

Fair Rents (Scotland) Bill

Introduction

A proposal for a Bill to protect private sector tenants by introducing measures to limit rent increases and to increase the availability of information about rent levels. The consultation runs from 15 May 2019 to 8 August 2019 (extended from 6 August). All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Representative organisation (trade union, professional association)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Living Rent is Scotland's Tenants' Union. We are a democratic organisation run by tenants for tenants. We are not affiliated to any political party. We seek to unite all tenants in Scotland, whether they rent from the private or social sector. We want homes for people, not profit; to redress the power imbalance between

Please select the category which best describes your organisation

landlords and tenants, and to ensure that everyone has access to safe, secure and affordable housing. We do this by campaigning against unfair rent increases and poor-quality housing, as well as representing and defending our members when they are having housing problems. Living Rent welcomes the opportunity to respond to this consultation. While the Private Housing (Tenancies) (Scotland) Act 2016 undoubtedly introduced necessary reforms in the private rented sector, there are still systemic issues in the sector which could be addressed by well-designed and properly enforced rent controls. Since it was deregulated in the 1980s, the private rented sector has grown exponentially, now accounting for more than a seventh of all homes in Scotland, and while there are differences between different property types and different areas of the country, average rent levels have increased above the rate of inflation since 2010. In addition, the 2016 Scottish Housing Condition Survey shows that every second privately rented home has some disrepair to critical elements. As housing issues are known to exacerbate other social and public health problems, Living Rent considers rent controls an essential part of building a better Scotland that works for everyone. However, given the urgent needs of tenants in the PRS, Living Rent urges that the current proposal be amended to incorporate a number of additional measures presented below. These follow from our own proposal for rent controls ('The Rent Controls Scotland Needs', February 2019) and the proposal for rent controls put forward by the Mayor of London as part of their effort to reform the London PRS ('Reforming Private Renting: the Mayor of London's Blueprint', July 2019).

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Living Rent, Scotland's Tenants' Union

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Aim and approach - rent cap

Q1. Which of the following best expresses your view of capping private sector rent increases annually across Scotland at one percentage point above inflation (measured according to the Consumer Price Index (CPI))?

Partially opposed

Please explain the reasons for your response.

Living Rent supports limiting private sector rents across Scotland. However, we do not believe that inflation is an appropriate benchmark. As wages rarely increase by one percentage point more than inflation and housing benefits have been frozen for four years, a rent cap at one percentage point above inflation simply does not reflect the reality of tenants' available income. Living Rent also recognises that current rent levels are already often unaffordable for tenants and that additional measures are urgently needed to make sure that rent levels across Scotland are brought down to a level affordable to the average tenant. This would ensure that rent levels are not only stabilised, but that tenants will have access to affordable and secure

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housing in the long-term. We have included at the end of this submission our policy paper outlining the model of rent controls we believe Scotland needs, and would welcome the opportunity to meet to discuss this.

The proposal as it stands would not make the sector any more affordable, as it would still allow rent to increase disproportionately in relation to the average person's source of income. According to a report published by the Housing and Social Justice Directorate, 22 March 2018, both income poverty and in-work poverty are increasing in Scotland. In 2017, 58% of working age adults in poverty are in working households. The past decade has seen a sharp rise in private rented sector housing, as well as a sharp increase in rent levels, with the number of PRS tenants living in poverty increasing by 75% in the decade up to 2017 (Living Rent, 2019). Scottish Labour has shown that the current housing crisis is caused by lack of affordable housing that pushes in increasing number of vulnerable people into the private rented sector. Lower income groups, such as young people, black and ethnic minority groups, migrants and the working class are all disproportionately represented in the PRS. This has resulted in the number of children living in poverty in the private rented sector having doubled from 2005 to 2018. In combination with stagnating wages and inadequately uprated benefits, this means that a failure to bring down to and keep rent levels at a level that is truly affordable results in a system that will continue to disadvantage socio-economically vulnerable people and remain unable to provide secure, decent housing.

This was similarly made clear by the Mayor of London in their recent proposal for rent controls in London. While recognising that the rent levels in London are extreme, Living Rent strongly believes that the private rented sector would benefit from similar measures to bring down and stabilise rent long-term, especially in urban and gentrifying areas of Scottish cities. The London proposal outlines a system in which a London Private Rent Commission would be established. Recognising that one of the biggest challenges in reforming the PRS today is lack of reliable information, the Rent Commission would maintain the register and use the information to design and test the details of how rent control would operate and be maintained, as well as establish an accurate baseline for market rents. A similar model was outlined by Living Rent in our previously mentioned report, where we also propose that rent levels be tied to property value and quality rather than arbitrary market rent levels.

Living Rent would also like to see removed the suggestion that an exemption from the rent cap can be allowed if substantial improvements are made to the property. Given the current levels of disrepair in the PRS, introducing this exemption would allow for large rent increases in areas already experiencing problems with rapidly increasing rents and gentrification. As will be discussed in our additional comments, we would instead suggest that rent levels across Scotland were tied to the quality of the property being rented out, with a baseline rent that is truly affordable to tenants in Scotland.

Rent level appeals

Q2. Which of the following best expresses your view of providing that, when tenants appeal their rent, rent officers and the First-tier Tribunal would be able to either lower or maintain the rent but not increase the rent?

Partially supportive

Please explain the reasons for your response.

We support in principle the proposal that rents could be lowered or maintained but not increased by the tribunal. However, we have hesitations about the tribunal process. For example, when fighting against the practice of charging illegal fees in Glasgow, we concluded that it is unrealistic and an unfair expectation that every affected tenant should have to go through this process and that it has, in the case of illegal fees, been a major deterrent for many who would have otherwise asked for their premiums back. In effect, this places the burden of combating the illegal activities of letting agents and landlords on their tenants, who are often already in a vulnerable position. The responsibility to make sure that the PRS is fair and does not function contrary to the tenants that relies on it, must lie with national and local authorities. This would necessarily be tied to a reform of the housing court system, ensuring that it works efficiently and smoothly to protect tenants and mediate when disagreements occur. Our members have also faced issues with the

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rulings of the Tribunal not being adhered to by landlords. As it stands, the first-tier tribunal simply does not seem able or willing to enforce its rulings.

Landlord registration scheme

Q3. Which of the following best expresses your view of expanding the landlord registration scheme so that landlords must input the rent that they charge when they register, and update the system when the rent changes?

Partially supportive

Please explain the reasons for your response.

Living Rent thinks that a comprehensive database of landlords and rent levels is essential in improving the conditions in the private rented sector, as it would give a reliable overview of how rent levels are changing across Scotland. We ask that this information be publicly available and easily accessible. However, Living Rent wants to highlight that the registration scheme only works if properly enforced and if there is sufficient incentive to comply. Despite current legislation, there are thousands of unregistered landlords operating out there and, if discovered, tend to be minimal or even non-existent. As highlighted in both the Living Rent 2019 Report and the Mayor of London Blueprint, this landlord registration scheme ought to be complemented by an independent Rent Commission which would manage the register and use the data from it to design how the rent controls would operate and make sure that the resulting rent controls remain flexible and an improvement to the system rather than a burden. We propose that it would also be responsibility of the Rent Commission to ensure that the register duties are fulfilled by landlords, in order to prevent that the responsibility of holding landlords accountable does not fall exclusively on tenants themselves.

Other options - Rent Pressure Zones

Q4. Which of the following best expresses your view of tackling the problem of rents rising significantly faster than inflation by making it easier for a local authority to apply to create a Rent Pressure Zone (RPZ)?

Fully opposed

Please explain the reasons for this response.

As per the Private Housing (Tenancies)(Scotland) Act 2016, RPZs only apply within tenancies and do not restrict rent increases when a new contract is signed, such as when a new tenant takes over the property. As outlined in Living Rent's 2019 report, this system creates three challenges: it disincentives tenants from moving, offers limited protection for people in precarious situations, and does not necessarily limit rent increases in the long term. Therefore, RPZs would not ensure long-term rent level stability in the sector and would make it more difficult for vulnerable and transient tenants to find affordable accommodation. Additionally, as has been highlighted by Edinburgh City Council in a 2018 report, the burden of proof required to implement a RPZ means that it would take several years before the restrictions are applied. As they fail to provide a sustainable solution to the underlying problems of rising rent levels, both in the short- and long-term, they therefore do not provide a cost-efficient alternative to market rent and are very likely to become a strain on the public purse. Rather, rent controls should be applied across Scotland and rent levels should be based on the quality of the property rented out and therefore tied to the property rather than the individual tenancies. Overlooked by the Rent Commission and based on data collected through the landlord registry, this would ensure a long-term and sustainable solution. This proposal is outlined in

Q4. Which of the following best expresses your view of tackling the problem of rents rising significantly faster than inflation by making it easier for a local authority to apply to create a Rent Pressure Zone (RPZ)?

Living Rent's 2018 report on rent controls in Scotland. While this will initially require a significant investment from the public purse, we strongly believe that it will long-term reduce public spending on the PRS as opposed to RPZs.

Financial implications

Q5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
Government and the public sector					X	
Businesses (including landlords)		X				
Individuals (including tenants)					X	

Please explain the reasons for your response.

Living Rent believes that the proposal as it stands will do little to reduce the costs for either tenants or the government, and would also have limited financial impact on businesses. Therefore, the answers given above relates to the financial impact of the bill given that it is amended to take into account the suggestions made in this consultation. When it comes to the government and the public sector, high rents place a significant burden on public expenditure - directly through the welfare system, and indirectly through, for example, costs to the NHS due to the health impacts of quality housing, and costs to councils caused by the disproportionate number of people made homeless by high PRS rents. It is our view that reducing rents would lead to such significant savings that any financial cost in administering rent controls would be dwarfed by the savings. Our proposals would mean landlords made less profits. We believe there is no solution to the housing crisis that does not involve the people who currently benefit enormously from it seeing a reduction in their profits. Homes should be for people not for profit. When it comes to individuals, we believe that our amendments would mean a significant reduction in costs. We do not believe the current proposals would create significant benefits for tenants, especially those on low or moderate incomes, and it would represent a missed opportunity to deliver the radical change tenants and Scotland's housing so badly need.

Q6. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

As has been stated, high rents place a significant burden on public expenditure - directly through the welfare system, and indirectly through, for example, costs to the NHS due to the health impacts of quality housing, and costs to councils caused by the disproportionate number of people made homeless by high PRS rents. It is our view that reducing rents would lead to such significant savings that any financial cost in administering rent controls would be dwarfed by the savings.

Equalities

Q7. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Positive

Please explain the reasons for your response.

If our suggested improvements are integrated in the final Bill, Living Rent expect that it will have a strong positive impact on all tenants in the private rented sector. Additionally, demographics that are already marginalised in other ways and are more likely to be lower-earners — such as BME people, migrants, and young people, particularly from a socio-economically deprived background — are disproportionately represented in the PRS. Tackling high rents is crucial to ensuring these groups are not further disadvantaged in society. The gender pay gap also means that women suffer the impacts of unaffordable rents disproportionately, and structural problems in the PRS have the added impact of making it more difficult to leave abusive relationships. The Domestic Abuse Housing Alliance cites housing as the primary barrier to women leaving abusive situations. In addition, the high levels of poverty in the PRS means that tackling rent levels in this sector is an essential component of vital part of reducing poverty levels across Scotland, and may well reduce the incidence of tenants reaching crisis situation and requiring the assistance of the Scottish Welfare Fund and DHPs, among others.

Q8. In what ways could any negative impact of the Bill on equality be minimised or avoided?

See answer to question nine.

Sustainability

Q9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Yes

Please explain the reasons for your response.

Living Rent believes that a failure to act on the current housing crisis in Scotland - including failure to implement system of rent controls ensuring that everyone can access decent, affordable housing - would have detrimental and potentially irreversible effects on tenants and their communities. As cities in Scotland are rapidly gentrifying and more wealth is placed in land and property, tenants are forced out of their flats through rapid rent increases and poor maintenance, which in the long-term will lead to the breakdown of communities and social networks. Additionally, our 2015 report detailed the current cost to the public purse of the PRS. The largest PRS subsidy comes in the form of Housing Benefit, costing more than £23 billion annually. If rent levels could be brought down, it is expected that this number would fall significantly. There are also a number of tax relief schemes, grants and subsidies (such as exemptions from capital gains tax) that funnel huge amounts of public money to private landlords every year. In addition, homelessness applications from the PRS are disproportionately high. This has both an incalculable human cost and an enormous financial cost to local authorities, that are already in financial hardship. Even a short period of homelessness can have a significant impact on a person's life outcomes and it can lead to a loss of personal confidence and morale. Furthermore, the impact of poor quality housing on the health of tenants is damning. While it is impossible to calculate an exact number, it is clear that the state of Scotland's PRS creates additional burden on Scotland's NHS. These costs are absorbed by local authorities and both the Scottish and UK Governments. Rent controls offer a policy solution with potentially enormous savings to the public purse at all levels, as well as leading to significantly better social outcomes for tenants in Scotland.

General

Q10. Do you have any other comments or suggestions on the proposal?

While Living Rent believes that the landlord registry, managed by the independent Rent Commission, should be used to ensure that an accurate baseline for rent levels across Scotland can be set, we do not believe that this baseline should by itself guide the new rent control system. Rather, we propose a point-based system according to which the quality of a property would award a certain number of points corresponding to a certain rent level. While this level of rent should still be realistic, the details of the controls would be designed and tested by the Rent Commission. Through the landlord registry they would then be able to ensure that rent levels corresponding to a certain level of quality remain consistent and affordable across the country. A public and accessible registry and a transparent point system would also mean that tenants would be able to enter into negotiations with their landlords fully knowledgeable about the market situation. This point-base system if rent controls would go a long way to improving poor quality of the Scottish PRS. This proposal is fully outlined in our 2019 report on rent controls.

Further, Living Rent proposes that new buildings should not be exempt from the regulatory framework. The bill currently proposes that "market forces should prevent a landlord from setting an initial rent unreasonably high." We firmly believe that this will continue to perpetuate current inequalities in housing. This ignores current issues of gentrification and communities that are being forced to move as a result of new-builds that are rented out at mid-market rent. This perpetuates a system in which tenants are at the mercy of landlords and letting agents, and arbitrary ideas about what constitutes market prices in certain areas. As mentioned earlier in this consultation, we would suggest that rent be tied to property quality and that these rent levels be based on and limited to what is actually affordable to the average Scottish tenants.

Additionally, agreeing with the Mayor of London proposal, Living Rent recognises that the measures proposed above, including a landlord registry and a comprehensive rent control system that ultimately aims to bring rent down to a reasonable and affordable level would take a certain amount of time. However, as the concerns of tenants are pressing and current, Living Rent proposes that an interim steps be implemented to limit rent increases, such as a temporary rent cap operating both between and within tenancies. While this would not address underlying problems, it would mitigate the impact of rising rent while a long-term solution is being implemented.

All in all, we do not think that the current proposal adequately tackles the issues faced by tenants in the rented sector. As it stands, it does not put measures in place to reduce rents that are already unaffordable and the system is left relying on an unreliable and inefficient court system that in effect discourages tenants from challenging the status quo. While previous changes in the legislation, primarily through the Private Housing (Tenancies)(Scotland) Act 2016 has laid the groundwork for protecting tenants' rights by removing no fault evictions and creating open-ended tenancies, a well-designed rent-control system that brings rent levels down, provides long-term protection for tenants and a medium through which conflicts about rent can be mediated will be the next necessary step in improving the PRS. If tying rent levels to property quality and ensuring that they are consistent across the market through the Rent Commission also mean that the poor quality of the Scottish housing stock can be addressed.