

HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Housing (Scotland) Bill introduced in the Scottish Parliament on 26 March 2024.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 45–EN);
 - a Financial Memorandum (SP Bill 45–FM);
 - a Delegated Powers Memorandum (SP Bill 45–DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 45–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES

4. The Bill is ambitious in responding to the need to improve the housing outcomes in Scotland for people who live mainly in rented accommodation or face homelessness. At the same time, it continues to safeguard the proportionate use of a landlord's property for rental purposes, seeking to deliver a fair balance between protection for tenants and the rights of landlords.
5. The Bill contains a package of reforms which will help ensure people have a safe, secure, and affordable place to live. It also helps to deliver the Scottish Government's 'New Deal for Tenants'¹ and some aspects of 'Housing to 2040'², while contributing to the ambition to end homelessness in Scotland.
6. The Bill has 7 Parts which are summarised here and set out in more detail throughout the policy memorandum. Overall, the Bill's provisions relate to landlords, public bodies, local authorities, and tenancy deposit schemes. Some provisions apply to more than one category while others are specific to only one.

¹ <https://www.gov.scot/publications/new-deal-tenants-draft-strategy-consultation-paper/>

² [Housing to 2040 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/housing-to-2040/)

7. Part 1 makes provision about rent including the designation of rent control areas.
8. Part 2 makes provision about dealing with evictions, including duties to consider delaying evictions and the amount of damages for unlawful evictions.
9. Part 3 makes provision about residential tenants keeping pets and making changes to let property.
10. Part 4 makes provision about other matters relating to tenants including unclaimed tenancy deposits, registration of letting agents, ending joint tenancies, delivery of notices and converting assured tenancies into private residential tenancies supporting tenants affected by domestic abuse.
11. Part 5 makes provision about homelessness prevention including duties of relevant bodies, assessment of housing support services and tenants affected by domestic abuse.
12. Part 6 makes provision about other housing matters including mobile homes, fuel poverty and disclosure of information to the new homes ombudsman.
13. Part 7 makes provision about commencement and other ancillary matters.

CONSULTATION AND ENGAGEMENT

14. The Bill content has been informed by significant public and stakeholder engagement, including but not limited to engagement with tenants; private and social landlords; housing investors; third sector organisations; local authorities and public bodies. Proposals have also been informed by engagement with working groups listed below.
15. Three public consultations have been held on policies within the Bill, these are:
 - New Deal for Tenants – Draft Rented Sector Strategy consultation – Issued in December 2021 seeking views on a wide range of rented sector reform measures, including the introduction of a national system of rent controls for the private sector. The consultation closed in April 2022 with 8,434 responses available for analysis in total. Organisations accounted for 170 responses; individual members of the public accounted for 756 responses; and 7,508 respondents made a campaign-type submission. The consultation analysis was published August 2022³.
 - Prevention of homelessness duties consultation⁴ – Issued in December 2021 by the Scottish Government and the Convention of Scottish Local Authorities (COSLA) as a joint proposal on the new measures. The consultation closed in April 2022 with 113 responses received in total. Organisations accounted for 93 responses; and individual members of the public accounted for 20 responses. The consultation analysis was published in September 2022⁵.

³ <https://www.gov.scot/publications/new-deal-tenants-analysis-report-responses-consultation-exercise/>

⁴ <https://www.gov.scot/publications/prevention-homelessness-duties-joint-scottish-government-cosla-consultation/>

⁵ <https://www.gov.scot/publications/prevention-homelessness-duties-joint-scottish-government-cosla-consultation-analysis-consultation-responses-final-report/>

- Mobile Homes Act 1983 – Pitch Fee Uprating Consultation⁶ – Issued in January 2023 seeking views on changing the basis of pitch fee uprating from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI). The consultation closed in April 2023 with 171 responses available for analysis in total. Organisations accounted for 12 responses; and 159 from individuals, almost all of whom identified themselves as residents of mobile home sites. The consultation analysis was published in June 2023⁷.

16. The Scottish Government also issued the ‘Landlord and tenant engagement questionnaire on rented sector reform’ on 29 September 2023⁸. This set out some of the current proposals for rented sector reform and sought the views of tenants and landlords on certain aspects of those proposals. The questionnaire closed on 27 October 2023 with 6,645 responses received. Two discussion groups were also held on the questionnaire topics. The independent analysis of this is also published on the Scottish Government website⁹. Over the course of the consultation, 123 emails were also received from the public as well as stakeholder organisations related to the rented sector aspects of the Bill. An analysis of the email responses is also available¹⁰

17. Working groups that have helped shape the policies within the Bill include:

- Private Rented Sector stakeholder group;
- Local Authority working group on rent control;
- Homelessness and Rough Sleeping Action Group (HARSAG);
- Prevention Review Group (PRG);
- Homelessness Prevention Task and Finish Group;
- Letting Agent Stakeholder Group;
- Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse Working Group.

18. Further and more specific information on the results of the consultations and stakeholder engagement is provided throughout this document.

PART 1 – RENT

Overview

19. Part 1 of the Bill will create powers for the introduction of longer-term rent controls for the Private Rented Sector (“PRS”). The Scottish Government is committed to delivering tenure neutral outcomes. As part of achieving these aims, the improvements set out in this Bill will contribute to

⁶ [Mobile homes pitch fees - annual uprating index: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultation-report-mobile-homes-act-1983-consultation-proposal-change-basis-pitch-fee-uprating-scotland-analysis-responses-consultation/)

⁷ <https://www.gov.scot/publications/consultation-report-mobile-homes-act-1983-consultation-proposal-change-basis-pitch-fee-uprating-scotland-analysis-responses-consultation/>

⁸ <https://consult.gov.scot/better-homes-division/rented-sector-reform-landlord-and-tenant/>

⁹ [Rented sector reform: landlord and tenant engagement questionnaire - analysis report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultation-report-landlord-and-tenant-engagement-questionnaire-analysis-report/)

¹⁰ [Rented sector reform: landlord and tenant engagement questionnaire - analysis of email responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultation-report-landlord-and-tenant-engagement-questionnaire-analysis-of-email-responses/)

delivering fair, well-regulated rented sector, which balances the needs of tenants and responsible landlords.

20. The specific policies in this part of the Bill are:

- Chapter 1 – designation of rent control areas;
- Chapter 2 – rent control areas: changes to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”);
- Chapter 3 – other restrictions on rent increases.

21. Supporting a well-functioning rented sector is key to the Scottish Government’s aspirations for housing, as the sector is home to around 959,000 households, 618,000 of which live in the social rented sector and 341,000 in the private rented sector¹¹. These tenures provide vital homes needed in our communities.

22. The rented sector, like the whole of Scottish society, has been significantly impacted by the Coronavirus pandemic and Scottish Ministers took steps to introduce a number of emergency temporary measures to protect tenants in the Coronavirus (Scotland) Acts¹². In recognition of their importance, some of these emergency measures were placed on a permanent footing through the Coronavirus (Recovery and Reform) (Scotland) Act 2022¹³.

23. In March 2021, the Scottish Government published Housing to 2040¹⁴, the first national long-term strategy and route map, that set out the Scottish Government’s vision for housing to 2040. It included the ambition for everyone to have a safe, good quality, and affordable home that meets their needs in the place they want to be. This ambition can only be achieved with further improvements to the way the rented sector operates.

24. The Scottish Government’s commitment to improving the rented sector is underpinned by the Bute House Agreement and the Shared Policy Programme¹⁵ between the Scottish Government and Scottish Green Party Parliamentary Group. A key part of the Shared Policy Programme is the commitment to introduce a national system of long-term rent controls. In order to deliver on the agreement, the Scottish Government published ‘A New Deal for Tenants: Draft Rented Sector Strategy’ consultation in December 2021.

25. In October 2022, Scottish Ministers brought forward the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“2022 Act”)¹⁶. This emergency legislation introduced a temporary rent cap, backdated to 6 September 2022, that was initially set at zero with the potential for increases of up

¹¹ Scottish Government, [Housing statistics: Stock by tenure](#). Figures are estimated stock as at March 2022. In the Financial Memorandum, the number of private rented households is rounded to 340,000 when used in costings.

¹² [Coronavirus \(Scotland\) Act 2020 \(legislation.gov.uk\)](#) and [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(legislation.gov.uk\)](#)

¹³ [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](#)

¹⁴ [Housing to 2040 - gov.scot \(www.gov.scot\)](#)

¹⁵ [Scottish Government and Scottish Green Party - Shared Policy Programme - gov.scot \(www.gov.scot\)](#)

¹⁶ [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](#)

to 3% in specific circumstances to help stabilise housing costs for tenants. The Act also put in place a moratorium on the enforcement of evictions.

26. In February 2023, these measures were expired for the social rented sector, following a voluntary agreement with that sector. The rent cap in the private sector was raised to 3%, and increases up to 6% in specific circumstances were permitted for 2023-24. Part 1 of the 2022 Act remains in place until the end of 31 March 2024 when it will expire¹⁷. However, to support the transition away from the rent cap, the draft Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024¹⁸ were approved by the Scottish Parliament on 13 March 2024 to come into force on 1 April 2024. These regulations will temporarily amend the process of rent adjudication where most tenants can refer a proposed rent increase to a Rent Officer or the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for consideration. A tapering approach would be introduced which seeks to protect tenants from the sharp increases in rent that some could experience if rents moved back to market level in one step, whilst allowing rent increases that support landlords to continue to invest in the rental property.

27. The cost-of-living crisis and ongoing rental price increases have also emphasised the need to bring forward permanent measures to put in place an effective system of rent controls in the private rented sector, as soon as possible.

28. The 2023-24 Programme for Government¹⁹ set out the commitment to introduce a Housing Bill, which would include provisions that create powers for the introduction of long-term rent controls and new tenants’ rights.

29. This Bill will deliver a New Deal for Tenants by introducing new tenants’ rights and strengthening existing protections; and creating the legislative framework needed to introduce longer-term private sector rent controls.

30. A good quality, affordable, and well-regulated housing system generates benefits that can help tackle poverty (including for families with children), promote equality, and support wellbeing. The aim of these tenant protections is therefore to support the delivery of the shared vision for rented housing, balancing the rights of tenants and landlords as we improve the terms on which homes are rented.

CHAPTER 1 DESIGNATION OF RENT CONTROL AREAS ETC.; AND CHAPTER 2 RENT CONTROL AREAS: CHANGES TO THE 2016 ACT

Background

31. PRS landlords are able to set the level of rent increases within a tenancy in line with the market. Under the 2016 Act, a landlord can only increase rent for an existing tenant of the let property once in any 12 month period and they must give at least 3 months notice before any increase can be applied to the rent. Landlords can re-set between tenancies. Tenants have the right

¹⁷ [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Date\) Regulations 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹⁸ [The Rent Adjudication \(Temporary Modifications\) \(Scotland\) Regulations 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹⁹ [Programme for Government 2023 to 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

to refer any proposed rent increase to a Rent Officer for determination, with this determination being made taking account of open market rent for similar rented properties in the same area.

32. Currently under the 2016 Act, local authorities can choose to make an application to the Scottish Ministers requesting that all or part of the authority's area be designated as a rent pressure zone, where rent increases would be capped. Scottish Ministers can, where the evidence in the application demonstrates that the criteria laid out in the 2016 Act is met, designate all or part of a local authority area as a rent pressure zone, where rent increases will be limited in accordance with a specified formula. A request by a local authority for all or part of its area to be designated as a rent pressure zone is discretionary and to date no local authority has made an application. The Scottish Government is aware that there are concerns on the part of local authorities as to how the available data could meet the specific thresholds needed to support an application to designate a rent pressure zone. These concerns have been considered in developing the approach that has informed the measures proposed in the Bill. For example, by making local authority assessment of rent conditions mandatory and through giving local authorities the ability to request rental information from landlords to support them to meet their duty to assess rent conditions in their area.

33. As part of the Bute House Agreement between the Scottish Government and the Scottish Green Party, the Shared Policy Programme includes a commitment to implement an effective national system of rent controls, with an appropriate mechanism to allow local authorities to introduce local measures.

Policy objective

34. The Scottish Government wants to improve housing outcomes for those who rent their home and understands that rent levels, as set by the market in the private rented sector, can be unaffordable for some tenants in some areas, leading to people struggling to find suitable rented homes.

35. The measures in the Bill create the framework to deliver a nationally consistent approach to the consideration of the need for rent control, whilst maintaining the link to local circumstances. Local authorities will take the lead in carrying out mandatory assessments in their areas, ensuring that local circumstances are taken into account, to reflect the geographical variations that can exist in conditions relating to rents across Scotland. The assessments will be carried out on a cyclical basis, to ensure there is ongoing consideration of the need for rent control.

36. The outcome of these assessments will inform Scottish Ministers' decisions on whether it is justified and proportionate to designate rent control areas for the purpose of protecting the social and economic interests of tenants in those areas.

37. In any area designated for rent control, the restriction on the level of rent increases that are permitted will apply both within and between tenancies, to stabilise the level of rents within the area and avoid the potential for rents to continue to rise more steeply between tenancies.

38. It is essential that there is a balanced approach with safeguards for landlords, and the Bill creates a power that allows for Scottish Ministers to provide for circumstances where rent may

increase by more than the amount that is permitted. This will be subject to secondary legislation and, to ensure transparency, Scottish Ministers will consult on the circumstances in which such an increase will be permitted.

39. Rent control policies are aimed at making rents more affordable and ensuring tenants are less likely to be ‘priced out’ of housing due to rent increases. The introduction of a national system of rent controls in the private sector through the measures included in the Bill will contribute towards achieving the Scottish Government’s overarching objective of improved outcomes for tenants. Rent control is designed to help stabilise rents in areas where market rents have been increasing particularly steeply, whilst ensuring there can be a balanced approach that provides appropriate protection for the property rights of landlords.

Consultation

40. The Scottish Government consulted on the vision and principles of a national system of rent controls as part of the ‘New Deal for Tenants: Draft Rented Sector Strategy’ public consultation.

41. When considering the principles for a system of rent controls set out in the consultation paper, respondents expressed support for a localised approach to rent controls, based on evidence, which ensures openness and transparency.

42. Some respondents were opposed to any form of rent control, raising concerns around the potential for unintended consequences, for example reducing the supply of rented homes in the short term through making the PRS less attractive for landlords and investors. There was also a view that, while the proposals are welcome, rent controls cannot solve the issues around inadequate supply of affordable homes and that increasing the supply of social housing is the most important change needed to support the right to adequate housing. It was argued that the overall vision for the sector should be reflected in any future rent control system, including detail on how rent controls will balance protection for tenants with the risk of encouraging disinvestment by existing landlords. There was some concern that the vision and principles set out in the consultation did not consider the potential impact and risks associated with rent controls for the PRS and that there is a need to ensure that policy design anticipates potential adverse impacts, incorporates appropriate enforcement, and can respond to local variation in market pressures was highlighted.

43. A ‘Landlord and tenant engagement questionnaire on rented sector reform’ set out more detail on some of the emerging rent control proposals in September 2023, and sought the views of tenants and landlords on these.

44. The questionnaire responses indicated a range of views on whether rent control should be introduced on a local basis, where assessment shows that there is a need, or be applied across all tenancies. The majority of landlord respondents expressed support for rent control on a local basis. However, most tenant respondents felt it should be applied across all tenancies.

45. Just over half of respondents (58%) thought any restrictions on rent increases should apply to both sitting tenants and in between tenancies, while the remaining respondents thought the restrictions should apply to sitting tenants only. A majority of respondents (80%) agreed that, if

rent controls applied both within and between tenancies, the first rent increase in a tenancy should be possible at any point after the start of the tenancy, provided that at least 12 months has passed since the rent was last increased.

46. Respondents were evenly divided on whether there should be a mechanism to allow landlords to raise the rent above the rent cap in certain circumstances, such as where there have been improvements to the let property.

47. A majority of respondents thought that no categories of housing should be exempt from rent controls.

Specific provisions

48. The Bill creates a power for Scottish Ministers to introduce rent control areas.

49. The conditions in relation to rent can vary across Scotland and local circumstances should be taken into account in deciding where rent control should apply, with local authorities best placed to consider the circumstances in their area. Local authorities would be required to carry out an assessment of conditions in relation to rent in their area and make a recommendation about whether Scottish Ministers should impose rent controls in all or part of the area. There would be a mandatory requirement for local authorities to re-assess conditions in relation to rent on a cyclical basis.

50. The Scottish Ministers would review the outcome of the local authority's assessment and their recommendation and decide whether it is necessary and proportionate to restrict the level of rent increases in all or part of the local authority area, for the purpose of protecting the social and economic interests of tenants in that area. Where it is proposed that a rent control area is to be designated, the Scottish Ministers would consult with the local authority and representatives of landlords and tenants in the area affected.

51. Designation of a rent control area would be via secondary legislation approved by the Scottish Parliament.

52. Where a rent control area is introduced, there would be a restriction on the amount by which rents under private residential tenancies under the 2016 Act. can be increased in that area. This restriction would apply to increases in rent that take place both during a tenancy and at the start of any new tenancy of the same property. Landlords would be able to set the rent level for the first tenancy of a property at open market level where that property is considered as being 'new to market' (i.e. not having been previously let). Assured tenancies under the Housing (Scotland) Act 1988²⁰ ("the 1988 Act") would not be subject to rent control and the Bill contains a discretionary power to enable the Scottish Ministers, through Regulations, to set a date on which tenancies under the 1988 Act would convert to PRTs under the 2016 Act. Following any conversion to a PRT, the protections offered under the 2016 Act would extend to those converted tenancies.

²⁰ [Housing \(Scotland\) Act 1988 \(legislation.gov.uk\)](https://legislation.gov.uk)

53. Where a rent control area is in place, rent increases would be limited to one increase per property in any 12 month period, even if the tenant changes within that time.

54. If a rented property falls within a rent control area there would be a restriction on the amount by which the rent can be increased in respect of that property. The Bill creates a power for Scottish Ministers to set out circumstances where a rent increase above the rent cap could be allowed. Both the circumstances and the process that landlords would require to follow to implement such an increase would be set out in secondary legislation.

55. To ensure rent control can function effectively and tenants can exercise their rights, there is a need for them to have information. The Bill sets out information that landlords must provide to tenants and options for tenants who think their landlord may be proposing a rent increase which is above the rent cap or that the requirements in relation to setting the rent at the start of a new tenancy have not been met.

56. The Bill also creates a power for the Scottish Ministers to specify types of property or other circumstances relating to the tenant or landlord where the restrictions on rent increases would not apply.

57. Any rent control area would be in place for a fixed time period, to ensure there is transparency for both landlords and tenants. Re-designation beyond this period will be based on further assessment, consultation and would be delivered through secondary legislation. Scottish Ministers will also be under a duty to keep the operation of rent control areas and the level of the rent cap under review to ensure that they remain justified and proportionate. This is to ensure that rent control remains in place only where it has been demonstrated to be necessary in connection with the purpose of protecting the social and economic interests of tenants in those areas.

Alternative options

Option 1 – Do nothing

58. Current legislation would remain the same with local authorities able to make an application to Scottish Ministers to create a rent pressure zone on a voluntary basis under the current rent pressure zone provisions in the 2016 Act.

59. Scottish Ministers consider there is a need for a system of rent control that will ensure an ongoing, nationally consistent approach to considering conditions in relation to private sector rents across Scotland, as an alternative to the current voluntary approach. This is required to support the introduction of rent control on a local basis where evidence supports this action.

Option 2 – Non-regulatory action

60. Consideration has been given to the potential to optimise the operation of the existing requirements under the 2016 Act that allows for the designation of rent pressure zones. As these existing requirements are not mandatory, non-regulatory action is considered to have limited potential to deliver the nationally consistent approach to considering conditions in relation to private sector rent across Scotland that Scottish Ministers view as essential.

Option 3 – Legislate

61. This option will deliver the framework required to support an ongoing, nationally consistent approach to considering conditions in relation to private sector rent across Scotland. This assessment will support the introduction of rent control on a local basis in order to protect the social and economic interests of tenants in those areas. Consideration was given to amending some aspects of the 2016 Act in relation to the existing Rent Pressure Zone (RPZ) provisions, by mandating that every local authority must carry out an assessment of rent conditions. However, within RPZs rent control would only apply to rent increases during the term of an existing tenancy and, to ensure that the overarching purpose of protecting the social and economic interests of tenants, it is considered necessary to also apply restrictions on rent increases at the start of a new tenancy of a previously let property.

62. Consideration was also given to a form of rent control that would apply a blanket restriction on rent increases across the whole country. That approach was considered to be disproportionate as it would not enable the different rental conditions that apply in different parts of the country to be taken into account. A further approach that was considered was to set out the detail of the rent cap that would apply in rent control areas on the face of the Bill. That approach was however considered to be too rigid and would not enable the different issues with rent conditions that may apply, from time to time, in different local authority areas to be taken into account.

CHAPTER 3 OTHER RESTRICTIONS ON RENT INCREASES

Private residential tenancies: frequency of rent increase

Background

63. Section 19 of the 2016 Act currently provides that the rent payable under a private residential tenancy may not be increased more than once in a 12-month period. However, there is currently no express restriction on when a landlord can increase the rent following the beginning of a private residential tenancy, meaning that a landlord could serve a rent increase notice giving their tenant 3 months' notice of a rent increase immediately after the start of a lease.

64. Whilst this approach does not appear to be widespread in practice, the Scottish Government is proposing to modify the requirements to provide that the rent payable may not be increased during the first 12 months of the tenancy, in order to provide tenants with the security of knowing that the rent they have agreed to at the start of the tenancy will not increase during the first 12 months.

65. The proposed measures include a regulation-making power which could be used by the Scottish Ministers to disapply this requirement in some circumstances, which will allow for flexibility in cases where this may be appropriate.

Policy objective

66. The measures in the Bill are intended to build on the existing requirements in the 2016 Act on the frequency at which rents can be increased, making clear that rent increases cannot take place during the first 12 months of a tenancy. This is aligned with the existing requirements in relation

to rent increases – whereby rent can only be increased once in any 12 month period – and would provide clarity and certainty for both landlords and tenants on the rent that will apply for the first 12 months of any tenancy.

Consultation outcome

67. The Scottish Government’s ‘Landlord and tenant engagement questionnaire on rented sector reform’ set out the proposal that in most cases, a landlord would not be able to increase their tenant’s rent until at least 12 months after the tenancy started. Respondents were not asked directly about this proposal, although they were asked whether it should be disapplied in rent control areas if rent controls were applied between tenancies, and the majority agreed with this approach (as set out in paragraph 45 above).

68. It is intended that further engagement and consultation will be carried out in relation to the measures before implementation. The further consultation will allow for detailed feedback on issues such as circumstances where it may be proportionate for Scottish Ministers to disapply the requirement.

Specific provisions

69. Provisions include an amendment to the 2016 Act, such that rent cannot be increased in the first 12 months of a tenancy in non-rent control areas.

Alternative options

Option 1 – Do nothing

70. In this option, the current position would be maintained and rents could be increased in the first 12 month period of a tenancy.

71. Scottish Ministers do not think this is an appropriate option. Doing nothing would not align requirements in relation to rent increases or provide clarity and certainty for both landlords and tenants on the rent that will apply for the first year of any tenancy.

Option 2 – Non-regulatory action

72. The Scottish Ministers do not consider that non-regulatory action could align requirements in relation to rent increases or provide clarity and certainty for both landlords and tenants on the rent that will apply for the first 12 months of any tenancy.

Option 3 – Regulatory action

73. There are no alternative legislative options which would provide a similar protection for tenants from rent increases in the first 12 months of their tenancy. The option being progressed in the Bill would mean that rents could not be increased by the landlord in the first 12 months of a tenancy. This is the only option that would provide the clarity that Scottish Ministers consider is required to provide tenants and landlords with certainty on this issue.

Private residential tenancies: capping of rent increases

Background

74. The 2016 Act introduced a range of measures to tackle high rents and to provide private tenants with greater protection against excessive rent increases. This included the ability for a tenant with a Private Residential Tenancy (“PRT”) to challenge a proposed rent increase to protect tenants against the possibility of landlords using large and unjustified rent increases to force tenants from their homes where they are otherwise complying with their tenancy agreement.

75. Section 24 of the 2016 Act provides for tenants to make a referral to a Rent Officer (Rent Service Scotland). Where an application for a rent adjudication is received by Rent Service Scotland, the Rent Officer will base the determination of the open market rent on the rent being paid for similar rented properties in the same area. This may have the effect of agreeing the proposed increase, decreasing the proposed increase, or increasing the rent above the increase requested by the landlord (for example, to bring it in line with the open market rent if the increase proposed by the landlord was below this).

76. To date, usage of rent adjudication under the private residential tenancy has been limited despite efforts to raise awareness of the right for tenants to make a referral for rent adjudication. Only 181 applications were made to Rent Service Scotland between 2018 and 2022, when the measures were temporarily suspended by the 2022 Act. The concern is that the current process may act as a disincentive to tenants seeking to challenge a rent increase due to the risk of the rent being set above that requested by the landlord.

77. Similar rights to seek a determination of rent directly through the Tribunal exist for private tenants with Assured Tenancies under the 1988 Act. While no new Assured Tenancies can be created, a small number of applications continue to be made to the Tribunal in connection with existing tenancies.

78. The Bill will amend the rent adjudication processes in the 1988 and 2016 Acts to ensure that the rent set by the Rent Officer on referral or by the Tribunal on appeal cannot be higher than the rent proposed by the landlord in the rent increase notice.

Policy objective

79. The measures in the Bill to cap rent increases on referral or appeal to the Rent Officer or the Tribunal aim to remove the risk that, when a tenant with a PRT or an Assured Tenancy refers a rent increase, the rent could be set higher than the rent increase proposed by the landlord. This measure will address concerns that the current process may act as a disincentive to tenants from making use of their right to refer a rent increase for independent adjudication.

Consultation outcome

80. Many respondents to A New Deal for Tenants - Draft Rented Sector Strategy: consultation supported proposals to change the rent adjudication process to remove the ability for a Rent Officer to increase the rent above that requested by the landlord in relation to PRTs. There was agreement

that the risk of the rent being raised higher than the rent requested by the landlord has limited the effectiveness of adjudication. Those in favour saw rent adjudication provisions as the only safeguard for tenants against unaffordable rent increases and there were calls for more action to ensure all private tenants are aware of the adjudication option.

81. Those who disagreed argued that the proposed changes would result in adjudication being unfairly balanced in terms of the impact on landlords, and that current rules should remain unchanged to ensure fairness to landlords and to prevent ‘speculative’ rent appeals. Those who supported the proposals suggested that changes were unlikely to result in unreasonable adjudication requests, given the under-use of the facility to date, and that a more effective and better used rent adjudication process may act as a deterrent to landlords considering unfair or unaffordable rent increases.

82. No specific consultation has taken place in relation to taking forward amendments that would extend these changes to Assured Tenancies under the 1988 Act. However, the intention is to provide parity of approach where feasible for tenants seeking a rent adjudication.

Specific provisions

83. Provisions include:

- an amendment to the 2016 Act so that the rent determined by the Rent Officer is the lower of either the open market rent or the rent proposed by the landlord in the rent increase notice;
- an amendment to the 2016 Act so the rent determined by the Tribunal is the lower of either the open market rent or the rent proposed by the landlord in the rent increase notice; and
- an amendment to the 1988 Act so the rent determined by the Tribunal is the lower of either the open market rent or the rent proposed by the landlord in the rent increase notice.

Alternative options

Option 1 – Do nothing

84. In this option, current legislation would remain the same. In determining a rent adjudication application from a tenant, the Rent Officer and Tribunal would continue to have discretion to determine a rent above that requested by the landlord.

85. Scottish Ministers do not think this is an appropriate option. Doing nothing would not address the concerns raised in relation to the risk to private tenants that applying to the Rent Officer or the Tribunal for a rent adjudication for a PRT or an assured tenancy could result in a rent higher than that requested by the landlord. It would also not deliver on the commitments made in a New Deal for Tenants Draft Rented Sector Strategy to take legislative action to ensure that a Rent Officer or Tribunal will only be able to agree the proposed rent increase, or lower the rent increase, as part of the existing Rent Adjudication process.

Option 2 – Non-regulatory action

86. The Scottish Government has considered further non-regulatory action to raise awareness of tenants' rights to seek a rent adjudication.

87. The Scottish Government has already taken non-regulatory action to raise awareness of private tenants' rights to rent adjudication through a number of national tenants' rights awareness raising campaigns. Despite this, usage of the rent adjudication process remains low.

88. Non-regulatory action would not address the concerns raised in relation to the risk to private tenants that applying to the Rent Officer or the Tribunal for a rent adjudication for a PRT or an Assured Tenancy could result in a rent higher than that requested by the landlord or deliver the commitment to legislate as part of the New Deal for Tenants.

Option 3 – Legislate

89. There are no alternative legislative options which would provide a similar protection for tenants from rent increases above the level requested by the landlord when the tenant raises a rent adjudication. The option being progressed in the Bill would amend the rent adjudication framework under the 2016 Act and the Assured Tenancy framework under the 1988 Act. This would remove the ability of the Rent Officer or the Tribunal to determine a rent above that requested by the landlord.

90. This is the only option that would remove the disincentive to private tenants to seek a determination on a proposed rent increase on the basis that a referral may result in a higher rent than that originally proposed by the landlord.

PART 2 – DEALING WITH EVICTIONS

EVICTIONS: DUTIES TO CONSIDER DELAY

Background

91. Eviction can happen for a number of reasons, for example a change in use of the property, change in status of the landlord or tenant, or poor conduct by tenants.

92. There are strict legal processes that a landlord must follow to lawfully end a tenancy, and these will depend on the rules in place at the time. For example, in the private rented sector, when a landlord issues a notice to terminate a tenancy and a tenant does not leave at the end of the relevant notice period, the landlord must apply to the Tribunal in order to evict the tenant. In the social rented sector, if a landlord wants to seek repossession of a property on breach of tenancy or management grounds, a tenant is served with a notice of proceedings to make them aware of the landlord's intentions. If the landlord decides to proceed with action to repossess the tenancy, they must seek a decree for eviction from the Sheriff Court.

93. The exact process landlords need to follow will depend on the relevant rules in place which are different based on whether it is a social sector or private sector tenancy.

94. The Bute House Agreement made a commitment to “enhance tenants’ rights, including through greater restrictions on evictions over winter”.

Policy objective

95. The Scottish Government recognises there may be certain circumstances and times of year where being evicted can be particularly problematic and that it may be reasonable for there to be a delay in the enforcement of the eviction order or decree. For example, due to seasonal pressures, periods of religious significance, exam periods or where more time is required to access suitable alternative accommodation.

96. Measures in the Bill are designed to provide greater protection for tenants during the eviction process, except in limited circumstances, by introducing a requirement on the Tribunal and the Sheriff Court to consider whether a delay to the enforcement of an individual eviction should occur based on the circumstances of the case. This would:

- where appropriate, allow for consideration to be given to any seasonal pressures or individual circumstances where it would be reasonable to give those being evicted additional time before the eviction could be carried out to allow time to find alternative accommodation or access necessary support;
- reduce, as far as possible, the negative impact of eviction at a time of greater stress resulting from additional pressures or individual circumstances; and
- ensure that all the circumstances of a case are considered and that the rights of tenants are appropriately balanced against the rights of landlords to recover the let property.

97. There are certain types of eviction where the Scottish Government considers a delay to enforcement would rarely be reasonable. Measures in the Bill therefore exempt certain repossession grounds from the new requirement including antisocial conduct, criminal convictions, and vacant/abandoned properties.

Consultation outcome

98. The Scottish Government consulted as part of the New Deal for Tenants: Draft Rented Sector Strategy on introducing a specific requirement on the Tribunal and the Sheriff Court to consider delaying the enforcement of eviction orders and decrees based on the circumstances of the case during the winter period. A substantial majority thought that a specific requirement for the Tribunal and Sheriff Court to consider delaying the enforcement of eviction orders and decrees during the winter period should be introduced. However, of the non-campaign respondents (those whose response was not an endorsement of a wider organisational campaign) only 14% agreed with this proposal, on the basis that additional protections were not required.

99. The most frequent point made by those who disagreed was that, in relation to the private rented sector, a specific requirement is not necessary as the Tribunal already can and does delay evictions taking place when they consider it necessary in a particular case. Other comments included: any flexibility should only cover the Christmas and New Year period; should not be available when criminal or anti-social behaviour is involved; or that landlords should receive financial compensation to cover any delays.

100. Further views in response to the consultation and from engagement with stakeholders were that the time of year is not, and should not, be relevant, because the Scottish climate can be challenging at any time of year.

101. There may be other times of the calendar year which present major financial and emotional/wellbeing pressures for people, e.g. periods of religious significance, and school exam periods for households with school aged children. There may be a desire to be equally sensitive to this. As well as times where there is additional pressure on housing stock levels, for example University term times.

102. Reflecting on the range of views, the Scottish Government are now proposing measures to make it a requirement on the Tribunal and Sheriff Court to consider, in light of the individual circumstances of a case, delaying the enforcement of an eviction regardless of the time of year.

103. Further engagement on the detail of policy proposals was carried out through focussed stakeholder engagement and the landlord and tenant engagement questionnaire and accompanying policy paper²¹.

104. Questionnaire responses indicated a majority strongly agreed or agreed that the Tribunal (for the private sector) or Court (for the social rented sector) should be required to consider whether it is reasonable to delay the enforcement of an eviction at any time of the year, as indicated by 59% and 69% of all respondents to those questions. Broken down by respondent type, this rose to 98% of private tenants (for private sector evictions) and 100% of social tenants (for social sector evictions). However, 67% of PRS landlords either strongly disagreed or disagreed with this proposal for the private sector and a small majority of social landlords (54%) either strongly disagreed or disagreed with this proposal for the social sector.

Specific provisions

105. Provisions include:

- Amending the 2016 Act, the 1988 Act and the Rent (Scotland) Act 1984 to place a duty on the Tribunal to consider a delay to the enforcement of an eviction under a Private Residential Tenancy, Assured or a Short-Assured Tenancy, and protected and statutory tenancies except in limited circumstances, and to set out factors that may be considered in determining whether a delay is reasonable; and
- Amending the Housing (Scotland) Act 2001²² to place a duty on the Sheriff Court to consider a delay to the enforcement of an eviction under a Scottish Secure Tenancy or a Short Scottish Secure Tenancy, except in limited circumstances, and set out factors that may be considered in determining whether a delay is reasonable.

²¹ [New deal for tenants - rented sector reform proposals: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/new-deal-for-tenants-rented-sector-reform-proposals-consultation)

²² [Housing \(Scotland\) Act 2001 \(legislation.gov.uk\)](https://legislation.gov.uk)

Alternative options

Option 1 – Do nothing

106. In this option, current legislation would remain the same.

107. Scottish Ministers do not think this is an appropriate option. Doing nothing would not ensure that, where an eviction order/ decree is granted, the impact of the timing of that enforcement based on the individual circumstances of the case and the impact on the tenant and landlord is always considered.

Option 2 – Non-regulatory action

108. Scottish Ministers do not consider that non-regulatory action could deliver the consideration of timing of enforcement based on the individual circumstances that is sought.

Option 3 – Legislate

109. The Scottish Government consulted on a number of options for providing greater protection for tenants in relation to eviction. This included extended notice periods during the winter period, delay to the service of the prescribed notice to leave or notice of proceedings during the winter period. However, these alternative approaches would introduce a blanket approach regardless of the circumstances of the tenant or landlord and were not assessed as appropriate. Measures in the Bill therefore include a requirement for the Tribunal and the Sheriff Court to consider whether a delay to the enforcement of an individual eviction should occur based on the circumstances of the case except in limited circumstances. This is not limited to the winter period because it could be reasonable to delay an eviction during another season. This is the only option that can deliver the changes outlined while balancing the rights of both tenants and landlords.

DAMAGES FOR UNLAWFUL EVICTION

Background

110. In Scotland, tenants can only be legally evicted from their homes by order of the Sheriff Court or the Tribunal. Evicting someone without obtaining such an order is a criminal offence. In addition to a criminal prosecution, an unlawful eviction also leaves the landlord liable to pay civil damages to the former occupier of the property under section 36 of the 1988 Act.

111. Currently, section 37 of the 1988 Act sets out the mechanism for the valuation of damages where an unlawful eviction has occurred. This calculation requires a professional surveyor valuation of the difference between the landlord's interest in the property with and without a sitting tenant. This is not only an expensive process but feedback from stakeholders indicates it can also lead to a nil valuation. A briefing²³ into unlawful evictions and available information from the First-tier Tribunal for Scotland indicated that only a small number of cases have ever been taken and the current process is not considered to provide enough protection for tenants.

²³ [Unlawful-evictions-damages-law-reform-briefing-11-August-2020.pdf \(lsa.org.uk\)](https://www.lsa.org.uk/publications/briefings/unlawful-evictions-damages-law-reform-briefing-11-august-2020.pdf)

Policy objective

112. Measures in the Bill aim to make it easier and more meaningful for tenants to challenge an unlawful eviction and receive appropriate damages where an unlawful eviction is found to have occurred.

113. The change to the civil process for seeking unlawful eviction damages under the 1988 Act would remove the requirement for a professional valuation and replace it with a calculation based on the monthly rent. This change would make permanent a version of the temporary changes introduced under the 2022 Act.

114. This will also make it more difficult, more expensive, and higher risk for a landlord to pursue an unlawful eviction rather than going through the lawful routes.

Consultation outcome

115. The Scottish Government consulted as part of the ‘A New Deal for Tenants: Draft Rented Sector Strategy’ on simplifying the process for a tenant to challenge an unlawful eviction. This would in turn deter landlords from carrying out an illegal eviction as the risk of challenge and penalty will be higher.

116. The Scottish Government sought views on the current calculation for unlawful eviction and whether it should be reformed and simplified. Analysis of responses found that a substantial majority, 94% of those answering the question, agreed with the proposal. However, this level dropped to only 31% of non-campaign responses. Among organisations, a large proportion of those who disagreed were ‘Private landlord, letting agent or their representative bodies’ respondents.

117. In response to the consultation on the minimum and maximum multiplication of damages that could be awarded, there were a range of views. Some respondents were supportive of the approach proposed, seeing the minimum of 3 months and maximum level of 36 months as reasonable with at least one suggesting the maximum should be higher. Others saw the maximum level of 36 months as excessive and not justifiable; other suggestions included a lower level of multiplication, or fixed amounts would be more appropriate. It was also suggested by some that no minimum should be set, instead relying on the discretion of the Tribunal to set an amount relative to the individual circumstances of the case.

118. Also raised by respondents was the importance of working with stakeholders, including Police Scotland on ensuring enforcement. Awareness raising and supporting the enforcement of the legislation was seen as important to addressing illegal evictions.

119. Measures to temporarily introduce changes to the way unlawful eviction damages are calculated were made by the 2022 Act. Further engagement on proposals to make the temporary measures permanent was carried out through focussed stakeholder engagement. Stakeholders did not identify major changes to the proposed policy approach during this engagement.

Specific provisions

120. The provisions amend the 1988 Act to:

- replace the basis for the assessment of damages for unlawful eviction with a calculation based on a multiplication of the monthly rent;
- set minimum and maximum levels of damages that the Tribunal (and Sheriff Court in social housing cases) can award at 3 times and 36 times the monthly rent respectively;
- enable the Tribunal or Sheriff Court to set damages at a level lower than the minimum threshold where the circumstances of the case merit a lower award;
- place additional requirements on the Tribunal to inform the relevant local authority and police of any order it makes awarding damages, where a private landlord has been found to have unlawfully evicted a tenant; and
- place an additional requirement on the Court to inform the police and Scottish Housing Regulator of any order it makes awarding damages, where a social landlord is found to have unlawfully evicted a tenant. These duties to inform would allow relevant authorities to consider whether any further action should be taken in relation to the unlawful eviction.

Alternative options

Option 1 – Do nothing

121. In this option, current legislation would remain the same and unlawful damages would continue to require a costly professional survey valuation to determine the level of damages to be awarded where an unlawful eviction is found to have occurred.

122. Scottish Ministers do not think this is an appropriate option. Doing nothing would not address the concerns raised about the current process being a barrier to tenants seeking unlawful eviction damages and the limitations of the current approach as a disincentive to landlords in terms of engaging in behaviour which would result in an unlawful eviction.

Option 2 – Non-regulatory action

123. This option would see the current legislative process for awarding civil damages for an unlawful eviction remaining the same. Instead, action could be taken to raise awareness of illegal eviction and work with key stakeholders to support the enforcement of existing legislation.

124. Scottish Ministers do not think this is an appropriate option as it would not remove the requirement for a costly professional valuation, which is considered a barrier to many tenants exercising their existing rights.

Option 3 – Legislate

125. This option would see a permanent change to the basis for the calculation of damages for an unlawful eviction, with damages based on a multiple of monthly rent between 3 and 36 times the monthly rent.

126. This would address the concerns raised about the current process being a barrier to tenants seeking unlawful eviction damages. The change would simplify the current process, making it easier for tenants to challenge and seek appropriate compensation where an unlawful eviction occurs. Alternatively, the Scottish Government could have legislated for different numbers for the upper and lower limits or different ways of calculating damages (economic loss suffered by the tenant etc.). Whilst this was considered, it was not the option adopted because anything that would require a subjective analysis by the Tribunal or Court would arguably slow the process and give tenants the task of demonstrating/evidencing their loss which is not wanted.

PART 3 – KEEPING PETS AND MAKING CHANGES TO LET PROPERTY

Overview

127. The Scottish Government recognises that people who live in rented accommodation should be able to have a home that meets their needs. These measures are part of a package of reforms within the legislative framework needed to deliver these strengthened rights for tenants.

KEEPING PETS

Background

128. Currently under the 2016 Act pets are allowed only by explicit written agreement. It is up to the landlord whether they agree to a tenant having a pet. The current position on keeping pets in the social rented sector under the 2001 Act is different to that in the private rented sector. General practice within the social sector is to give permission for pets, with landlords acknowledging that pets are beneficial to a tenant and their family's health and wellbeing.

129. Where a landlord agrees for their tenant to have a pet the Model Private Residential Tenancy Agreement²⁴, which anecdotal evidence suggest most landlords use, outlines the expectations that pet owners must meet. The 'Respect for Others' clause sets out that tenants should control their pets properly and should not allow them to foul or cause damage to other people's property.

130. The 'Pets' clause sets out that the tenant must not keep any animals or pets in the let property without the prior written consent of the landlord. It also requires the tenant to keep any pet under supervision and control to ensure that it does not cause deterioration in the condition of the let property or common areas, nuisance either to neighbours or in the locality of the let property.

131. The Easy Read Notes that must accompany every PRT make clear that if the tenancy agreement bans pets, a tenant can ask the landlord to change it, for example, to allow an assistance dog if the tenant needs one. This is known as making a 'reasonable adjustment'. The Notes also make clear that if the landlord refuses to make a reasonable adjustment, it may be discrimination on the grounds of a protected characteristic (as prescribed by the Equality Act 2010) and could be acting illegally.

²⁴ <https://www.gov.scot/publications/scottish-government-model-private-residential-tenancy-agreement/>

132. In the social rented sector, the Model Scottish Secure²⁵ and Short Scottish Secure Tenancy²⁶ agreements are published by the Scottish Government to assist social landlords to develop their own tenancy agreements setting out the rights and responsibilities of both tenants and landlords. These Model Tenancy Agreements include both mandatory clauses set out in statute and common law and discretionary clauses. “Keeping of Pets” is already a discretionary clause within these Model Tenancy Agreements.

133. In the social rented sector, each landlord sets its own criteria for any restrictions on the number and type of pets allowed within an individual tenancy, whether permission in advance needs to be obtained from the landlord, and any criteria applied. Given that this is a discretionary clause it is possible that not all landlords use it.

134. As part of the Bute House Agreement between the Scottish Government and the Scottish Green Party, the Shared Policy Programme contains a commitment to introduce new rights for tenants, including greater flexibility to have pets.

Policy objective

135. The overarching policy objective is to give private and social housing tenants greater flexibility to have a pet by introducing a right to request to keep a pet, and for tenants’ requests not to be unreasonably refused.

136. For a PRT under the 2016 Act (those whose tenancy began on or after 1 December 2017); and for social rented sector tenants with a Scottish Secure Tenancy or a Short Scottish Secure Tenancy under the 2001 Act, this will:

- seek to improve the renting experience for private and social housing tenants by giving them more control over having a pet, supporting their mental health and wellbeing;
- more closely align the rights of private and social housing tenants creating greater equality of outcome between tenures; and
- seek to appropriately balance the strengthened rights for tenants with sufficient protections for landlords.

Consultation outcome

137. Scottish Ministers consulted as part of the ‘New Deal for Tenants: Draft Rented Sector Strategy’ consultation on how a right to keep pets could be most effectively introduced for the private sector – for example by the introduction of a statutory right or by amendment to the Model Tenancy Agreement – and whether or not to allow exceptions. It also consulted on whether or not the right to keep pets should also be introduced as a right in the social sector.

138. Around 750 non-campaign respondents made a comment regarding a right to keep a pet in the private sector. A substantial majority – 94% of those answering the question - thought that the

²⁵ <https://www.gov.scot/publications/model-scottish-secure-tenancy-agreement-2019/>

²⁶ <https://www.gov.scot/publications/model-short-scottish-secure-tenancy-agreement-antisocial-behaviour-related-grounds-2019/>

right to keep pets should also be introduced as a right in the social sector. The most frequently made point was that the approach should be tenure neutral. Comments often focused on the importance of pets to people's emotional life as well as mental health.

139. Private landlords and letting agents raised significant concerns about any right to keep a pet being introduced. Respondents also reflected that keeping pets was already common practice in the social sector.

140. A frequently expressed view was that, rather than a general right, each situation must be assessed on its merits. More generally, feedback suggested that tenants should be required to request permission in advance, which should not be unreasonably withheld.

141. Further engagement on the detail of policy proposals was carried out through focussed stakeholder engagement and the landlord and tenant engagement questionnaire and accompanying policy paper.

142. Findings from the questionnaire responses indicated that the majority of respondents (63%) agreed that private tenants should have a right to request to keep a pet and that request should not be unreasonably refused. The remaining 37% disagreed.

143. Broadly, a substantial majority of tenant responses supported the introduction of the right to request and not be unreasonably refused. A majority of PRS and SRS tenant organisations also agreed with the proposal. However, a majority of PRS landlords, and landlord organisations and SRS landlords disagreed.

144. A majority of respondents thought private landlords should have 20 working days to respond to a request to keep a pet, with the remaining respondents favouring a longer period. The majority of respondents from PRS landlords and PRS landlord organisation respondent groups expressed preference for a period of 30 working days at 47% and 51% respectively.

145. Policy measures have taken account of responses, and the Bill creates the enabling framework for a right for tenants to request and not be unreasonably refused permission to keep a pet and for landlords to set reasonable conditions for approval.

Specific provisions

146. The provisions included here seek to:

- amend the 2016 Act to insert the right to request to keep a pet and for this not to be unreasonably refused. This could then be prescribed as a statutory tenancy term via regulations under section 7 of the Act;
- amend the 2001 Act to include a new statutory right to allow social housing tenants the right to make a request to keep a pet, and for this not to be unreasonably refused;
- provide the Scottish Ministers with powers to prescribe reasonable reasons for refusal and reasonable conditions for approval in relation to the private rented sector;

- require the Scottish Minister to consult private tenants, landlords and other relevant stakeholders as part of developing the secondary legislation on reasonable reasons for refusal and reasonable conditions for approval in relation to the private rented sector;
- create powers for the Scottish Ministers to set out the procedure and information required for a written request to keep a pet in the private sector;
- provide tenants under a private residential tenancy with a route of redress to the First-tier Tribunal for Scotland in relation to any unreasonable refusal to allow the keeping of a pet or unreasonable conditions for the keeping of a pet.

Alternative options

Option 1 – Do nothing

147. In this option, current regulation would remain the same and keeping pets would remain largely at the discretion of the landlord.

148. The Scottish Ministers do not think this is an appropriate option. Doing nothing would not provide private or social sector tenants with greater rights to keep a pet.

Option 2 – Non-regulatory action

149. The Scottish Ministers have considered pursuing non-regulatory action by amending the Scottish Government’s model PRT agreement to include additional terms to keep a pet. For the social sector, amending the model tenancy agreements to make keeping of pets a mandatory clause can only be achieved by primary legislation.

150. Amending the Scottish Ministers’ model tenancy agreement would not deliver the additional rights to keep a pet being sought for all private tenants. There is no requirement for a private landlord to make use of the Scottish Ministers’ model tenancy agreement, so not all tenants with a PRT would be afforded the new rights. In addition, should landlords stop using the model tenancy agreement, landlords would no longer be required to provide tenants with the accompanying Easy Read notes which provide tenants with vital detailed information on their tenancy rights and would instead only receive information on the statutory terms.

Option 3 – Legislate

151. This option would bring forward legislative changes that would amend the existing tenancy framework under the 2016 Act and the 2001 Act to introduce a new statutory term to the private residential tenancy and the Scottish Secure and short Scottish Secure tenancies, so that all tenants with a PRT and a Scottish Secure Tenancy have the right to request to have a pet that could not be unreasonably refused. This option would ensure that all private and social housing tenants are afforded additional rights to have a pet. Alternatively, the Scottish Ministers could have legislated for an express right to keep pets in every case regardless of circumstances, but this was considered to be a disproportionate interference with a landlord’s property rights.

MAKING CHANGES TO LET PROPERTY

Background

152. Under current legislative requirements, private landlords are usually responsible for the decoration of a let property and properties can be let furnished or unfurnished.

153. The exact terms on which a property is let will depend on the tenancy agreement in place. Private tenancies that began on or after 1 December 2017, except in a limited number of circumstances, will be a PRT and subject to the requirements of the 2016 Act.

154. The 2016 Act is silent regarding the decoration and personalisation of a property and landlords and tenants are free to negotiate and agree their own terms. In practice, some landlords will agree specific terms that allow tenants to make certain changes to the let property or stipulate certain specific restrictions, for example tenants may be restricted from putting up pictures that will damage the walls.

155. As part of the Bute House Agreement between the Scottish Government and the Scottish Green Party, the Shared Policy Programme includes a commitment to introduce greater flexibility for tenants to decorate their home as part of a New Deal for Tenants.

Policy objective

156. Measures in the Bill aim to give all private tenants with a PRT (tenancies that began on or after 1 December 2017) greater discretion to personalise their home. Changes would allow tenants to be able to make certain minor modifications without the consent of the landlord (Category 1 – e.g. putting up pictures and posters) and give them the right to request certain other modifications (Category 2 – e.g. painting walls) that a landlord could not unreasonably refuse after they have lived in the let property for 6 months or more. This is intended to:

- improve the renting experience for private tenants by giving them more control over personalising their home supporting mental health and wellbeing;
- more closely align the rights of private tenants with other tenures while continuing to take account of the differing legal frameworks; and
- seek to appropriately balance the strengthened rights for tenants with sufficient protections for landlords.

Consultation outcome

157. The Scottish Ministers consulted as part of ‘A New Deal for Tenants: Draft Rented Sector Strategy’ consultation on how a right to personalise a property could be most effectively introduced.

158. Many landlord respondents understood the desire to personalise a home but were concerned about how this would work in practice and the problems that could arise. These included the standard of decoration by tenants, potential damage that could be caused to the let property and furnishings, cost to return the let property to its previous state at the end of the tenancy and how

disputes would be managed. Respondents highlighted a need for clear guidance on this to inform and protect both tenants and landlords.

159. Further engagement on the detail of policy proposals was carried out through focused stakeholder engagement and the landlord and tenant engagement questionnaire and accompanying policy paper.

160. Findings from the questionnaire responses indicated that the majority of respondents felt small changes, for example putting up pictures and posters should not require consent.

161. A majority of respondents also agreed that other bigger changes could be requested and not unreasonably refused.

162. A majority of respondents overall (63%) thought landlords should have to respond to a request for a change that cannot be unreasonably refused in 20 working days, with the remaining respondents favouring longer periods. The majority preference among PRS landlords and PRS landlord organisations was for a 30 day period, with 53% and 54% respectively preferring this option.

163. Among all respondents to the questionnaire, the preferred length of time for a tenant to have lived in the let property before they can request bigger changes that could not be unreasonably refused was 3 months (50% of those answering). The next most frequently chosen option was 12 months (38% of those answering), with PRS landlords more likely to favour this option than any other time period (selected by 77% of PRS landlords and 72% of PRS landlord organisations).

164. Policy measures have taken account of responses and the provisions in the Bill will create an enabling framework that allows tenants to make certain prescribed minor modifications without the landlord's permission and a right for tenants who have lived in the let property for a prescribed period of time to request certain other prescribed modifications that cannot be unreasonably refused. Landlords would be able to set reasonable conditions for approval helping to address some of the concerns raised by landlords.

Specific provisions

165. The provisions included in the Bill:

- amend the 2016 Act to include a new term in schedule 2 of the Act which, if prescribed as a statutory term of a private residential tenancy, will allow the tenant to make certain changes to the let property which will be prescribed by secondary legislation (category 1 changes) without the permission of the landlord;
- amend the 2016 Act to include a new term in schedule 2 of the Act, which, if prescribed as a statutory term of a private residential tenancy, will allow the tenant to request certain changes to be prescribed by secondary legislation (category 2 changes) that cannot be unreasonably refused;
- create a power for Scottish Ministers to prescribe in regulations the types of changes under category 1 and 2;

- make provision on the procedure for requesting a category 2 change and information that must be included within a request;
- create a power for Scottish Ministers to make provision about when it is reasonable to refuse consent for a category 2 change;
- create a power for Scottish Ministers to make provision about when a consent condition for a category 2 change is reasonable;
- require Scottish Ministers to consult tenants, landlords and other relevant stakeholders in the use of powers to make provision in relation to the power to prescribe changes and the power in relation to reasonable refusal and reasonable conditions for approval;
- create a power for Scottish Ministers to make the necessary amendments to tenancy deposit requirements in relation to a supplementary deposit; and
- provide private tenants with a route of redress to the First-tier Tribunal for Scotland in relation to unreasonable refusal to allow a category 2 change to let property or unreasonable conditions for the making of any such change.

Alternative options

Option 1 – Do nothing

166. In this option, current regulation would remain the same with no additional rights or protections provided.

167. Scottish Ministers do not think this is an appropriate option. Doing nothing would not provide private tenants with greater rights to personalise a let property.

Option 2 – Non-regulatory action

168. The Scottish Government has considered pursuing non-regulatory action by amending the Scottish Government’s Model Private Residential Tenancy Agreement to include additional terms to personalise a let property.

169. Amending the Scottish Government’s model tenancy agreement would not deliver the additional rights to personalise a let property being sought for all private tenants. There is no requirement for a private landlord to make use of the Scottish Government’s model tenancy agreement, so not all tenants with a PRT would be afforded the new rights. In addition, should landlords stop using the model tenancy agreement, landlords would no longer be required to provide tenants with the accompanying Easy read notes which provide tenants with vital detailed information on their tenancy rights and would instead only receive information on the statutory terms.

Option 3 – Legislate

170. As an alternative legislative option, the Scottish Government could have legislated for an express right to make changes regardless of circumstances, however, this was considered to be a disproportionate interference with a landlord’s property rights. The option being progressed in the Bill would see us progressing legislative changes that would amend the existing tenancy

framework under the 2016 Act to introduce two new statutory terms to the PRT so that (once those statutory terms have prescribed by regulations) all tenants with a PRT can make certain minor modifications without consent (e.g. putting up pictures and posters), and the right to request certain other modifications (e.g. painting walls) that could not be unreasonably refused. This is the only option that would ensure that all private tenants are afforded additional rights to personalise.

PART 4 – OTHER MATTERS RELATING TO TENANTS

Overview

171. These measures are part of a package of reforms which build on existing protections and strengthen rights to help deliver improved outcomes, strengthened rights, and greater protections for tenants. The provisions will also reform some aspects of the letting agent registration system.

UNCLAIMED TENANCY DEPOSITS

Background

172. Since 2012, where a private landlord asks a tenant to pay a tenancy deposit, the deposit must be lodged with one of three independent approved tenancy deposit schemes. Monitoring of the schemes has highlighted the previously unforeseen issue of deposits remaining unclaimed some significant time after the tenancy has ended. Scottish Ministers now wish to address this issue and take the necessary steps to enable the use of the current unclaimed funds, reinvesting them to the benefit of tenants living in the private rented sector.

173. When a tenancy ends, a landlord or letting agent is required to arrange the return of the deposit minus any reasonable deductions. The landlord or letting agent should do this as soon as they can after the tenancy ends. Unclaimed tenancy deposits occur where the landlord has started the process to return the deposit (via an application to the deposit scheme provider), but the tenant does not respond and cannot be contacted.

174. A review of tenancy deposit schemes²⁷ was carried out in 2018, which explored this issue further. It found that the majority of unclaimed deposits belong to students, in particular, overseas students who regularly return home without claiming their money back from the schemes. In addition, some of the larger unclaimed deposits relate to tenancies taken out by companies on behalf of their employees.

175. Despite work by each of the schemes to return unclaimed deposits, there is now around £4 million of unclaimed tenant deposit funds between the three approved deposit schemes.

Policy objective

176. The intention is to put unclaimed deposit funds to good use ensuring they benefit tenants living in the private rented sector.

²⁷ [Review of Tenancy Deposit Schemes in Scotland \(www.gov.scot\)](http://www.gov.scot)

Consultation outcome

177. An initial review into the Tenancy Deposit Schemes in 2018 sought views on the use of unclaimed deposit funds. It found that all schemes agreed in principle with the proposal to explore the reinvestment of unclaimed deposits after a five-year expiry period. The review also asked landlords whether they would object to unclaimed deposits being reinvested in the private rented sector after 5 years. 55% of respondents indicated they would not object to the money being used in this way, 15% objected but gave no alternative suggestion of what it should be used for. A number of uses of the money were suggested by landlords - 14% suggested unclaimed funds should be given to the landlord and a smaller proportion suggested giving the money to charity, to homelessness or to the social/affordable housing sector.

178. Scottish Ministers subsequently consulted on making use of unclaimed deposit funds in ‘A New Deal for Tenants: Draft Rented Sector Strategy’. A very substantial majority of those who responded to this consultation agreed that unclaimed deposits should be reinvested if they remain unclaimed after a period of five years, and after all avenues to reunite deposits with their tenants have been exhausted.

179. Respondents also suggested that Tenancy Deposit Schemes should obtain multiple means of contacting a tenant. Respondents also provided feedback in relation to being clear what is meant by ‘after all avenues have been exhausted’ and how this would operate in practice.

180. Further engagement on the detail of policy proposals was carried out through focussed stakeholder engagement, including with the three approved tenancy deposit schemes. The landlord and tenant engagement questionnaire and accompanying policy paper also sought views on five potential uses for unclaimed tenancy deposit funds.

181. The questionnaire responses indicated that respondents were most likely to strongly agree that any unclaimed funds should be used on the prevention of homelessness. This was the only use of funds with which a majority of both PRS landlords and tenants strongly agreed or agreed.

182. A majority of respondents also agreed or strongly agreed with use in connection with providing advice, information, and assistance to private tenants and with assisting private tenants to exercise their rights. A small majority of PRS landlords disagreed or strongly disagreed with using the funds to assist private tenants to exercise their rights.

183. In terms of using unclaimed funds to address barriers to the PRS and support access and support private tenant participation and representation, the majority of respondents neither agreed nor disagreed.

184. Responses to the consultation and questionnaire have been taken into account in the development of the policy measures in the Bill, including in relation to the use of unclaimed tenancy deposit funds for prevention of homelessness and providing or securing the provision of advice, information, or assistance to private tenants.

Specific provisions

185. Provisions amend the Housing (Scotland) Act 2006 to:

- create a legal definition of when a tenancy deposit can be considered unclaimed;
- set timescales by which former occupants can reclaim their tenancy deposit;
- enable approved tenancy deposit schemes to transfer unclaimed funds to Scottish Ministers or a fund administrator;
- set out the purposes for which unclaimed funds may be used to support private rented sector tenants;
- regulation making powers for the Scottish Ministers to amend the purposes that unclaimed funds can be used for;
- place a duty on Scottish Ministers to report on the use of unclaimed tenancy deposit funds within a prescribed period after the transfer of unclaimed funds to Scottish Ministers or a delegated third party; and
- enable the Scottish Ministers to repay an amount of a tenancy deposit.

Alternative options

Option 1 – Do nothing

186. In this option, current regulations would remain the same and no action would be taken to enable the use of unclaimed deposit funds.

187. The Scottish Ministers do not think this is an appropriate option. Doing nothing would not address the issue of unclaimed tenancy deposit funds and would not allow for them to be used to the benefit of private tenants. Instead, they would remain with deposit scheme providers indefinitely.

Option 2 – Non-regulatory action

188. The Scottish Ministers do not consider that non-regulatory action could enable the use of unclaimed tenancy deposit funds for the general benefit of private tenants.

Option 3 – Legislate

189. This option would see legislative changes to allow for the use of unclaimed tenancy deposit funds to the benefit of tenants living in the private rented sector. The Scottish Government considered different time periods before which unclaimed funds could be used, however, very few former tenants reclaim a deposit after 5 years. A longer period before a deposit was classed as unclaimed would limit the benefit of this policy for private tenants in general – in those circumstances unclaimed funds would sit unused with the scheme administrators for much longer. Additionally, the Scottish Government is considering further secondary legislative changes under existing powers to strengthen requirements on approved schemes to reduce the likelihood of a deposit being unclaimed. These changes alone would not enable the use of existing unclaimed funds or fully prevent deposits becoming unclaimed so primary legislation is considered necessary.

REGISTRATION OF LETTING AGENTS ETC.

Background

190. The letting agent industry plays an important role in providing a wide range of services in the private rented sector in Scotland by helping to deliver high quality services to landlords, tenants, and prospective tenants. These services help to ensure that landlords meet their regulatory responsibilities, as well as enabling effective management and maintenance of privately rented properties. The Scottish Government brought forward provisions to regulate letting agents in the Housing (Scotland) Act 2014²⁸ (“2014 Act”), with the aim of promoting high standards of service and levels of professionalism among all letting agents across the country.

191. The requirement for letting agents to register came into force in 2018, with registration lasting 3 years in most cases. A number of agents have now been through a full registration cycle and have either just renewed or are approaching the point of renewal.

192. The Scottish Government committed to undertake a review of the existing registration and regulation regimes within the private rented sector, to identify lessons and opportunities for strengthening them. As part of the initial review, a number of minor modifications to the existing provisions were identified. These would enable the current system and procedures to work more coherently and effectively.

Policy objective

193. These minor modifications do not represent a change in policy or direction, but rather are intended to improve the clarity of the existing requirements. In addition, they will also ensure the registration system operates in line with the original policy intentions.

Consultation outcome

194. As outlined above, the minor modifications do not represent a change in policy or direction. Amendments are responding to feedback primarily provided by key stakeholders during the initial registration and renewal processes; and a New Deal for Tenants: Draft Rented Sector Strategy’ consultation which included ‘review of the housing management registration systems.

Specific provisions

195. The following changes are intended to clarify requirements in the 2014 Act to ensure Scottish Ministers have information on all persons who should be assessed in relation to an agent’s application for registration. In addition, these amendments are to encourage agents to provide updates when their circumstances change by limiting the categories of information which they are required to update.

²⁸ [Housing \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

196. Provisions amend the 2014 Act to:

- ensure that, via an application for registration, the Scottish Ministers have all relevant information on the ownership of a letting agent and the control and governance of a letting agent’s work, removing any dubiety about the need for information on both;
- update the process for issuing reasons for refusal or revocation during a decision on application to ensure that the Scottish Ministers may issue a subsequent and updated notice that they are considering refusing an application. This enables the decision to take account of new information provided by the applicant in the course of discussions;
- clarify that all reasonable steps must be taken by registered letting agents to display their letting agent registration number on their social media;
- narrow the applicability of the duty to inform changes of circumstances so that only the most relevant changes of information need to be notified to the Scottish Ministers;
- allow for an agent to be removed by Scottish Ministers ‘if they are satisfied that the entity has ceased to exist, and Scottish Ministers consider it appropriate to do so’;
- update the process of removal from the register upon application to prevent Scottish Ministers breaching a duty to notify in situations whereby it is not possible to do so. This deals with a similar situation whereby an agent has applied for removal but has deceased or ceased trading in the intervention period and notice cannot actually be provided to the agent;
- extend the timescale during which notes of refusal or removal remain visible from the current period of 12 months to 36 months as the note would be removed in any event should the agent subsequently obtain registration; and
- clarify the ability of Scottish Ministers to request information from a letting agent but also to make it clear that the recipient of the request may refuse to comply on grounds of self-incrimination.

Alternative options

197. Do nothing – The alternative is to not make operational improvements to Letting Agent regulation which have been highlighted by key stakeholders and is intended to provide letting agents with clarity in their specific application. This was rejected on the basis that it would be an opportunity lost to deliver a clarity of purpose, intent, and action that is beneficial to the industry and tenants. Failing to act on user and stakeholder feedback on the issues identified would not improve the clarity of the existing requirements and would continue to frustrate users of the IT system. The legislative changes being made by the Bill are mainly procedural in nature and there is not considered to be any alternative legislative means of achieving the policy objectives here.

ENDING JOINT TENANCIES

Background

198. Under the 1988 Act one joint tenant could end a tenancy with minimal notice to the other joint tenants. If the other joint tenants wanted to remain in the property, they could negotiate with the landlord to enter a new tenancy or seek to assign the departing joint tenant’s interest in the

tenancy. However, if negotiations failed the remaining joint tenants could be made inadvertently homeless.

199. Since the 2016 Act came into force, landlords cannot place time limits on the tenancy and one joint tenant can no longer terminate a joint tenancy on behalf of all the joint tenants. This ensures that no tenant can inadvertently be made homeless.

200. Currently, where there is more than one person named as a tenant on a tenancy, the tenancy will be a joint tenancy. Joint tenants are all responsible for the total amount of rent payable under their tenancy agreement. This is sometimes called joint and several liability. If one tenant does not pay their share of the rent, the landlord can ask any or all other tenants to pay.

201. As there is no specified time limit on a PRT, where one tenant seeks to end a joint tenancy, all joint tenants must agree and sign a Notice to Leave, giving the landlord at least 28 days' notice in writing (unless a shorter notice period has been agreed). If the other joint tenants agree that another joint tenant can leave, but want to continue living in the property, they can try to negotiate a new agreement with the landlord's permission. Additionally, they can seek to arrange for another tenant to move in to replace the person who wants to leave, and the tenancy can either be assigned to the new tenant or a new tenancy can be created that would replace the existing tenancy of those who wish to remain in the property.

202. However, if the joint tenants decide to stay on and not to release the tenant who wishes to leave or has left the property, then all tenants, including the tenant that has left, will continue to be jointly and severally liable until the tenancy is ended through mutual agreement. This has the effect of tenants being at risk of remaining liable for rent even if they no longer live at the property.

203. Concerns have been raised regarding the negative impact of these requirements on tenants, often students, but also those experiencing domestic abuse. Where relationships have broken down and a woman is seeking to leave, this can be used as a method of financial and coercive control.

Policy objective

204. The overarching policy objective is to reform how joint tenancies in the private sector are ended to enable one joint tenant to end the tenancy for all tenants where there is no mutual agreement between joint tenants to end the tenancy. This would be possible only after the tenant who is seeking to end the tenancy has provided the other joint tenants with appropriate notice. This is intended to:

- ensure no joint tenant can be indefinitely held to a rental contract against their wishes; and;
- ensure a fair process for all joint tenants where one joint tenant wishes to leave the tenancy.

Consultation outcome

205. The Scottish Government consulted in 'A New Deal for Tenants: Draft Rented Sector Strategy' on proposals to enable one joint tenant to end their interest in a joint tenancy without the

agreement of other joint tenants. A very substantial majority thought the 2016 Act should be amended to allow joint tenants to terminate their interest in a PRT without agreement of other joint tenants.

206. Among organisations, a large majority of those who disagreed were from the ‘Private landlord, letting agent or their representative bodies’ group. Feedback highlighted concerns around the remaining tenant’s ability to afford the rent, and the possibility of a build-up in rent arrears.

207. Overall, the proposed changes were described as a sensible, practical approach that brings the private rented sector in line with the social sector and reinstates the position prior to the 2016 Act. The ability to terminate an interest in a joint tenancy was seen as both an issue of individual choice for all tenants and also as an important protection for those experiencing domestic abuse.

208. Further engagement on the detail of policy proposals was carried out through focussed stakeholder engagement and the landlord and tenant engagement questionnaire and accompanying policy paper.

209. Findings from the questionnaire responses indicated that a substantial majority of respondents agreed that the notice period which the departing joint tenant must give to the other joint tenant should be 2 months.

210. A clear majority of respondents in all groups agreed with the proposal, although at a lower level for PRS landlord and PRS landlord organisations and SRS landlord organisations.

211. Reflecting on these consultation responses and stakeholder feedback the Scottish Government are proposing measures which will introduce a power to enable one, or more, joint tenants to end the tenancy without the agreement of all but only after providing reasonable notice to other joint tenants.

Specific provisions

212. Where there is no agreement between the joint tenants to allow one of them to leave the tenancy, the tenant who wishes to go would be required to give a fixed amount of notice to all other joint tenants of their intention to end the tenancy for all. Usually this period of time would give the other joint tenants time to consider their own circumstances and to come to an agreement with the exiting tenant – through finding someone to replace the tenant leaving, assessing whether they are able to continue to afford to remain in the property either on the same tenancy agreement or under a new tenancy (subject to the landlord’s agreement) or find alternative accommodation. In cases of domestic abuse, a joint tenant experiencing abuse would be able to notify the other tenant of the intention to end the tenancy, and thereafter unilaterally end the tenancy, with the perpetrator of the abuse being unable to prevent the tenancy from coming to an end.

213. The specific provisions:

- amend the 2016 Act to allow one joint tenant to be able to terminate a joint tenancy without the agreement of all joint tenants;

- require a departing tenant to give 2 months’ notice to all other joint tenants of intention to serve a notice to terminate on the landlord;
- prescribe in regulations the form and manner of the 2-month notice; and
- prescribe the content, form and manner of the evidence of service of the 2-month notice, which must accompany the notice of termination served by the departing joint tenant.

Alternative options

Option 1 – Do nothing

214. In this option, current legislation would remain the same and would continue to have a negative impact for tenants who can become effectively ‘trapped’ in a joint tenancy.

215. Scottish Ministers do not think this is an appropriate option. Doing nothing would not address the concerns raised about the current requirements in particular the issues for joint tenants who experience domestic abuse. In domestic abuse cases, it is possible for both joint tenants to be effectively tied to the tenancy, even if one party wants to leave permanently, and this can be used as a method of financial and coercive control.

Option 2 – Non-regulatory action

216. The Scottish Ministers do not consider that non-regulatory action could address the concerns in relation to how joint tenancies can be ended, in particular the issues for joint tenants who experience domestic abuse.

Option 3 – Legislate

217. The Scottish Government could have enabled the joint tenant to simply terminate the joint tenancy without notifying the other tenants but that could cause significant harm to the remaining tenants where they are unaware of the departing tenant’s actions. The Scottish Government could have provided a process whereby the departing tenant could assign their interest in the tenancy with the landlord being obliged not to unreasonably withhold their consent to the assignation. However, it is considered that this could cause undue delay in the process as there could be a dispute about the assignation both between the joint tenants themselves and between the joint tenants collectively and the landlord. Disputes over the landlord’s refusal to provide consent or any conditions attached to the landlord’s consent could also create a further need for the involvement of the Tribunal. The option being progressed would see legislative changes that that would amend the existing tenancy framework under the 2016 Act to allow one joint tenant to be able to terminate a joint tenancy without the agreement of all joint tenants.

218. The advantage of this approach is that it would ensure that all joint tenants are given reasonable notice that another joint tenant intends to leave. This would give them time to find an alternative tenant where they wish the current tenancy to continue or make alternative plans.

DELIVERY OF NOTICES ETC.

Background

219. Currently social housing landlords are required to serve notices in relation to rent increases either by:

- delivering it to the tenant in person;
- leaving it at the tenant's address; or
- sending it by recorded delivery letter to the tenant at their address (where a signature on delivery is required).

220. Stakeholders have highlighted concerns about the current prescribed methods of delivery, particularly in relation to recorded delivery when a signature is required to confirm delivery. The current acceptable methods of delivery are considered restrictive, outdated, and do not reflect modern mail delivery methods or widely used electronic delivery methods such as email or secure access tenancy management IT systems.

Policy objective

221. The policy objective is to make some changes to the way in which notices and other documents may be given to a person under Chapter 1 of Part 2 of the 2001 Act in connection with Scottish secure tenancies. This is expected to better reflect modern communication methods and provide benefits for both tenants and landlords.

Consultation

222. This is a minor modification and does not represent a change in policy or direction. These amendments were identified by social housing landlords as being a beneficial change.

Specific provisions

223. The provisions include amending the 2001 Act to make changes to how notices and documents may be given in connection with Scottish secure tenancies:

- to make it clear that they may be given by means of a postal service which provides for the delivery to be recorded, including in a way that does not require a signature on delivery (commonly known as a tracked mail service); and
- to allow notices about increase in rent or charges to be given by electronic means (such as email or a secure tenancy management platform) provided the tenant has agreed.

Alternative options

Option 1 – Do nothing

224. Scottish Ministers consider that this approach would not make the improvements to the operational process for the delivery of these notices which social housing landlords have identified as beneficial.

Option 2 – Non-regulatory action

225. The Scottish Ministers do not consider that non-regulatory action could deliver the benefits that more flexibility would bring to social landlords, given the current methods for the service of notices in relation to rent increases are governed by existing legislative requirements.

Option 3 – Legislate

226. This option would progress legislative changes that would support a wider range of delivery options, which would be of benefit to social landlords in meeting their obligations in terms of rent increases. There is no alternative legislative means of enabling social landlords to serve notices in this way.

CONVERTING OLDER TENANCIES

Background

227. The 2016 Act created the private residential tenancy (“PRT”), which was to supersede tenancies under the 1988 Act. Under the 2016 Act, tenancies which began on or after 1 December 2017 would be PRT unless they were excluded under Schedule 1 of the 2016 Act. Tenancies under the 1988 Act which already existed on this date could continue until they were brought to an end by the landlord or tenant. The intent of the 2016 Act was that PRTs would be the main tenancy for the private rented sector going forward.²⁹

Policy objective

228. Scottish Ministers propose to create a regulation making power which would enable a date to be set on which tenancies under the 1988 Act would convert to PRT under the 2016 Act. Exercise of this power would be subject to a consultation first. If used, this would enable tenants with tenancies under the 1988 Act to benefit from the protections under the 2016 Act, as well as proposed protections in this Bill, and reduce complexity and confusion in the sector.

Consultation outcome

229. The Scottish Government sought views on this proposal in the ‘Landlord and tenant engagement questionnaire on the rented sector reform’. The questionnaire asked for views on whether short assured and assured tenancies under the 1988 Act should be phased out. 71% of those answering the question agreed with the proposal.

230. Support for the proposal was strongest amongst tenants. However, a smaller majority of landlords and landlord organisations also supported the proposal.

²⁹ [Private Housing \(Tenancies\) \(Scotland\) Act 2016 - Policy Memorandum \(para 19\)](#)

Specific provisions

231. The provisions included will enable the Scottish Ministers to set a date in secondary legislation when tenancies under the 1988 Act will convert to PRT under the 2016 Act. There is a requirement on the Scottish Ministers to consult on this proposal before laying the regulations.

Alternative options

Option 1 – Do nothing

232. If no action was taken, the current situation would continue. Assured and short assured tenancies would continue to reduce over time; however, this would be a slower process over a much longer timescale. In the meantime, those tenants would not benefit from the protections of the 2016 Act or the provisions in this Bill. In addition, there would continue to be a level of complexity and potential for confusion caused by operating several differing tenancy regimes in the private sector. Scottish Ministers do not think this is an appropriate option.

Option 2 – Non-regulatory action

233. The Scottish Government has considered non-regulatory action, however, whilst the Scottish Government will continue to support landlords and tenants in understanding their rights and responsibilities, the inherent differences between the current tenancy regimes are governed by statute. The Scottish Ministers consider that aligning tenancies to allow tenants to benefit from the protections under the 2016 Act, as well as proposed protections in this Bill, requires a change to legislation.

Option 3 – Legislate

234. This does not represent a change in policy or direction. Tenancies under the 1988 Act can no longer be created, except in some limited circumstances, and some pre-existing ones have not yet come to an end. The intent of the 2016 Act was that the PRT would supersede tenancies under the 1988 Act, the provision in the Bill would create a mechanism to achieve this at a faster pace. An alternative legislative option would have been to provide a firm date on which all 1988 Act tenancies converted to PRTs but that would have involved legislating without full consultation with landlords and tenants.

PART 5 – HOMELESSNESS PREVENTION

Overview

235. Part 5 of the Bill introduces ‘Ask and Act’, which will create a shared public responsibility to prevent homelessness. Relevant bodies, who are listed in the Bill and noted below, will be required to ask about housing precarity and to take action to help individuals and families avoid becoming homeless; and from going through the trauma and disruption to lives that homelessness brings. The relevant bodies are:

- a Health Board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

- an integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
- a local authority,
- the Police Service of Scotland,
- a registered social landlord (within the meaning of section 165 of the Housing (Scotland) Act 2010),
- the Scottish Ministers in so far as they have functions (including any that are delegated to another person) relating to—
 - prisons and young offenders institutions (as construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995), and
 - persons detained in them,
- a Special Health Board constituted by order under section 2(1)(b) of the National Health Service (Scotland) Act 1978.

236. There is provision built into the Bill to modify the list of relevant bodies to which the duties will apply by way of secondary legislation. This will allow Scottish Ministers to modify the bodies listed in part 5 of the Bill in the future and will ensure the legislation can reflect current needs.

237. The relevant bodies will use their existing powers to focus on early intervention and prevention by proactively taking steps to mitigate a risk of homelessness, and only referring to a local authority for assistance where it is not possible for them to do so. This upstream intervention and shared responsibility will ensure that fewer people reach the point of housing crisis or become homeless.

238. There are also changes to existing homelessness legislation to require local authorities to act sooner to prevent homelessness. This will ensure an assessment can be made of whether a household is threatened with homelessness up to 6 months before homelessness appears imminent (a change from two months as required by current legislation) and, by clarifying the ‘reasonable steps’ local authorities should take, creates more consistency and transparency around the support available from local authorities for people who are threatened with homelessness.

239. Further changes to existing legislation will be made to update the definition of domestic abuse as it applies within a housing context. In addition, a requirement will be placed on all social landlords to develop and implement a domestic abuse policy setting out how they will support their tenants who are at risk of homelessness as a result of domestic abuse.

DUTIES OF RELEVANT BODIES AND ASSESSMENT OF HOUSING SUPPORT SERVICES

Background

240. Historically, Scotland has some of the strongest legislation in the world for people who are homeless; however, even with that at least 8%³⁰ of the population have experienced homelessness. While strong protections are in place to help households assessed as being homeless by local authorities, there has been less focus (legislatively) to date on preventing homelessness happening in the first place, i.e. addressing emerging risks of homelessness which can be evident far in advance of actual homelessness and within services outwith local authority housing departments. This means it continues to be possible for someone to reach housing crisis before they are able to access the help and support they need.

241. Since 2010, many local authorities in Scotland have adopted a person centred, but non-statutory, approach to preventing homelessness termed ‘Housing Options’. While this initially led to a reduction in the number of homelessness applications, a thematic report by the Scottish Housing Regulator in 2014³¹ expressed concerns over a non-statutory approach driven by targets to reduce homelessness applications. The review called for clarity from the Scottish Government on the balance between this approach and the legislative duties that local authorities already owe people facing homelessness. The review made clear the importance of ensuring prevention activity did not result in people being diverted down a path away from making an application for homelessness assistance, and unable to realise their legal rights as a household which is homeless or threatened with homelessness. The fact that a household which is homeless or threatened with homelessness is owed a statutory response, while some prevention activity (badged as housing options activity) which can help a household avoid reaching the crisis of homelessness in the first place is not defined as a statutory response, creates an imbalance in the system. The Bill will correct this imbalance and remove any perceived incentive to direct households towards or away from a particular form of support.

242. Following the commitment from the former First Minister in 2017 to end homelessness in Scotland, the Scottish Government established the Homelessness and Rough Sleeping Action Group (HARSAG) to set out how to achieve this. Its recommendations³² included wide reaching homelessness prevention duties. The Scottish Government formally responded to this by committing to take forward work on the development of such duties in the joint Scottish Government/COSLA Ending Homelessness Together Action Plan³³. This was followed by the convening of the Prevention Review Group (PRG) which was tasked with developing proposals for legal duties on local authorities and public bodies to prevent homelessness. The group’s report³⁴ formed the basis of the joint Scottish Government and COSLA consultation.

243. The Prevention Review Group’s foundational principles have governed the approach adopted in developing the legislative provisions and are set out below:

³⁰ [hard-edges-scotland-full-report-june-2019.pdf](https://www.housingregulator.gov.scot/media/1225/housing-options-report-web-version.pdf) (therobertsontrust.org.uk)

³¹ <https://www.housingregulator.gov.scot/media/1225/housing-options-report-web-version.pdf>

³² [Homelessness and Rough Sleeping Action Group: final recommendations report - gov.scot](https://web.archive.org/web/20140618000000/http://www.housingregulator.gov.scot/media/1225/housing-options-report-web-version.pdf) (webarchive.org.uk)

³³ [Ending Homelessness Together: High Level Action Plan](https://www.gov.scot/publications/ending-homelessness-together-high-level-action-plan/pages/1-1-introduction.aspx) (www.gov.scot)

³⁴ [preventing-homelessness-in-scotland.pdf](https://www.crisis.org.uk/publications/preventing-homelessness-in-scotland) (crisis.org.uk)

- Responsibility to prevent homelessness should be a shared public responsibility, and not rely solely or primarily on the homelessness service.
- Intervention to prevent homelessness should start as early as possible. In many cases this should be before issues have escalated to a point where homelessness appears imminent.
- People facing homelessness should have choice in where they live and access to the same range of housing outcomes as members of the general public, with appropriate protections to mitigate further risk of homelessness.

Policy objectives

244. The overarching policy objective of the homelessness prevention measures is to shift the focus away from crisis intervention and towards prevention activity which can eliminate the need for a household to go through the trauma of homelessness in the first place, without diluting the existing rights for people who are assessed as being homeless. This can help reduce reliance on temporary accommodation, which has been an increasing feature of Scotland's response to homelessness in recent years.

245. This will be achieved by involving a range of relevant bodies, many of whom already engage with people before they reach homelessness, so that they ask people about their housing situations, and act within their existing powers to provide support where possible to mitigate a risk of homelessness, or refer the household to their local authority where that is deemed necessary. It is not intended that a referral to the local authority should be the default action, but that it should be considered alongside other actions that can be taken within the relevant bodies' existing powers. Collectively, this is known as 'Ask and Act'.

246. Additionally, changes to existing legislation will ensure local authorities act up to 6 months before homelessness occurs and will clarify what 'reasonable steps' they are expected to take when supporting households that are threatened with homelessness. The support provided will vary by household and may include actions similar to those adopted through the Housing Options approach in Scotland in recent years e.g., income maximisation, debt advice, family mediation. Local authorities will continue to have the duty to house those assessed as being homeless.

247. Further changes to existing legislation will be made to update the definition of domestic abuse as it applies within a housing context and to require social landlords to develop and implement a domestic abuse policy to support their tenants who are at risk of homelessness as a result of domestic abuse. Both steps were recommendations within the PRG report. They are also key outcomes in the Women and Children experiencing Domestic Abuse homelessness prevention pathway³⁵, due to domestic abuse being one of the most common reasons for women to apply for homelessness assistance³⁶.

³⁵ [Improving-Housing-Outcomes-for-Women-and-Children-Experiencing-Domestic-Abuse-Report.pdf \(womensaid.scot\)](#)

³⁶ [The extent of homelessness in Scotland - Homelessness in Scotland: 2022-23 - gov.scot \(www.gov.scot\)](#)

Consultation and engagement

248. A public consultation on the prevention of homelessness duties was open from December 2021 to April 2022 and received 113 responses. This was supplemented by stakeholder meetings with representatives appropriate to the relevant bodies aspect of the proposals, including Ask and Act.

249. The consultation set out the full suite of recommendations proposed by the PRG and responses described that package as comprehensive; well balanced; transformational; and welcome. However, each specific proposal attracted its own level of support and opposition. This feedback has helped inform the provisions being included in the Bill as well as those that will not be progressed. The key principles of the PRG have also informed this approach – shared public responsibility, early intervention and greater choice and control.

250. Of the 113 responses received, 84% of respondents agreed that the package of proposals constituted the right set of reforms to meet the principles of early intervention and prevention. Within that, 25% strongly agreed. On specific proposals:

- 96% of respondents agreed public bodies should be required to ‘Ask and Act’;
- 90% of respondents agreed local authorities should take reasonable steps to prevent homelessness;
- 88% of respondents agreed local authorities should accept a referral from a public body as an application for assistance; and
- 87% of respondents agreed with extending the prevention duty from 2 months to 6 months.

251. The highest rate of agreement was in relation to questions on actions to tackle domestic abuse, with 98% of respondents agreeing with the measures and noting they should be implemented in full. This included updating the definition of domestic abuse as it applies within a housing context and creating a new legal duty for social landlords to put in place protocols to address housing issues relating to domestic abuse. The complete independent analysis of the consultation responses was published on 29 September 2022.

252. Subsequently, the Homelessness Prevention and Strategy Group (HPSG), which oversees delivery of the joint Scottish Government/COSLA Ending Homelessness Together Action Plan created the Homelessness Prevention Task and Finish Group to identify actions required to prepare for the introduction of the duties and to support successful implementation. The Group’s recommendations were published in August 2023 and the Scottish Government published its formal response in December 2023.

Specific provisions

253. The following provisions are included within the Bill:

- duties for relevant bodies to ‘Ask and Act’ cooperatively, with a power to modify the list of relevant bodies by secondary legislation;

- local authorities are required to provide support to households threatened with homelessness up to 6 months before homelessness appears imminent rather than the current 2 months;
- enabling a relevant body to make an application to a local authority under section 28 of the Housing (Scotland) Act 1987 in respect of a person who the body has reason to believe is homeless or threatened with homelessness (with the person's consent);
- a power for the Scottish Ministers to prescribe advice and assistance that may be given by a local authority in a case where a person is found to be threatened with homelessness;
- changes to the definition of domestic abuse as it applies within homelessness legislation to bring it up to date with the most recent understanding of domestic abuse;
- place a duty on every social landlord to prepare and publish a policy setting out how it will support tenants affected by domestic abuse (a "domestic abuse policy") to which it must have regard when exercising its functions with a view to preventing homelessness; and
- to require that a local housing strategy under section 89 of the 2001 Act includes an assessment of the needs of persons and the availability of housing support services including in relation to homelessness.

254. Stakeholders highlighted a high risk of unintended consequences in relation to some provisions which were included in the public consultation and as such the following recommendations will not be progressed at this time.

- **GPs should refer to local authorities where there is a risk of homelessness:** 22% of consultation respondents disagreed with this proposal, one of the highest levels of disagreement. Further, many who agreed caveated their responses with concerns. These were echoed in consultation events and discussion with sector representatives. Concerns focused on the impact on GP time to provide person centred interventions specifically on homelessness and how this is balanced with the primary function of providing medical care.
- **Appeals to the Housing and Property Chamber of the First Tier Tribunal:** Concerns were also raised around the resource and workload implications for local authorities and tribunals, and the impact on speed of decisions. A very small number of respondents supported the right to appeal on points of law but questioned whether the Tribunal is the appropriate forum when the statutory duty sits with a local authority.
- **Social work to take a lead role for 16 and 17 year-olds at risk of homelessness:** 98% of consultation respondents suggested this could have significant and negative unintended consequences for this particular group including creating a barrier to 16 and 17 year olds making homelessness applications to local authorities, which is their legal right to do so if required.

255. Provision is made for commencement of the homelessness prevention provisions to be taken forward via secondary legislation following engagement with stakeholders on the appropriate timing and phasing of introduction. This recognises the need for adequate resourcing and interdependencies of certain elements with existing systems and processes.

Alternative options

256. In considering the need for the changes to be developed, other options were considered. These are set out below.

Option 1 – Do not change primary legislation

257. Current homelessness legislation provides strong housing rights for people that are assessed as being homeless, but it is less robust with regards to preventing homelessness, leading to an unintended emphasis on crisis response. This also means that a significant reliance on temporary accommodation for households who are homeless remains in place. This increases overall cost to public services and the risk to the household of negative long-term outcomes for people experiencing homelessness continues. While local authorities are currently required to provide advice and information with the aim of preventing homelessness, and to take action for people at risk of homelessness, specific actions to prevent homelessness are based on good practice rather than legal requirements. There is no legal driver to influence early intervention, joint working between services to prevent homelessness, resourcing, or culture change.

258. Without creating greater parity between crisis response and prevention activity which sets out clearly the requirements for the latter, local authority approaches may continue to be inconsistent and influenced by a concern not to be seen as ‘gatekeeping’ i.e. stopping people realising their rights as a homeless household, by undertaking prevention activity. This would be detrimental to achieving a person-centred approach to prevention and not within the spirit of the PRG recommendations. The responsibility to prevent homelessness would not be shared with relevant bodies beyond housing services, and so opportunities to prevent homelessness (and the long-term impacts) would continue to be missed. More people who are at risk of homelessness could ultimately become homeless.

259. The statutory Code of Guidance on Homelessness³⁷ (which applies to local authorities) could be re-visited as part of this option but that change alone would not drive a culture shift towards early intervention and prevention. There would be no change to the obligations of relevant bodies beyond housing services, despite evidence that opportunities to prevent homelessness before it occurs are currently being missed.

260. This approach would not strengthen the rights for people at risk of homelessness or address the imbalance between protections for people who are homeless, and people threatened with homelessness. Such an approach is not in keeping with a policy agenda which places preventing harm at its core. As a result, Scottish Ministers do not think this is an appropriate option.

Option 2 – Provide further guidance to local authorities but do not make prevention a legislative requirement

261. Existing legislation provides strong legal rights for households who are assessed as being homeless by local authorities, but there is less strength around the rights of households who are at risk of homelessness. An option exists to leave legislation as it is currently written, but the Code of Guidance (which applies to local authorities) could be updated to set out the expectations around

³⁷ <https://www.gov.scot/publications/code-guidance-homelessness-2/>

prevention, including the need to take specific steps for all households who are identified as threatened with homelessness. In times of limited resources, this approach may drive behaviours away from prevention activity towards crisis response in order that statutory obligations under homelessness legislation are met.

262. This may create a system where there is an overall increase in cost to public services due to a continued, or increased, use of temporary accommodation and need for crisis response. It does not create a legal driver to influence resourcing or culture change.

263. The responsibility to prevent homelessness is not shared with relevant bodies beyond housing services, and so opportunities to prevent homelessness (and the long-term impacts) continue to be missed. More people who are at risk of homelessness could ultimately become homeless.

264. The Scottish Government has considered non-regulatory action. However, whilst the Scottish Government would continue to support person centred, trauma informed approaches to prevention based on existing good practice, without a legislative intervention an imbalance would remain between the rights of people who are homeless and people at risk of homelessness. The Scottish Ministers consider that clarifying and strengthening the actions to be taken to prevent homelessness, by relevant bodies and by local authorities, requires a change to legislation.

Option 3 – Introduce the changes as a legislative requirement (preferred option)

265. This option provides for change to be made to current legislation to ensure local authorities are required to assist households 6 months before homelessness appears imminent as opposed to the current 2 months, and sets out the reasonable steps they should consider to prevent homelessness. The additional time will allow for considerations of household need and preference in a way that crisis response cannot. The changes to legislation will also ‘re-balance’ the system to put preventative activity on a more even footing with crisis response. The changes are not intended to affect existing housing rights for people assessed as being homeless by local authorities, but to allow earlier opportunities to consider a wider range of options and support to help people avoid becoming homeless in the first place.

266. The new legislative provisions will also extend the need to prevent homelessness to relevant bodies who come into contact with people who are at risk of homelessness by requiring them to ask about a household’s housing circumstances and then to take actions (within their own powers) to prevent homelessness. This is known as ‘Ask and Act’ and by applying it to relevant bodies, early identification of a risk of homelessness and mitigating actions will be possible. While referrals should only be made where a relevant body is unable to mitigate the risk of homelessness, the legislation will require any referrals made by a relevant body under Ask and Act to be given the same weight and response as an application for assistance made directly to a local authority by an individual. The local authority will then require to make such inquiries as are necessary to establish whether the individual is threatened with homelessness or is homeless. This will give the referring body the reassurance that action will be taken following their intervention.

267. The changes will be based on the principles that prevention should be a shared public responsibility; that there should be earlier intervention across systems; and, that people facing

homelessness should have more choice and control over where they live than is often possible in crisis situations. By intervening at an earlier stage and encouraging services to work together to respond to people's needs, fewer households are faced with having to re-build lives affected by homelessness and see a more effective use of public resources.

268. Introducing legislative change is the only option which facilitates achievement of all three principles above, with the ambition of ending homelessness in Scotland by preventing it from happening in the first place. As such Scottish Ministers consider it to be the most appropriate option.

TENANTS AFFECTED BY DOMESTIC ABUSE

Background

269. Domestic abuse is one of the leading causes of women's homelessness³⁸, and, consequently, affects significant numbers of children and their long-term outcomes.

270. The Scottish Government set up a working group in 2019 co-chaired by the Chartered Institute of Housing Scotland and Scottish Women's Aid to consider how Scotland could improve housing outcomes for women and children experiencing domestic abuse, including those experiencing financial abuse to remain in their home³⁹.

271. Financial abuse is a significant element of coercive control in domestic abuse. Research suggests that 89% of women experience financial abuse as part of domestic abuse⁴⁰. It involves a perpetrator using or misusing money to limit and control their partner.

272. One of the recommendations in the "Improving housing outcomes for women and children experiencing domestic abuse" working group report⁴¹ published in December 2020 is the introduction of a new statutory pre-action requirement for social landlords to ensure that they have fully considered domestic abuse before commencing legal action to recover possession of a property.

273. Pre-action requirements are a number of steps social landlords are required to take to ensure they have exhausted all attempts to resolve rent arrears with a tenant before taking action to evict.⁴² Social landlords must also satisfy the court that all the pre-action requirements have been complied with before court action for eviction can begin. Pre-action requirements do not currently require specific consideration of the effect of domestic abuse on the accrual of rent arrears.

³⁸ [Homelessness in Scotland: 2022-23 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

³⁹ [Improving-Housing-Outcomes-for-Women-and-Children-Experiencing-Domestic-Abuse-Report.pdf \(womensaid.scot\)](https://www.womensaid.scot)

⁴⁰ Sharp, N. (2008). [What's yours is mine. The different forms of economic abuse and its impact on women and children experiencing domestic violence.](#)

⁴¹ [Improving-Housing-Outcomes-for-Women-and-Children-Experiencing-Domestic-Abuse-Report.pdf \(womensaid.scot\)](https://www.womensaid.scot)

⁴² [Housing \(Scotland\) Act 2001 \(legislation.gov.uk\)](https://legislation.gov.uk)

Policy objective

274. The overall policy aim is to help protect the rights of women and children experiencing domestic abuse financial control living in social housing to remain in their home, or be re-housed if that is their wish, and ensure arrears accrued because of domestic abuse are not a barrier to accessing social housing in the future. The changes would:

- ensure social landlords consider domestic abuse financial control in all rent arrears cases before commencing legal action for eviction;
- require social landlords to support individuals experiencing domestic abuse causing financial arrears in a specialised manner; and
- require social landlords to confirm to the court that all the pre-action requirements have been complied with if a court action for eviction on rent arrears grounds, or grounds including rent arrears is raised.

Consultation outcome

275. The Scottish Government consulted as part of the New Deal for Tenants: Draft Rented Sector Strategy⁴³ on introducing a new pre-action requirement into the existing pre-action requirements in the 2001 Act to ensure social landlords have fully considered all forms of domestic abuse, including coercive control, and the impact it can have before commencing legal action to recover possession of a property. There were relatively few comments relating to the social sector pre-action requirements in consultation responses. Those that did comment tended to suggest that the current requirements are sufficient or satisfactory. However, there was support for amending social sector pre-action requirements to specifically take account of the impact of domestic abuse on rent arrears as a way of providing additional support to victims of domestic abuse.

276. The Scottish Government sought further views on this proposal in the ‘Landlord and tenant engagement questionnaire on the rented sector reform’. This questionnaire asked whether respondents agreed with the proposal to amend social housing pre-action requirements to require social housing landlords to specifically consider the effect of domestic abuse in the accrual of rent arrears. Where domestic abuse financial control has had an impact on the arrears, social landlords would be required to fully consider further actions that could assist the victim-survivor before eviction action for rent arrears could be taken in court.

277. 83% of those answering the question, agreed with the proposal to amend social housing pre-action requirements.

278. Support for the proposal was strongest amongst tenants. However, a smaller majority of landlords and landlord organisations also supported the proposal.

279. The amendments to existing requirements are largely already being delivered by social housing landlords. This amendment therefore seeks to formalise this process, requiring social housing landlords to specifically consider the effect of domestic abuse in the accrual of rent arrears, where eviction action is being taken on the grounds of those rent arrears. Where domestic abuse

⁴³ [New deal for tenants - rented sector reform proposals: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/new-deal-for-tenants-rented-sector-reform-proposals-consultation)

in terms of financial control has had an impact on the arrears, this would require the landlord to fully consider further actions that could assist the victim-survivor before eviction action for rent arrears can be taken in court.

Specific provisions

280. Provisions include amending the 2001 Act to:

- place a duty on social landlords to comply with a new domestic abuse pre-action requirement where the landlord considers that domestic abuse is a factor in the accrual of rent arrears.

Alternative options

Option 1 – Do nothing

281. In this option, the current pre-action requirements in the 2001 Act would remain the same and there would be no obligation for a social landlord to specifically consider the effect of domestic abuse on the accrual of rent arrears.

282. The Scottish Ministers do not think this is an appropriate option. Doing nothing would not strengthen the existing protection for victim-survivors of domestic abuse and their children in social housing to remain in the home or to be rehoused, if that is their wish and ensure arrears accrued because of domestic abuse are not a barrier to accessing social housing in the future.

Option 2 – Non-regulatory action

283. The Scottish Ministers do not consider that non-regulatory action, such as issuing guidance, could strengthen the protection for victim-survivors of domestic abuse and their children in social housing that is sought under this measure. This approach would not require social landlords to consider such action as they consider reasonable in relation to the needs of the tenant, based on the landlord's domestic abuse policy, with a view to preventing homelessness.

PART 6 – OTHER HOUSING MATTERS

Overview

284. Part 6 of the Bill provides for a small number of minor administrative updates for existing housing legislation and service provision. These measures include:

- Mobile homes – to make changes to pitch fee uprating under the Mobile Homes Act 1983 (“1983 Act”)⁴⁴. This is to ensure that increases remain fair, appropriate, and in line with the development of statistical measures of inflation.
- Fuel poverty – to make changes to the Fuel Poverty Act 2019. This will ensure that consultation and preparation requirements are streamlined and improved; and that the operating costs for the Scottish Fuel Poverty Advisory Panel are sufficient to allow its operations and scrutiny function to be carried out effectively.

⁴⁴ [Mobile Homes Act 1983 \(legislation.gov.uk\)](https://legislation.gov.uk)

- New homes ombudsman (NHO) – to enable the Scottish Public Services Ombudsman to share information with the new UK-wide NHO.

MOBILE HOMES

Background

285. The Scottish Confederation of Park Home Residents Associations has estimated that there are around 100 mobile home parks with around 7,000 residents in Scotland, and reports that many of them are older people⁴⁵. Homes on licensed sites have pitch agreements under the 1983 Act. Gypsy/Traveller sites provided by local authorities are also bound by the 1983 Act.

286. The cost-of-living crisis and a campaign by residents highlighted the impact of the gap between different inflation measures on pitch fee inflation; and that the RPI is no longer judged to be a reliable measure of inflation. As a result, a commitment was made during the passage of the Cost of Living (Tenant Protection) Scotland Act 2022 to consult on changing the basis of pitch fee uprating from the RPI to the CPI.⁴⁶

287. The 1983 Act regulates the rights of mobile home owners. Agreements include statutory implied terms to protect residents, including the basis of pitch fee uprating. The basis for uprating pitch fees is set out at Paragraph 23 of Schedule 1 of the 1983 Act, amended in Scotland in 2013. At present, there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than any percentage change in the RPI, since the last review date, unless this would be unreasonable. The site owner must issue a proposal for the new pitch fee 28 days in advance of the increase. If the occupier does not agree the proposed fee, they can apply to the Court to determine the new pitch fee. The pitch fee remains unchanged while this process is in progress.

288. In England, the Mobile Homes (Pitch Fees) Act 2023⁴⁷ came in to force in July 2023, and it changed the pitch fee review index from RPI to CPI. In Wales, the basis of uprating was changed from RPI to CPI in 2015.

Policy objectives

289. The policy objective is to ensure the protections relating to pitch fee uprating for residents of residential mobile homes remain fair, appropriate, and in line with development of statistical measures of inflation.

290. The RPI is no longer considered a reliable measure of inflation which has led to its designation as a national statistic being removed. The CPI, which is designated as a national

⁴⁵ [Research by Consumer Focus](#) in 2013 identified 92 park home sites in Scotland, housing an estimated 3,314 mobile homes. The majority of sites comprised fewer than 50 residential homes. The majority of Scottish local authorities (22 out of 32) confirmed that they had at least one park home site under their area. However, sites tend to be concentrated in Perth and Kinross, Dumfries and Galloway, Fife, Angus, Argyll and Bute, and Aberdeen. Some sites are actively marketed as retirement communities, including a minimum age limit for residents.

⁴⁶ [RPI and CPI are both measures of inflation in the cost of retail goods and services, calculated using different methodologies and published monthly by the Office for National Statistics.](#)

⁴⁷ [Mobile Homes \(Pitch Fees\) Act 2023 \(legislation.gov.uk\)](#)

statistic, is calculated in a different way to the RPI and is regarded as better measure of inflation. The Scottish Government proposed the CPI as a robust alternative to the current measure that is widely forecast and used for uprating, including of pensions and benefits. Moving to the CPI also has the advantage of consistency with the approach taken in the rest of the UK.

Consultation and engagement

291. The Scottish Government undertook a technical consultation on pitch fee uprating under the 1983 Act from 19 January 2023 to 7 April 2023⁴⁸. There were 171 responses available for analysis in total. Twelve of these were from organisations and 159 from individuals, almost all of whom identified themselves as residents of mobile home sites.

292. The majority of respondents agreed that the CPI is the most appropriate inflation index for pitch fee uprating for Scottish contracts under the 1983 Act and thought that this should apply to both existing and new contracts. Positive financial impacts were identified for residents and some corresponding negative impacts for site operators. Some respondents did not think there would be much impact on individuals from the proposed change. Many respondents thought a further change should be made to the 1983 Act so that the statistical basis for uprating pitch fees can be amended by secondary legislation in the future, in order for changes to be made in a timely way if there are further updates to national statistics. For example, the UK Government has confirmed that it will reform the measure of RPI from 2030, aligning the methodology with Consumer Prices Index with Housing (CPIH).

293. Responses to the consultation can be found on Citizen Space⁴⁹ and the consultation analysis report was published 21 June 2023⁵⁰.

Specific provisions

294. The changes proposed to the 1983 Act are:

- to change an existing presumption that new pitch fees for mobile homes should not raise by more than RPI to a presumption that they should not rise by more than CPI;
- a power for the Scottish Ministers to change the inflation index in future by secondary legislation, to facilitate timely changes as required; and
- provisions to improve protection for residents should a site owner seek to undertake activity to compensate for the loss of income as a result of the change to indexation.

295. In addition, an adjustment to section 5 of the 1983 Act to remove references to gypsy and traveller sites that are no longer needed in consequence of previous changes to the law in relation to these sites.

⁴⁸ [Mobile homes pitch fees - annual uprating index: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/mobile-homes-pitch-fees-annual-uprating-index/consultation-2023-01-19-2023-04-07/pages/12.aspx)

⁴⁹ [Published responses for Pitch fee uprating under the Mobile Homes Act 1983 - Proposal to change from Retail Price Index to Consumer Price Index. - Scottish Government consultations - Citizen Space](https://citizenspace.org.uk/consultations/mobile-homes-act-1983-proposal-to-change-from-retail-price-index-to-consumer-price-index)

⁵⁰ [Mobile Homes Act 1983 - pitch fee uprating: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/mobile-homes-act-1983-pitch-fee-uprating/consultation-analysis-2023-06-21/pages/12.aspx)

Alternative approaches

Option 1 – Do nothing

296. In this option, RPI would continue. RPI lost its status as a National Statistic in 2013. The ONS discourage its use and consider it to be a poor measure of general inflation due to methodological issues. The high RPI rates over the last year are contributing to significant increases in pitch fee levels which is impacting particularly on residents who are more likely to be on fixed pension or benefit incomes. For these reasons, the Scottish Government does not think that continuing with RPI as the basis for uprating pitch fees would be appropriate.

Option 2 – Non-regulatory action

297. As the restriction on pitch fee increases is set out in the 1983 Act, there would be no non-legislative means of changing that restriction.

Option 3 – Legislate

298. It is acknowledged that any inflation index will be an imperfect measure for increases in the cost of maintaining mobile home sites. This is because they aim to measure economy wide inflation, rather than the factors specific to mobile home sites. The option of creating a bespoke index was ruled out as it would require disproportionate resources, given the size of the sector and information gathering requirements.

299. The Scottish Government sought views on applying the change to new contracts only but concluded that it would have minimal effect, given that many contracts are assigned and therefore have a long life. Consultation responses indicated that it would be unfair to exclude existing contracts from the change.

300. A further alternative legislative option would be to use CPIH as the new index. CPIH is broadly consistent with CPI but is a UK measure designed to better capture the costs of owning housing, including Council Tax. The housing costs included in CPIH cover costs of maintaining and living in a property. However, official forecasts of CPIH are not available and it is therefore not commonly used for uprating. Forecasts are required to assess the cost of uprating over a longer time period than the immediate future, and would make it easier for residents and site owners to plan ahead.

301. More information on indices is available on the ONS website⁵¹.

FUEL POVERTY

Background

302. The Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019⁵² (“the 2019 Act”) set targets relating to the eradication of fuel poverty; reporting provisions; and includes the establishment of the Scottish Fuel Poverty Advisory Panel (“the SFPAP”) amongst other matters.

⁵¹ <https://www.ons.gov.uk/economy/inflationandpriceindices>

⁵² <https://www.legislation.gov.uk/asp/2019/10>

This Bill seeks to strengthen and improve the Scottish Ministers duties to consult and report under the 2019 Act and to remove budgetary limitations on the SFPAP.

Policy objective

303. The policy objective is to strengthen the fuel poverty governance under the 2019 Act, ensuring that consultation and preparation requirements are streamlined and improved; and that the operating costs for the SFPAP are sufficient to allow its operations and scrutiny function to be carried out effectively. There is no change to the current policy or direction.

Consultation outcome

304. As outlined above, these are minor amendments to strengthen the current governance within the 2019 Act. This does not represent a change in policy or direction.

Specific provisions

305. The proposed changes to the 2019 Act are:

- Consultation strategy – proposed amendments will clarify the level of consultation required for any future review of the Fuel Poverty strategy, strengthening, and improving future engagement with appropriate stakeholders. The consultation duties will be amended to make it clear that they apply to a review of the strategy and that representatives of certain groups can be consulted.
- Preparation of periodic reports – the Bill will extend the reporting timeline and publication. The first reporting period under the current law runs from December 2021 to December 2024, with the first periodic report then due by 31 March 2025. A change to the law will enable suitable engagement and preparation of periodic reports with the first reporting period running from the day the Fuel Poverty strategy was published and ending on 31 December 2024. The first periodic report under the new law will be due by 30 June 2025. Subsequent reporting periods will continue on a rolling 3 year basis from 31 December 2024, with the subsequent report due by the end of June following the end of the reporting period (i.e. 30 June every 3 years from 30 June 2025).
- Consultation on periodic reports – the Bill will streamline the consultation requirements for preparing periodic reports. The list of persons who must be consulted by the Scottish Ministers in preparing a report under section 9 will be shortened so that the Scottish Ministers are only obliged to consult with the SFPAP and other such persons as Scottish Ministers consider appropriate. This is both to strengthen and improve engagement, which will support policy in the publication of the first periodic report in 2025.
- Funding of the SFPAP – the Bill will remove the budget limitation on the SFPAP. The current budget is not considered to be sufficient for the Panel to operate with its own secretariat. The amendment will ensure that the advisory NDPB's operating costs are at the discretion of the Scottish Ministers.

Alternative approaches

306. Do nothing - The alternative is to not make changes to the 2019 Act. This would result in no improved changes to the current governance process. This was rejected on the basis that it would be an opportunity lost to deliver and strengthen and improve process.

307. The proposed amendments can only be made through legislation and are deemed to be proportionate and sensible, with no detriment to the overall 2019 Act or statutory targets. It is not considered that there are any alternative legislative means of achieving the policy objectives here.

NEW HOMES OMBUDSMAN

Background

308. The UK Building Safety Act 2022 includes provisions for a New Homes Ombudsman (NHO) scheme. The aim of the scheme is to drive up standards in housebuilding and to independently resolve disputes between developers and purchasers where there is an issue concerning the standards of conduct or quality of a new-build home. Following the consent of the Scottish Parliament the scheme will apply in Scotland, as well as the rest of the UK.

309. Under the provisions, developers may be required to be members of the NHO scheme, with exact membership requirements of the scheme to be established in regulations. Some public bodies such as local authorities and housing associations carry out activities which fall within the definition of ‘developer’ in the 2022 Act, and therefore would likely fall within the requirements of the NHO provisions and Regulations. Such public bodies also fall within the remit of the Scottish Public Services Ombudsman (SPSO), established by the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”), which addresses complaints about public services in Scotland.

Policy objectives

310. There is provision in the UK Building Safety Act 2022 for the NHO to cooperate with other redress schemes which could, for example, include the SPSO. The Scottish Public Services Ombudsman Act 2002, however, places restrictions on the disclosure of information by the SPSO. Given the potential for interaction between the SPSO and the NHO in relation to developers which are public bodies, it would be beneficial to ensure that there are no barriers to information sharing which could hinder the intended cooperation.

Consultation outcome

311. As outlined above, this is a minor change to allow the SPSO to share information with the NHO and does not represent a change in policy or direction. As a result, it would be a disproportionate use of resources to subject this minor operational issue to specific consultation.

Specific provisions

312. The provision amends schedule 5 of the 2002 Act to include the NHO in the list of persons or bodies to whom the SPSO, in certain circumstances, may disclose information in relation to

certain matters. This replicates provision in the Building Safety Act 2022 for the equivalent body in Wales.

Alternative approaches

313. Do nothing - The alternative is to not make changes to the 2022 Act, which would result in the SPSO not being allowed to pro-actively share information with the NHO. This was rejected on the basis that it would be an opportunity lost to deliver a strengthened and improved administrative process.

314. This proposed amendment can only be made through legislation and is deemed to be proportionate and sensible, with no detriment to the overall SPSO. It is not considered that there are any alternative legislative means of achieving the policy objectives here.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

315. While a suite of impact assessments has been drafted specifically for the Bill and will be published on the Scottish Government website, it should be noted the Bill mainly provides Scottish Ministers with the powers to make regulations. As a result, the Bill itself will in many circumstances not have a direct impact on people.

316. Scottish Ministers are therefore committed to ensuring potential impact assessments are considered at the right time. Further impact assessments will be considered, if necessary, when secondary legislation is made under the Bill.

317. The impact assessments that will be published for the Bill include an:

- Equality Impact Assessment (EQIA);
- Business and Regulatory Impact Assessment (BRIA);
- Children's Rights and Wellbeing Impact Assessment (CRWIA); and
- Fairer Scotland Duty Assessment (FSD).

Equal opportunities

318. The intention of the Bill is to improve the housing outcomes in Scotland for people who live mainly in rented accommodation or face homelessness. As a result, the Bill is anticipated to have a positive impact on all equality groups. An EQIA has been carried out to determine if there will be any particular impacts on tenants or people who face homelessness with protected characteristics, and this has found that certain measures may have a greater impact on certain groups. In all cases the impacts have been found to be neutral or positive, and no negative impacts have been identified.

319. In particular, for the provisions listed below, key positive impacts have been summarised, and further information is detailed in the EQIA.

Part 1 – Rent; Part 2 – Dealing with evictions; Part 3 – Keeping pets and making changes to let property; and Part 4 – Other matters relating to tenants

320. The Bill will have a positive impact on all tenants including those with protected characteristics. A key positive impact is the development of a national system of rent controls for the private rented sector, to help stabilise rents in areas where market rents have been increasing particularly steeply, whilst ensuring there can be a balanced approach that provides appropriate protection for the property rights of landlords. The overall assessment is that the introduction of rent control will benefit all tenants in areas where rents are controlled and will not introduce changes that directly or indirectly discriminate against those with protected characteristics. The introduction of rent control may be beneficial for certain groups of tenants with protected characteristics including older people, disabled people and women who may experience more difficulty in affording rent costs.

321. This Bill will provide tenants with stronger rights to request to keep a pet and make changes to their home as well as greater protections during the eviction process and against unlawful eviction. Allowing tenants greater rights to request to keep pets or to make changes to their homes will help to improve the renting experience and contribute to their health and wellbeing. Additionally, ensuring active consideration of whether there should be a delay to the enforcement of an eviction order or decree in the circumstances of the case will have a positive impact for all tenants but may be particularly beneficial for certain groups with protected characteristics, for example disabled people who may find it more difficult to find suitable alternative accommodation or families with children.

322. The supporting EQIA identified no negative impact on people with protected characteristics. The Scottish Government recognises that some private tenants, such as minority ethnic families or lone parents, are less likely to know their existing rights or might know their rights but feel unable to exercise them. To advance equality of opportunity during implementation, communications on the new rights and existing legislation changes should use a range of appropriate, accessible, and inclusive means and methods. This will include internet and social media to advance equality of opportunity by maximising understanding of the changes.

Part 5 – Homelessness prevention

323. The duties offer equal opportunity to all people who find themselves in a precarious housing situation, as the changes will apply to all those that are identified as in a precarious housing situation by relevant bodies and to all those assessed as being threatened with homelessness by local authorities. However, specific groups have been identified as being at particular risk of homelessness and therefore may benefit more than other groups from the changes given that they are more likely to approach local authorities for homelessness assistance, including :

- Young people under age 25 who are over-represented in homelessness applications and assessments, and who also often form part of the ‘hidden homeless’. By placing a duty on relevant bodies, vulnerable young people may be identified earlier and assisted, including by family mediation if appropriate, thus preventing homelessness from occurring in the future.
- Women, who make up the greatest proportion of single parent households.

- Women and children who are victim-survivors of domestic abuse and who are at risk of homelessness/are homeless as a result. The duties will require social landlords to have a domestic abuse policy in place, which outlines how they will meet the housing needs of women experiencing domestic abuse, including staying in their own home, if that is what they want. This is complementary to the provisions in the Domestic Abuse (Protection) Scotland Act 2021 which give social landlords greater control to transfer housing tenancies to a domestic abuse survivor, should this be desired, thus reducing the risk of homelessness for women in this situation.

Part 6 – Other housing matters

324. Residential mobile homes – This change has been screened as a positive impact on people with protected characteristics. The demographic of mobile home residents includes older people; people with a limiting long term health condition; and Gypsy/Travellers. The change from RPI to CPI as a basis for pitch fee uprating under the Mobile Homes Act is expected to impact positively on those groups. This is for three key reasons: a) likely financially benefit as pitch fees will rise more gradually; b) reduced stress or financial worry; and c) likely positive impact on the morale of residents because they feel their voices have been heard or the balance of rights with site operators has been shifted.

325. Fuel poverty – these impacts were screened as neutral.

326. New Homes Ombudsman (NHO) – these impacts were screened as neutral.

Human rights

327. As noted below, there are a number of areas covered by the Bill that potentially engage rights under the European Convention on Human Rights (ECHR). However, the Scottish Government considers that the provisions of the Bill are ECHR compliant.

Article 1, Protocol 1 (right to property)

328. There are a number of measures in the Bill which will likely be considered as a control on the use of property for the purposes of ECHR Article 1, Protocol 1 (right to property). Rent control will limit what a landlord can charge for their property. The restrictions on evictions will regulate when a landlord can recover possession of their property. The right to keep a pet or personalise a rented property will restrict how a landlord can regulate the use of their property. The changes to the law on joint tenancies will regulate the ending of a landlord's contractual relationship with joint tenants. Powers to convert 1988 Act tenancies into 2016 Act tenancies could result in the terms of a landlord's tenancy agreement changing and the change to the uprating index for mobile home site agreements will limit how site owners can increase site fees. All of these measures could amount to a control of the use of a landlord's, or site-owner's, property.

329. Accordingly, in order to be justified the control of use needs to meet the three-part test of legal certainty, proper purpose, and proportionality. The measures which control the use of property will be in primary and secondary legislation which provides legal certainty for landlords, tenants and site owners. The measures also have a legitimate purpose which is to protect the social and economic interests of tenants and occupiers of mobile homes.

330. In relation to the test of proportionality, the Scottish Ministers consider that the changes are a proportionate means of protecting the social and economic interests of tenants. There are various protections in the Bill which safeguard the interests of landlords where appropriate. For example, the Scottish Ministers have a power to prescribe circumstances in which rent control will be removed or relaxed. In the provisions on pets and personalisation, the landlord is given the right to refuse a request by a tenant to have a pet or personalise their home provided such refusal is on reasonable grounds. The involvement of the Tribunal as an independent and impartial adjudicator in disputes also protects the interests of the landlord – such as where the Tribunal is considering whether it would be reasonable to delay the enforcement of an eviction order. Safeguards are provided for mobile home site-owners in existing legislation (the 1983 Act) whereby the Court can override the presumption that the pitch fee will only change in line with the change in the uprating index.

331. In many cases, the control of use will only be effected by the exercise of delegated powers in the Bill and those powers must themselves be used compatibly with the Convention rights of landlords and tenants. Indeed, many of those powers include a duty to consult relevant stakeholders so that the resulting subordinate legislation can be made so as to ensure a balance between the various rights being affected. The Scottish Ministers therefore consider that the Bill provides a regime which is structurally capable of providing an appropriate balance between the interests of landlords and tenants and the interests of mobile home site owners and mobile home occupiers.

Article 8 (right to private and family life)

332. There are some provisions in the Bill which will result in an interference in the private life of individuals, mainly via the sharing of personal information. The powers to request information from landlords about the rent being charged for their rented properties may constitute an interference with the landlord's Article 8 rights. The duty on certain persons to "ask and act" in relation to a person who is homeless or threatened with homelessness involves information being collected from an individual and passed to the appropriate local authority – this too may constitute an interference with the Article 8 rights of those who are homeless or threatened with homelessness.

333. Accordingly, in order to be justified the control of use needs to meet the three-part test of legal certainty, proper purpose, and proportionality. The measures which interfere with the private lives of individuals will be in primary and secondary legislation which provides legal certainty for landlords and those who are homeless or threatened with homelessness. The measures also have a legitimate purpose which is to protect the social and economic interests of tenants and the welfare of those who are homeless or threatened with homelessness.

334. In relation to the test of proportionality, the Scottish Ministers consider that the changes are a proportionate means of protecting these individuals. The measures to collect information about tenancies and rent charged in an area are no more than is necessary to inform the local authority and the Scottish Ministers about rent conditions in the area and whether rent control is necessary and proportionate. These measures are therefore necessary to protect the interests of landlords and tenants in the consideration of whether rent control is required and in the implementation of rent control. The measures to collect information about an individual who is homeless or threatened with homelessness are designed to protect the welfare of that individual and direct them to services which may be able to protect them from homelessness.

335. The Scottish Ministers therefore consider that any interference with the Article 8 rights of individuals via the measures in the Bill is a proportionate means of achieving a legitimate aim.

Island communities

336. The provisions in the Bill are intended to benefit all communities across Scotland. The Scottish Government is satisfied that, as a package, the Bill has no significant differential effects upon island or rural communities and a Bill-level ICIA is not required. A record of, and rationale for, that decision and a summary of the information that has informed it will be published on the Scottish Government website. The Bill enables local circumstances to be taken into account and differences in approach can be taken in order to reflect local circumstances. For example, rent control can only be imposed in response to an assessment of rent conditions in a particular area and can be tailored to fit the requirements of that area. Part 7 of the Bill specifically enables the Scottish Ministers to make different provision for different purposes of areas when making subordinate legislation under the Bill. This would enable the specific circumstances of island communities to be taken into account in the implementation of the Bill.

Local government

337. The purpose of the Bill is to improve the experience of people who live mainly in rented accommodation or face homelessness and enhance their rights. As a result, a significant number of the new provisions in this Bill will have a direct and indirect impact on local government. For example, in relation to their service delivery for: prevention of homelessness; social landlord; and the creation of a new responsibility to assess and monitor rental conditions within their local authority area.

338. The direct and indirect impact on local government will in most cases depend on the subsequent secondary legislation. Specifically, the Bill proposes new duties for local authorities in relation to rent control and the prevention of homelessness which will have resource and cost implications. COSLA and local authorities have therefore been engaged throughout the policy development process for the provisions in this Bill and the Scottish Government will continue to engage with local authority partners as the secondary legislation is developed. Indeed, the Scottish Government are obliged to consult with local authorities in the implementation of rent control under the Bill.

Sustainable development

339. At a strategic level, the Bill will provide a range of powers for Scottish Ministers to deliver the Scottish Government's commitment to improve the housing outcomes in Scotland for people who live mainly in rented accommodation or face homelessness. However, in most cases environmental impacts associated with these powers will depend on their subsequent use in secondary legislation. Any specific actions resulting from the Bill, particularly in relation to secondary legislation, will be further considered for their environmental impacts but, from initial consideration it anticipated that there will be beneficial effects in terms of global goals in relation to reduced inequalities⁵³.

⁵³ [Goals Archive - The Global Goals](#)

340. A pre-screening exemption notification has been submitted to the Consultation Authorities as per the requirements of the Environmental Assessment (Scotland) Act 2005. It is expected the Bill will likely have no direct or indirect environmental effects and it is therefore being considered for exemption. Consequently, it is not expected a full Strategic Environmental Assessment will require to be undertaken at this stage.

CROWN CONSENT

341. It is the Scottish Government's view that the Bill as introduced does require Crown consent. Crown consent is required and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that in order to comply with Rule 9.11 of the Parliament's Standing Orders, Crown consent will be required because it is considered that the provisions in the Bill affecting private residential tenancies could affect residential tenancies on His Majesty's private estates and those on land forming part of the Scottish Crown Estate.

342. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

APPENDIX 1 – GLOSSARY

Ask & Act - Is the actions needed by a public body if they believe that a person may be homeless or threatened with homelessness, i.e. they should ‘Ask’ the person if this is the case, and if it is, then they should ‘Act’ on that information.

Evictions decree/eviction order – Permission from a court or tribunal to carry out an eviction.

Illegal eviction - Illegal eviction is when someone, who doesn’t have the legal right to make the tenant leave, forces them to leave their home.

Joint tenant - A joint tenant is a person who has signed the same tenancy agreement with one or more other people.

Rent arrears – The money that is owed when a tenant has not paid their rent by the due date.

Tenure neutral – When consumers are financially indifferent between owning and renting a dwelling or between different types of tenancy.

APPENDIX 2 – LIST OF ABBREVIATIONS

BRIA - Business and Regulatory Impact Assessment

COSLA - Convention of Scottish Local Authorities

CPI - Consumer Prices Index

CPIH - Consumer Prices Index with Housing

CRWIA - Children’s Rights and Wellbeing Impact Assessment

ECHR - European Convention on Human Rights

EQIA - Equality Impact Assessment

FSD - Fairer Scotland Duty Assessment

HARSAG - Homelessness and Rough Sleeping Action Group

NDPB - Non-departmental public body

NHO – New Homes Ombudsman

ONS - Office for National Statistics

PRG - Prevention Review Group

PRS – Private Rented Sector

RPI - Retail Prices Index

SFPAP - Scottish Fuel Poverty Advisory Panel

SPSO - Scottish Public Services Ombudsman

SRS - Social Rented Sector

The 1983 Act - Mobile Homes Act 1983

The 1988 Act - Housing (Scotland) Act 1988

The 2001 Act - Housing (Scotland) Act 2001

The 2002 Act - Scottish Public Services Ombudsman Act 2002

The 2014 Act - Housing (Scotland) Act 2014

The 2016 Act - Private Housing (Tenancies) (Scotland) Act 2016

The 2019 Act - Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019

The 2022 Act – Cost of Living (Tenant Protection) Act 2022

This document relates to the Housing (Scotland) Bill (SP Bill 45) as introduced in the Scottish Parliament on 26 March 2024

HOUSING (SCOTLAND) BILL

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