know they will have to wait months for a decision, there is a real danger that they would prefer to move out of a property than go through a lengthy appeal process. This undermines the proposals and also creates the real danger of landlords using unaffordable rent increases as a means of evicting tenants, thus undermining the important steps made in the 2016 Act to improve security of tenure.

In any answer to question 3, the Committee also welcomes your views on—

- *The right set out in section 2 to appeal a Rent Officer’s determination to the First-tier Tribunal*
- *The matters set out in section 2 that must be taken into account in determining what is a “fair open market rent”*

- 4. Section 3 requires the following to be entered into the Scottish Landlord Register: the monthly rent charged for a property, the number of occupiers, and the number of bedrooms and living apartments. The MSP who introduced the Bill thinks this change will help ensure we have more public data about private rent levels. Do you agree with section 3?**

Agree.

We do support this measure, and argue that debate around private rented housing is informed by high-quality, holistic data. To this end, we strongly support this data being made publicly accessible.

However, as we have detailed before, we do *not* believe that Rent Pressure Zones are a sufficient model, and as such do not believe that the goal of this should be to facilitate the introduction of RPZs. We published a policy paper last year outlining what we see as the problems with RPZs, and while collating the required data is indeed one of them, we have identified a number of other crucial issues. We believe that the limited scope of Rent Pressure Zones, the fact that they don't take account of quality issues, and that caps on increases are only within tenancies, mean that they will not effectively protect tenants from unfair rents. Our full report can be read here:

<https://commonweal.scot/policy-library/rent-controls-scotland-needs>

- 5. What financial impact do you think the Bill will have – on private tenants, on landlords in the private rented sector, on local authorities, on Rent Services Scotland, on the First-tier Tribunal, or on anyone else.**

It goes without saying that reducing rents in the private sector could have an enormous and positive impact on private tenants, who the Joseph Rowntree Foundation have described as the 'new face' of poverty in Scotland.⁵ We believe that effective rent controls - which both reduce rents and limit future increases, would be a powerful way of improving the quality of life of private tenants across Scotland.

Of course, though, the inequality and poverty faced by private tenants in Scotland is worse for some than others. In particular, the gender and ethnic pay gap means that high rents in the PRS, which are unaffordable for all tenants, are particularly unaffordable for women and BAME people, who are disproportionately likely to live in the PRS. Reducing rents, therefore, has the ability to also represent a significant step forwards in gender and racial equality.

⁵ Joseph Rowntree Foundation: Monitoring poverty and social exclusion 2016 (MPSE): <https://www.jrf.org.uk/report/monitoring-poverty-and-social-exclusion-2016>

We believe that effectively limiting rent increases will have a **profoundly positive impact** in a number of other areas as well, both for local authorities, the NHS, the Scottish Government and the public purse more widely.

- High rents in the PRS are kept high through a number of public subsidies; including discretionary housing allowance and the housing element of Universal Credit. They are also effectively subsidised by, for example, student support. Reducing rents would relieve the pressure on these funds and free up enormous amounts of public money.
- The cost to the NHS of poor quality housing is well established.⁶ Ensuring that rent appeals take account of quality issues could prove to be a powerful tool for incentivising rapid improvement in the quality of private rented sector homes, while also improving health and wellbeing in Scotland.
- The proportion of people presenting as homeless from the private rented sector is disproportionately high and high rents are a leading cause of this. Reducing rents could mean a significant reduction in homelessness.

6. We welcome any other comments you may have on the Bill that you think are relevant and important, including its likely impact (positive or negative) on equalities, human rights and quality of life issues.

As well as the health impacts (and associated savings to the NHS) outlined above, we believe that there are two other crucial reasons to effectively link quality to rent controls.

- Scotland's PRS is amongst the most **energy inefficient** of all of Scotland's housing. Given that roughly half of Scotland's CO2 are from heating, the potential for effectively incentivising these improvements to dramatically reduce the carbon impact of Scotland's PRS is an important opportunity.
- Additionally, improving the energy efficiency of Scotland's PRS would represent a significant step forward in tackling fuel poverty in Scotland.

⁶ BRE Group: New BRE Trust report shows poor quality homes in England cost the NHS £1.4bn per year, and wider society £18.6bn: <https://www.bre.co.uk/news/New-BRE-Trust-report-shows-poor-quality-homes-in-England-cost-the-NHS-14bn-per-year-and-wider-society-186bn-1161.html>

Fair Rents (Scotland) Bill

Submission from Citizens Advice Scotland

- 1. The Member in Charge thinks there is a need to make private rents fairer for tenants and to create a better balance of power between private landlords and tenants. Do you agree with this overall policy aim? If so, do you think the Bill will help achieve this outcome?**

Yes, partly. CAS supports more affordable rents for tenants and a better balance of power between private landlords and tenants. Our evidence suggests that affordability of housing is a key concern for CAB clients, particularly for those on a low income (whether from employment, social security benefits, or a combination of both).

Between 2012-13 and 2016-17, advice on arrears across all rented tenures grew by over 40%. This stands in sharp contrast to the steady decline in other debt-related advice during the same period. Our research also indicates that in 2017 (still pre-pandemic), some 36% of Private Rented Sector (PRS) tenants surveyed were already struggling to manage financially, with many spending less on food and other essentials to pay their rent.⁷

In 2020 so far, advice on Private Rented Sector (PRS) rent arrears has grown as a proportion of all housing cost arrears, whereas the share of advice on arrears in other sectors has declined since the start of the pandemic⁸.

CAS therefore believes that there is both a necessity for and clear benefits to intervention in this area. In addition, whilst we believe that the PRS should not take the place of social housing, we agree that it has an important role in meeting housing need in Scotland while social housing waiting lists are oversubscribed. At least 158,439 applicants were on transfer or waiting lists just for local authority housing in Scotland last year⁹ so the PRS needs to be an affordable option for people on low incomes, and a cap on rent increases may help to ensure that more PRS stock is and remains affordable.

CAS particularly supports the introduction of a rent register as a basic foundation to improve understanding of the PRS and improve PRS policymaking in Scotland, leading to more truly affordable housing for those who need it.

However, this Bill lacks the scale of ambition required to achieve its stated aims. The current power imbalance between landlords and tenants relates to factors that fall

⁷ <https://www.cas.org.uk/publications/rent-arrears>

⁸ <https://www.cas.org.uk/publications/citizens-advice-scotland-housing-data-feb-oct-2020>

⁹ <https://www.housingnet.co.uk/pdf/housing-statistics-scotland-2019-key-trends-summary.pdf>

outwith the scope of this Bill. These factors include low awareness of tenants' rights, limited funding for specialist housing advice across Scotland, the lack of meaningful choice for tenants in finding a home and an overstretched housing and property chamber where early Shelter research¹⁰ shows tenants are often absent or unrepresented in hearings while landlords and letting agents have access to professional support.

CAS also has concerns that the specific measure proposed to limit rent increases is too modest, as detailed further in response to question 2.

2. Section 1 of the Bill prevents a landlord of a private residential tenancy from increasing rent in any year by more than the Consumer Price Index plus 1%? Do you agree with this? Section 1 also gives the Scottish Government a power to vary the cap by order. Do you agree with this?

Partly. CAS would see this as an improvement to the rate of rent increases in some circumstances but we are concerned that the proposed cap of CPI +1% will not result in genuinely affordable PRS housing where rents are already too high. This is particularly so for people on lower incomes, who are already struggling to make ends meet. Instead, we believe that it would more likely offer a sense of predictability, rather true affordability, due to the disconnect between existing PRS rents, wages and social security income. Average wages seldom grow in line with inflation, particularly for the lowest earners. Local Housing Allowance (LHA) rates are currently set to only cover the bottom 30% of rents. Tenants under 35 accessing Housing Benefit will also only be entitled to the "shared accommodation rate" even if living alone, and despite shared accommodation being in short supply in some areas. This means that the support low income private renters can receive through Housing Benefit or Universal Credit is capped, increasingly bearing little or no relation to the true cost of renting in many areas and leaving tenants to make up the shortfall themselves. This has an obvious knock-on impact on tenants' ability to pay their rent, and how much income tenants have remaining after housing costs.

With as many as one fifth of private renters in Scotland receiving help with their housing costs¹¹, we should not underestimate how many people this problem affects. Some changes have made social security fractionally more generous in 2020 on a temporary basis in response to the pandemic. However, unless social security rates and wages are also uprated annually by CPI + 1% (which is unlikely, the 'usual' rate for the former is CPI), CAS believes that the proposal as it stands would have a limited impact.

¹⁰

https://scotland.shelter.org.uk/_data/assets/pdf_file/0009/1919898/Shelter_Scotland_Data_Analysis_of_First-tier_Tribunal_Housing_and_Property_Chamber.pdf/nocache

¹¹

https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research

Indeed, for benefit claimants, any rent increase greater than annual benefit uprate would simply not be affordable over time, and so those on the lowest incomes would continue to experience the most detriment.

CAS is also concerned that the proposal does not contain any provisions to tackle rents that are already too high. Indeed, any positive impact of a cap on rent increases is likely to be limited for tenants who are already struggling to pay their rent. Whilst not problematic in every area of Scotland, high pressure markets are not confined to the country's bigger cities, such as Edinburgh, Glasgow and Aberdeen. Indeed, CAB advisers have highlighted that there tends to be fewer social lets available in many rural areas. This increases demand on PRS stock, which is often already limited, due to higher concentrations of holiday homes and because many homes are tied to employment in these areas. There also tends to be less investment in new affordable homes in rural areas¹². The result of all of the above is higher rents.

Related to this, CAS is also concerned that properties entering the market for the first time would not be subject to the cap. Whilst this may not be an issue in areas where PRS rents are relatively low, we remain unconvinced that market forces in mid-range and high pressure areas will act as a suitably robust safeguard against landlords setting unreasonably high rents. This runs the risk of PRS remaining unaffordable or simply unreachable in the first place, particularly for those on the lowest incomes.

Finally, it is also important to note that the Scottish housing market is not homogenous. Rather, it is made up of many smaller sub-markets, each with (sometimes hugely) varying levels of demand for PRS housing and average rents charged. Average incomes of those who need and live in PRS housing will also vary across the country. Thus, CAS believes that it is important to consider and evaluate the possible impacts that a blanket national policy such as this may have in different areas. For instance, whilst it may help to increase affordability of rent in high pressure markets, it may also drive rents up (even to the maximum allowed by the cap) in others. This is conceivable in low-demand areas where rents may be relatively cheap and landlords may not be accustomed to routinely increasing them.

3. Section 2 allows a tenant in a private residential tenancy to apply to have a “fair open market rent” determined by a Rent Officer. Do you agree with section 2?

Partly. CAS agree with the ambition to introduce more objectivity in rent setting, and to remove the current option for a determination to result in a higher rent than that proposed by the landlord.

¹² <https://ruralhousingscotland.org/wp-content/uploads/RHS-Rural-Housing-Investment-Analysis.pdf>

However, while these proposals mark a small improvement on existing arrangements, practical issues in relation to the appeal system proposed and the method proposed for determining a “fair market rent” mean this is unlikely to make a significant difference to the lives of most tenants. The Committee specifically seeks views relating to these two points and further detail is set out below.

- (a.) In principle, CAS is supportive of the right set out in section 2 to appeal a Rent Officer’s determination to the First-tier Tribunal. However, this must be accompanied by increased resource to support tenants to represent themselves or be represented at tribunals, in the same way most landlords and letting agents are.

It would also likely not be feasible for every tenant who wished to appeal, to do so. Early evidence from the first-tier tribunal confirms that caseload has been unprecedented, with tenants sometimes having to wait months for their cases to be heard. For instance, in 2018-19 alone, the tribunal heard almost 3,196 cases, and noted in its annual report it received three times more than the anticipated number of applications in its first year of operation, causing delays and challenges.¹³ The events of 2020 will increase those challenges and delays. And as rent adjudication is carried out with regard to market rates, and many markets rates are vastly inflated by constrained supply, many PRS properties would simply remain out-of-reach for those on a low income.

- (b.) CAS supports what is set out in Section that must be taken into account in determining what is a “fair open market rent” to an extent. We would support the matters listed as being reasonable grounds for a rent reduction, and they could help incentivise landlords to ensure their property is of better standards.

However, it’s not clear in the Bill how a Rent Officer would establish whether or not a rent was fair in an instance where there were no significant shortcomings in the property, or what the starting rent level would be for reductions. Currently, rent determinations are based on sampled advertised market rents. This does not reflect within-tenancy changes or properties that were never advertised on the open market. For this reason, we are very supportive of the measures in the Bill to gather more accurate information on PRS rents through an obligation to register rent information. However, even setting a rent at a more accurate “market rate” would not necessarily improve affordability in areas where values of sales and rental incomes in the housing market have been inflated due to constrained supply.

CAS does not have sufficient case evidence to understand how well the current rent appeal system works, and we have been unable to locate evidence or evaluations from other sources. CAS believes that this is an important consideration and we would

¹³ <https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/scottish-tribunals-publications/scottish-tribunals-annual-report-2018-19.pdf>

therefore welcome investigation into the matter, if it has not already been carried out. In addition, as discussed above, we are concerned that the tribunal may not be able to cope with increased demand for its services.

Therefore, in order to maximise efficacy, we believe that this proposal must be accompanied by sufficient resource for the tribunal, advice and representation for tenants and an effective way of establishing a “fair rent” starting level, before any reductions

4. Section 3 requires the following to be entered into the Scottish Landlord Register: the monthly rent charged for a property, the number of occupiers, and the number of bedrooms and living apartments. The MSP who introduced the Bill thinks this change will help ensure we have more public data about private rent levels. Do you agree with section 3?

Yes. CAS supports this proposal in principle. We agree that there is a need to gather more comprehensive data about rents in Scotland, and collecting this alongside other PRS property information would be simplest for those interested in that information. This would be true for individual tenants seeking to make an informed choice about their home, and for the public sector, organisations and academics interested in making use of that data to improve understanding of the PRS and develop policy recommendations.

CAS would suggest also making sure energy efficiency information for properties is publicly available too. While landlords already have to include energy performance certificates for their portfolio while registering, this information is only available to the local register operator, not to prospective tenants or other organisations. This will help in making fair comparisons between properties, similar to the proposal to include bedroom and living apartment numbers in the Bill, and contribute to better understanding of energy efficiency in the sector.

Although hopefully these are isolated incidents, CAS also notes evidence from across the Scottish CAB network that suggests the current landlord registration system is perhaps not working as well as it should, with unregistered landlords still operating across the country.

For example, a West of Scotland CAB in August 2020 reported of a client who was seeking advice on taking their landlord to the First Tier Tribunal on the grounds of not meeting repairs obligations. In the course of supporting the client, the adviser found that the landlord did not appear on the local landlord register.

In a similar case, a client visited an East of Scotland CAB just this month (December 2020) for advice on handling their rent arrears. Once again, in the process of supporting the client, the adviser discovered that the landlord did not appear on the local landlord register.

Other landlords, whilst registered, do not always comply with their legal responsibilities, such as the minimum repair standards. It would also appear that in practice, pursuit and fines for non-compliance with registration requirements are sometimes limited, or even non-existent, unless moved by a tenant. These issues occur not because the current legislation is insufficient, but because enforcement is lacking, with no coordinated way to tackle poor practice, other than the burden on an individual tenant to pursue a case to tribunal. A number of CAB advisers have also highlighted that many of their clients do not know that the landlord register exists, or what information it contains. This evidence is complemented by the results of a survey commissioned by CAS which suggest that the majority of people in Scotland know very little, or indeed nothing, about both the responsibilities of landlords and their rights as tenants¹⁴. A survey of tenants by SafeDeposit Scotland also found that more than a quarter of respondents didn't know that their deposit had to be protected in a Government-back scheme by law.¹⁵

Therefore, in order for this proposal to be effective, CAS believes that it is vital that the landlord registration scheme is suitably resourced and enforced. It should also be accompanied by a sustained effort to promote and ensure that tenants understand their rights, as well as the legal responsibilities of their landlords.

Informed tenants can help (to an extent) to address bad practice, including failure to comply with registration requirements, by challenging it individually when they encounter it. Tenants must also be able to access high quality advice services to support them, where required.

To support a generation of confident renters, CAS also recommends the development of an educational rights resource, including housing rights, similar in scope to rshp.scot. This could be part of the social studies area of the Curriculum for Excellence or build on the review of Personal and Social Education through the proposed PSE Delivery and Implementation Group, which the review recommended be established.

5. What financial impact do you think the Bill will have – on private tenants, on landlords in the private rented sector, on local authorities, on Rent Services Scotland, on the First-tier Tribunal, or on anyone else.

In terms of local authorities, the Scottish Government and other public sector bodies, there are a range of possible impacts. We recognise that local authorities, including trading standards, may require a significant increase in resource to suitably enforce all of the recommendations made above. Expansion of the landlord registration database would also require some additional resource for set up, but ongoing maintenance costs should not be significantly larger. However, incentivising better quality PRS homes and reducing housing costs for those on lower incomes would also result in wider public

¹⁴ <https://www.cas.org.uk/publications/rent-arrears>

¹⁵ <https://www.scottishhousingnews.com/article/scottish-tenant-survey-shows-surprising-lack-of-awareness-around-deposits>

sector benefits. Housing has an important influence on health inequalities. Housing costs throw thousands of families into poverty in Scotland, causing destitution and the increased risk of poor health to individuals¹⁶. More affordable rents would help reduce this and the strain it can place on over-stretched public services.

CAS understands that there may be some increase in cost for landlords. Some landlords may experience a decrease in their profits and so may be more reluctant to let their properties. Some may even remove their properties from the market. However, based on the conclusions so far of research conducted in England looking at a similar scenario¹⁷, we could reasonably expect this impact to be minimal. In addition, more affordable rents could also reduce tenant churn, benefitting good landlords.

For tenants, CAS would expect to see some reduction in cost. More affordable rents would benefit tenants, reducing the number of households in poverty after housing costs. However, as discussed above, the proposal is unlikely to improve the financial situation of all tenants, particularly for those on low incomes, and/or for those living in high pressure markets where rents are already very high. For tenants in these situations, we believe the proposal would guarantee a sense of predictability, as opposed to genuine affordability.

The resource challenges face by the First-tier Tribunal referenced in answer to earlier questions are also relevant here.

6. We welcome any other comments you may have on the Bill that you think are relevant and important, including its likely impact (positive or negative) on equalities, human rights and quality of life issues.

CAS does not hold sufficient case evidence from the CAB network to determine the possible impacts of the proposal on equalities.

However, given that some protected characteristics are more likely to be represented in the PRS¹⁸, the proposal may help to ease some of the additional financial pressure that these groups tend to be burdened with. In turn, this would, at least in theory, help to reduce the disadvantage that these groups face. For example, disabled people are more likely to suffer from the impacts of higher rents than non-disabled people because they are more likely to be living in poverty, due in part to the increased costs of living with a disability¹⁹. In addition, there are a disproportionate number of disabled people living in high pressure PRS markets such as Edinburgh and Glasgow (compared with

¹⁶ http://www.healthscotland.scot/media/1250/housing-and-health_nov2016_english.pdf

¹⁷ <https://www.cchpr.landecon.cam.ac.uk/Research/Start-Year/2015/The-effects-of-rent-controls-on-supply-and-markets/Project-Report/Report>

¹⁸ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2017-scottish-household-survey/>

¹⁹ <https://www2.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty/povertytable>

rural and remote areas)²⁰. Further, the gender pay gap means that women suffer the impacts of unaffordable rents disproportionately, and structural problems in the PRS have the added impact of making it more difficult to leave abusive relationships²¹. Finally, 58% of PRS tenants record their ethnicity as White Scottish, compared to 79% of adults as a whole in Scotland. This would suggest that other ethnic groups are overrepresented in the PRS²².

However, as some groups with protected characteristics tend to be lower earners, we remain concerned that the impact of the proposal on equality will be limited, particularly whilst wage growth does not keep up with inflation and LHA rates remain at only 30%.

As discussed above, CAS acknowledges the possibility of two unwelcome impacts from the Bill's proposals: encouraging regular rent increases where none previously existed, and the withdrawal of properties from the market. On the first point, we are satisfied that the information available through the proposed rent registration, if combined with adequate resources, would allow for monitoring and, if necessary, flagging this issue to local and national government where necessary.

On the second point, CAS acknowledges that some landlords could perceive the cap as an unwelcome limit on their income and opt to withdraw their properties from the market as a result. This could either be withdrawal from the rental market altogether or renting properties as short-term lets, such as AirBnB. While the former could result in a small increase in supply of properties for sale, both could contribute to a reduction in availability of PRS stock for mid to long-term homes.

This may create additional demand for remaining PRS stock, which could force tenants to leave the area. However, as discussed above, we would expect this to be minimal²³. In addition, forthcoming licensing and regulation of short-term lets could be used to bring more parity between the two sectors, reducing incentives for long-term PRS landlords to switch. Thus, any potential disproportionate impacts of the proposed Bill could be mitigated or addressed through effective implementation of its measures, robust resourcing for monitoring and compliance, and co-ordination with other relevant legislation.

Whilst CAS welcomes measures to make the PRS more affordable, the issue itself cannot be considered in isolation. In order to achieve genuinely affordable PRS housing, particularly for people on the lowest incomes, CAS believes that any form of rent control (whether through this proposal or any other) needs to be accompanied by a balanced housing market. This requires serious investment in both social and truly

²⁰

https://www.understandingglasgow.com/indicators/health/trends/disability_trends_scottish_cities/overview

²¹ <https://www.dahalliance.org.uk/facts>

²² Scottish Household Survey, as above

²³ <https://www.cchpr.landecon.cam.ac.uk/Research/Start-Year/2015/The-effects-of-rent-controls-on-supply-and-markets/Project-Report/Report>

affordable housing, particularly in high pressure housing markets like Edinburgh, Glasgow, Aberdeen and many rural areas. This would achieve two things. Firstly, it would help to ensure that more affordable cross-tenure housing options are available to everybody. Secondly, it would also provide the essential surrounding context needed for rent control (in any of its many possible forms) to work. Crucially, research from across Europe shows that where rent controls were introduced without this wider action to boost the supply of social and affordable housing, they were all too often rendered ineffective by loopholes and shadow markets on rentals²⁴. This is a critical consideration for this proposal. Finally, whilst not 'within our powers', it is essential that LHA rates are increased, with a view to enabling them to cover more than the bottom 30% of market rents once more.

²⁴

https://scotland.shelter.org.uk/data/assets/pdf/file/0011/1527590/Shelter_RentReport_May18_screen_3_1.pdf

Local Government and Communities Committee

9th Meeting, 2020 (Session 5), Wednesday 24 February 2021

Subordinate Legislation

Overview of instrument

1. The following instruments, subject to negative procedure, are being considered at today's meeting:
 - [Non-Domestic Rating \(Valuation of Utilities\) \(Scotland\) Amendment Order 2021 \(SSI 2021/59\)](#)
 - [Non-Domestic Rate \(Scotland\) Order 2021\(SSI 2021/63\)](#)
 - [Non-Domestic Rates \(District Heating Relief and Renewable Energy Generation Relief\) \(Scotland\) Amendment Regulations 2021\(SSI 2021/64\)](#)
 - [Non-Domestic Rates \(Levying and Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(SSI 2021/65\)](#)

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2021 (SSI 2021/59)

Purpose

2. This Order amends the Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005 to amend a list of fixed line telecommunications companies that are to be entered in a single valuation roll, rather than local rolls. Further detail on the Order is set out in the policy note attached at **Annexe A**.
3. The instrument was laid before the parliament on 4 February 2021 and comes into force on 1 April 2021. It is subject to the negative procedure.
4. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2021/59/introduction/made>
5. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [16 February 2021](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

7. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 15 March 2021.

Non-Domestic Rate (Scotland) Order 2021(SSI 2021/63)

Purpose

8. This Order prescribes a rate of 49 pence in the pound as the non-domestic rate to be levied throughout Scotland in respect of the financial year 2021-2022. A rate of 49.8 pence in the pound was prescribed by the Scottish Ministers as the non-domestic rate to be levied throughout Scotland for the financial year 2020-2021 (S.S.I. 2020/37). Further detail on the Order is set out in the policy note attached at **Annexe B**.

9. The instrument was laid before the parliament on 8 February 2021 and comes into force on 1 April 2021. It is subject to the negative procedure.

10. An electronic copy of the instrument is available at:

<https://www.legislation.gov.uk/ssi/2021/63/introduction/made>

11. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

12. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [16 February 2021](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

13. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 15 March 2021.

Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021(SSI 2021/64)

Purpose

14. These Regulations amend the Non-Domestic Rates (Domestic Heating Relief) (Scotland) Regulations 2017 and the Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010. The policy note (attached at **Annexe C**) states that the instrument time-limits the current 60% non-domestic rates reduction for lands and heritages used to generate renewable energy from water and the 50% rates reduction for lands and heritages used as District Heating schemes, until the end of the 2031-32 financial year.

15. The policy note also states that the instrument provides a 90% rates reduction for lands and heritages used for district heating networks, introduced on or after 1 April 2021 that are powered by renewables, until the end of the 2023-24 financial year.
16. The instrument was laid before the parliament on 8 February 2021 and comes into force on 1 April 2021. It is subject to the negative procedure.
17. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2021/64/introduction/made>
18. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

19. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [16 February 2021](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

20. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 15 March 2021.

Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/65)

Purpose

21. These Regulations make provision for the amount payable in certain circumstances as non-domestic rates in respect of non-domestic subjects in Scotland. A list of the non-domestic subjects covered by these regulations, and further detail, is set out in the policy note (attached at **Annexe D**). The non-domestic rate for subjects not covered by these Regulations is fixed by the Non-Domestic Rate (Scotland) Order 2021, made under the Local Government (Scotland) Act 1975 - further detail on that Order is set out above.
22. The instrument was laid before the parliament on 8 February 2021 and comes into force on 1 April 2021. It is subject to the negative procedure.
23. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2021/65/introduction/made>
24. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

25. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [16 February 2021](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

26. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 15 March 2021.

Procedure

27. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
28. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
29. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
30. Each negative instrument appears on the Local Government and Communities Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
31. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

POLICY NOTE**THE NON-DOMESTIC RATING (VALUATION OF UTILITIES) (SCOTLAND)
AMENDMENT ORDER 2021****SSI 2021/59**

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by sections 6A(1)(aa) and 6A(1B) of the Valuation and Rating (Scotland) Act 1956 and all other enabling powers. The instrument is subject to negative procedure.

This Order updates The Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005 (“the principal Order”) to amend a list of fixed line telecommunications companies that are to be entered in a single valuation roll, rather than local rolls.

Policy Objectives

The purpose of this instrument is to amend the list of companies registered at article 7A(2) (fixed line telecommunications) of the principal Order. This includes:

the addition of four companies:

- Grain Connect Limited
- Grain Communications Limited
- Open Fibre Networks Limited
- Sky Telecommunications Limited

the removal of three companies:

- Everything Everywhere Limited
- Interoute Vtesse Limited
- Oath (UK) Limited

The names of companies can change, and these changes need to be shown in the 2005 Order to allow designated assessors to treat the lands and heritages held by relevant companies as a single entry on the valuation roll for a single, designated, area, despite being situated in areas covered by different rolls.

Consultation

There is a statutory requirement to consult on this Order. Scottish Assessors, representatives from the Institute of Revenues Rating and Valuation, and COSLA were consulted during drafting of the Order and are content with the changes it makes to the 2005 Order.

Business and Regulatory Impact Assessment

No Business Regulatory Impact Assessment is required because this instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Implications

There are no financial implications resulting from this instrument.

Scottish Government
Local Government and Communities Directorate
February 2021

POLICY NOTE**THE NON-DOMESTIC RATE (SCOTLAND) ORDER 2021****SSI 2021/63**

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 7B(1) of the Local Government (Scotland) Act 1975 and by all other enabling powers. The instrument is subject to the negative procedure.

The purpose of this instrument is to set the non-domestic (business) rate poundage, also known as the basic property rate, in Scotland at 49 pence for 2021-22.

Policy objective

This instrument will result in the Basic Property Rate (i.e. poundage) paid by non-domestic properties in Scotland from 1 April 2021 to 31 March 2022 being 49 pence. This is 0.8 pence lower than the poundage in 2020-21 (which was 49.8 pence) and returns the poundage to its 2019-20 level.

Consultation

There is no statutory requirement to consult on these Regulations.

Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with the Non-Domestic Rate (Scotland) Order 2020 which it replaces.

Financial Implications

This instrument has no additional financial effects on the Scottish Government, local government or business.

Scottish Government
Local Government and Communities Directorate
February 2021

POLICY NOTE

THE NON-DOMESTIC RATES (DISTRICT HEATING RELIEF AND RENEWABLE ENERGY GENERATION RELIEF) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/64

The above instrument is made in exercise of the powers conferred by section 153(1) of the Local Government etc. (Scotland) Act 1994 and all other enabling powers. The instrument is subject to the negative procedure and comes into force on 1 April 2021.

This instrument amends the Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010 and the Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017. The instrument time-limits the current 60% non-domestic rates reduction for lands and heritages used to generate renewable energy from water and the 50% rates reduction for lands and heritages used as District Heating schemes, until the end of the 2031-32 financial year.

The instrument also provides a 90% rates reduction for lands and heritages used for district heating networks, introduced on or after 1 April 2021 that are powered by renewables, until the end of the 2023-24 financial year.

Policy objective This instrument time limits the current 50% District Heating relief and 60% Hydro relief, until the end of the 2031-32 financial year, as per commitments made in the Scottish Budget 2020-21 and 2021-22 respectively.

The instrument also creates a 90% relief for District Heating networks powered wholly or mainly by renewable generation, for District Heating networks entered on the valuation roll on or after 1 April 2021. This relief will be available until 31 March 2024. The instrument also defines “renewable generation” for this purpose.

Background

On 1 April 2017, a 50% District Heating Relief was introduced through The Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017. On 1 April 2018, 60% relief was introduced for small hydro generators through The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018, amending The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010.

The Scottish Government has a commitment to supporting renewable energy. The relief for District Heating networks that is created by this instrument aims to support development of non-domestic properties that produce renewable energy.

The objective of time-limiting the 60% Hydro relief and the 50% District Heating relief to 31 March 2032 is to provide investor certainty by demonstrating the Government’s

commitment to these reliefs. In relation to Hydro relief, this also responds to the findings of the Tretton Review of Small Scale Hydro Plant and Machinery.

The expansion of the District Heating relief to provide 90% relief, until 31 March 2024, to new schemes introduced on or after 1 April 2021 that are powered by renewables, forms part of the Heat in Building Strategy.

Consultation

There is no statutory requirement to formally consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment has been carried out.

Financial Implications

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above.

Scottish Government
Local Government and Communities Directorate

February 2021

POLICY NOTE

THE NON-DOMESTIC RATES (LEVYING AND MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2021**SSI 2021/65**

The above instrument is made in exercise of the powers conferred by section 153 of the Local Government etc. (Scotland) Act 1994 and by all other enabling powers. The instrument is subject to the negative procedure and comes into force on 1 April 2021.

These Regulations provide for a number of non-domestic rates policies.

- The Levying Regulations make provision from 1 April 2021 for reductions in non-domestic rates as a result of the Small Business Bonus Scheme and provides for poundage supplements, the combined Basic Property Rates (i.e. poundage) and supplement being known as the Intermediate Property Rate and Higher Property Rate, on non-domestic properties with a rateable value in excess of £51,000 and £95,000 respectively.
- An amendment to The Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2016 to reflect mast location changes to the previously published grid references, and incorporate grid references of additional eligible new mast locations.
- Amendments to The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 reduce the amount payable as non-domestic rates for certain properties. This instrument adjusts provision for the relief in 2021-22 by adjusting it for inflation and adjusting calculations to take account of changes in the rates poundage and supplements that will operate in 2021-22.
- An amendment to The Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018 to continue Day Nursery relief until 30 June 2023.
- An amendment to the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018 to increase the upper threshold of the rateable value of lands and heritages for Fresh Start relief from £65,000 to £95,000.
An amendment to The Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2019 removing a restriction on the non-domestic rates relief provided by the Business Growth Accelerator relief, in cases which meet certain qualifying conditions, where there is also an increase in rateable value.

Policy Objective

Poundage Supplements (Property Rates)

This instrument provides for a poundage supplement of 1.3p in the pound for all non-domestic properties with a rateable value of £51,001 and not more than £95,000 (supplement + poundage = Intermediate Property Rate); and a poundage supplement of 2.6p in the pound for all non-domestic properties with a rateable value exceeding £95,000 (supplement + poundage = Higher Property Rate) on any day in the financial year 2021-22.

Small Business Bonus Scheme

The Small Business Bonus Scheme provides relief (bill discounts) to non-domestic properties in Scotland, the cumulative rateable value (i.e. the total number of premises held by the ratepayer) of which is £35,000 or less on any day in the financial year 2021-22. If this condition is met (payday lending is excluded), the Scheme offers 100% relief to individual properties with a cumulative rateable value of £15,000 or less; 25% relief to individual properties with a cumulative rateable value over £15,000 and no more than £18,000; and 25% relief to individual properties with an individual rateable value of £18,000 or less where the cumulative rateable value is over 18,000 and no more than £35,000.

The Scheme provides the following reliefs from 1 April 2021 for non-domestic properties:

Cumulated rateable value of all individual properties in Scotland 2020-21	Relief percentage under the Small Business Bonus Scheme
£15,000 or less	100%
£15,001 to £18,000	25%
£18,001 to £35,000	25% on each individual property with a rateable value of £18,000 or less

No relief is available for individual properties where the cumulative rateable value is over £35,000.

The rateable values of sites of Reverse Vending Machines will not be included in the cumulative rateable value assessment for the Small Business Bonus Scheme.

Properties which are receiving relief on account of not being in active use are ineligible for Small Business Bonus Scheme relief. In addition, payday lenders will continue to be unable to benefit from the Scheme.

Telecommunications relief

These regulations reflect mast location changes to the previously published grid references, and incorporate grid references of additional eligible new mast locations.

Relief for new mobile telecommunications masts in specified locations is aimed at incentivising mobile operators to build masts and/or improve the viability of mobile operators' business case to provide mobile services in those areas.

Achieving improved mobile coverage in Scotland is a key objective set out in the Scottish

Government's *Mobile connectivity: action plan* (2016).¹ It is referenced in the Scottish Government's

Digital Strategy refresh: '*Realising Scotland's full potential in a digital world: a digital strategy for*

Scotland' (2017)² and the Scottish Government's '*A nation with ambition: the Government's*

Programme for Scotland 2017-2018' (2017).³ The non-domestic rates relief is part of the Scottish Government's commitment to working in collaboration with the mobile industry to set the right conditions to incentivise infrastructure investment in non-commercial areas (so-called "notspots"). The Scottish Government's expectation is that new mobile masts built in the eligible areas will provide 4G mobile services to notspots in (and potentially around) the eligible areas.

Transitional Relief

Transitional relief was introduced at the last revaluation on 1 April 2017 for hospitality properties across Scotland and offices in Aberdeen and Aberdeenshire and is provided for in annual regulations amending the transitional cap and accounting for the annual poundage and supplements.

The non-domestic properties eligible for this relief are those which are wholly or mainly used for specified purposes, that were so used on 31st March 2017 (or, if unoccupied on that date, were so used when last occupied), and that meet certain other conditions.

The full list of qualifying properties is in the schedule of the principal Regulations.

Any increase in the annual 'gross bill'⁴ in 2021-22 is to be no more than 12.5 per cent (real terms) (the same in cash terms)⁵ of the annual gross bill for 2020-21, subject to adjustment in respect of any changes in rateable value taking effect after the date of revaluation, i.e. 1st April 2017.

The table below shows the annual and cumulative impact of Transitional Relief on annual gross bill increase limits for qualifying premises.

	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022
Real terms annual cap	12.50%	12.50%	12.50%	12.50%	12.50%

¹ <https://www.gov.scot/policies/digital/broadband-and-mobile/>

² <https://www.gov.scot/publications/realising-scotlands-full-potential-digital-world-digital-strategy-scotland/>

³ <https://www.gov.scot/publications/nation-ambition-governments-programme-scotland-2017-18/>

⁴ The gross bill for the purposes of this note is the rateable value on that day multiplied by the poundage factor; the poundage factor being the non-domestic poundage for that year plus, where applicable, the relevant Poundage Supplement for that year.

⁵ Inflation is set at 0%, which is the percentage increase in the non-domestic poundage from 2020-21 of 49p (factoring in the 1.6% universal relief to all non-domestic properties) to 2022-23 (49p).

Inflation measure	2.00%	3.00%	2.10%	1.70%	0%
Cash terms annual cap	14.75%	15.80%	14.80%	14.40%	12.50%
Cumulated cash terms increase in rates liability from 2016/2017	14.75%	32.90%	52.70%	74.70%	96.50%
Annual multiplier	1.1475	1.158	1.148	1.144	1.125
Cumulative multiplier	1.1475	1.329	1.527	1.747	1.965

Day Nursery

These regulations will continue provision of 100% non-domestic rates relief for properties wholly or mainly used as day nurseries (within the meaning of section 135 of the Education (Scotland) Act 1980) which also provide day care of children (as defined in paragraph 13 of schedule 12 of the Public Services Reform (Scotland) Act 2010) until 30 June 2023.

Day Nursery relief was introduced in 1 April 2018 following the Barclay Review's recommendation that the Scottish Government should introduce a new relief for day nurseries to ensure the workforce is supported by convenient, affordable and accessible childcare. The Scottish Government accepted this recommendation.

Fresh Start Relief

Fresh Start relief was introduced on 1 April 2016 and initially offered up to 12 months 50% relief to shops, offices, restaurants, pubs or hotels (or where there has not been previous use, the use had been as a shop, office, restaurant, pub or hotel) with a rateable value of up to £65,000; that had been empty for over 12 months and that then became occupied. This relief was expanded in 1 April 2018 as part of the Scottish Government's response to the Barclay Review through an increase in the level of relief from 50% to 100%. All property uses became eligible (except payday lending), and the minimum prior period of having received empty property relief was reduced from 12 to six months. The upper rateable value threshold remained at £65,000, and the maximum period of relief remained at 12 months.

The Scottish Government is committed to supporting the recovery of the Scottish economy in the post-COVID-19 period. Widening the eligibility criteria for Fresh Start relief will expand the existing incentive created by the relief to re-occupy long-term empty property.

This instrument expands Fresh Start relief for qualifying properties occupied from 1 April 2021 or thereafter, by widening the eligibility criteria. The upper rateable value threshold has been increased from £65,000 to £95,000. All property uses are eligible (except payday lending) if they have met the minimum 6 month prior period of having received empty property. The relief delivers 100% discount from non-domestic rates for 12 months.

Business Growth Accelerator (BGA) Relief

BGA relief was introduced in response to the Barclay Review which recommended that to boost business growth, a 12 month delay should be introduced before rates are increased when an existing property is expanded or improved and also before rates apply to a new build property. The Scottish Government went further, introduced on 1 April 2018:

- 100% relief on new properties for 12 months until after they are first occupied;
- 100% relief for 12 months on property improvements – except where there had been a concurrent change of use of the property

These regulations remove the restriction on the relief available for property improvements where there has also been a change of use.

Consultation

There is no statutory requirement to formally consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment has been carried out.

Financial Implications

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above.

This instrument will increase the cost of Fresh Start relief on the Scottish Government. This relief is not currently subject to a subsidy regime.

Scottish Government
Local Government and Communities Directorate

February 2021