

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 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

Commercial organisation (company, business)

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).

Independent property company, which includes a significant residential lettings business.

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).

Rettie & Co

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.

While Rettie & Co. supports the need, and ambition, of ensuring affordable and fair rental properties are available in the market, the capping of rents at a maximum of CPI+1% by intervention in the PRS has a number of potential threats and unintended consequences that may, in fact, negatively impact on the underlying ambitions of the legislation. With the PRS now accounting for 15% of Scottish households, or 360k households in total, and over 25% in Edinburgh, changes that impact on availability, choice, quality, as well as investment in the sector, may see the tenants detrimentally affected. Rent caps is often a politically populist policy as it fits within a narrative of wealth inequality, appealing to the larger voter pool of tenants over landlords with apparent cash savings to this group. The reality of implementation can see rents increase, housing supply fall and groups the legislation aims to assist losing out to households who are less in need. This indirect approach to assisting households with housing affordability also has long-run consequences for housing supply and the economy. While rent caps should be a policy consideration, more direct interventions through direct LHA and benefits would likely assist target groups more effectively. Some consideration surrounding the introduction of rent caps are summarised below.

An intervention in the market that causes an artificial constraint on financial returns will likely affect levels of participation and investment. With an estimated 60% of landlords in the UK owning a single property, the implications of market intervention will largely be directed at individuals and small-scale investors. Recently, financial and regulatory changes in the rental sector have made the ownership of rental property, especially for the individual and small-scale investors, more onerous and less financially viable. In the UK, the number of BTL loans in 2018/19 was over 1/3rd lower than the same period before the introduction of ADS in 2014/15. In Scotland, with ADS set at 4%, the private investor is already subject to higher costs than the equivalent UK investors. This higher cost and lower profitability are showing signs of divestment from the sector at a time when institutional Build to Rent investment is still limited, with the identified pipeline of BTR units accounting for less than 2% of PRS stock. The introduction of caps on private rents will likely further disincentivise investment in the Scottish PRS, by both private and institutional investors, reducing supply within the market. In areas of high demand, such as the major cities, the reduction of available stock due to divestment to other sectors, or through seeking adjacent uses with better returns such as short-term rentals, may further exacerbate supply issues in the PRS at time when demand is outstripping available supply leading to price pressures. The upshot of rent caps will therefore likely be the reduction of supply within the sector creating greater demand and exacerbating issues of access to housing.

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))?

Indeed, there is much literature suggesting that while rent controls are implemented with the intention of assisting low income and minority groups, their real-world impact can be very different. There are a number of unintended consequences that arise from rent controls that have been found in extensive literature on the topic. A central consequence on the introduction of rent caps is the efficient allocation of housing. Once a household secures a rent capped property, they are immediately disincentivised from moving, as this will likely lead to an increase in their relative rent. This means that even if the housing is no longer suitable for their needs, they remain in the property leading to an inefficient allocation of housing resource. This can lead to small families over occupying properties and mature households under occupying properties (see Suen 1980, Glaeser & Luttmer 2003, Sims 2011, Bulow & Klemperer 2012). Due to the incentive to stay rather than move, households in rent control properties have been found to move less frequently, further reducing available housing within a neighbourhood. This reduced level of movement means that rent cap benefit those who stay longest (Turner 1990) at the expense of households moving to an area. This has obvious implication for the mobility of the workforce and economic growth when a skilled workforce is required – such as in Scotland's major cities. This often results in older households benefiting the most from rent caps, while younger households moving into an area are disadvantaged, increasing intergenerational disparity.

While rent controls may aim to reduce wealth disparity by addressing affordability, affluent households in the PRS also benefit through rent caps as the policy is indiscriminate. This may mean that wealthy households who can afford local housing costs choose to remain in rental properties to profit from the discount, reducing available supply and disadvantaging lower income households that may be perceived to be less desirable tenants by more selective landlord vetting processes.

Indeed, with competition among tenants increased due to lower levels of supply and landlords more able to be selective, studies have found minorities or those on lower incomes can find themselves losing out to candidates who are perceived to be more reliable or desirable tenants. This can therefore further disadvantaged lower income households and those on benefits for whom rent caps are intended to protect the most. In addition to these issues, rent caps have been found to have implications on housing stock and housing markets where they have been implemented. With the profitability of the rent property reduced, the landlord is less incentivised to maintain the property (Downs 1988, Sims 2007) leading to greater rates of stock deterioration, as studies by Paul Niebanck, Joel Brenner and Herbert Franklin have found in USA, UK and France.

While rent caps are in place, they can also impact on housing values and, on their removal, both rental and housing values can see growth outperform the wider market leading to greater gentrification and exclusion in the area that had been subject to rent caps. In addition to issues within the rent capped area, the introduction of caps within an area can see displacement of demand and investment to other locations leading to rental and price inflation in neighbouring areas, effectively displacing the issues attempted to be solved in one area into the neighbouring area.

While the above issues are far from exhaustive, much of the economic literature points to rent caps causing a number of issues and unintended consequences that undermine the intention of the intervention.

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?

Fully opposed

Please explain the reasons for your response.

It would be anticipated that the aim of the First-tier Tribunal would be the fair appraisal of market value under the legislation, without prejudice against either party, and therefore the First-tier Tribunal should be able to either lower or increase the rent as supported by the market evidence, underpinning the decision without bias to the parties involved.

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?

Fully supportive

Please explain the reasons for your response.

A major issue in the current appraisal of the rental market, and whether rental values are unaffordable or rising too rapidly, is the lack of transparent and accurate information to make this judgement. Currently, rental price growth is based on new properties coming to the market, which represent the 'sharp edge' of stock prices, but also a comparatively small proportion of total properties paying rent; we estimate it to be around 10-15% of the stock. This means that there is no valid basis for an accurate assessment of what rents are being currently being paid, and how much these rents are being increased. While under the current legislation it is possible to increase rents annually, this is not always the case, meaning that actual rental inflation is likely running at a lower level than appears from new properties. It's also worth noting that under rent caps maximum, annual rent increase will likely become a standard in the market. Without this level of information, there can be no accurate basis on which to underpin a decision to intervene in the market as the statistical information to support such an intervention is unavailable. Implementing such a system would clearly have cost implications but is a necessity if transparent intervention in the market under the legislation is to be justified. We would propose that such a system should provide an 'open data approach' to allow tenants, landlords, agents and others involved in rental sector to view and judge values and price inflation within the market.

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)?

Neutral (neither support nor oppose)

Please explain the reasons for this response.

Any intervention in the market should be supported by accurate and authoritative data to ensure that any intervention is based on evidence. Such a significant intervention into the operation of the market should be required to meet a robust evidentiary basis. Under the current legislation, there is the authority in place to implement an RPZ if such an evidentiary basis can be met to justify its implementation. We believe that while this process or mechanism could be streamlined for efficiency, the evidentiary bar must be maintained to illustrate the clear disfunction of a market before such an intervention is made.

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.

Government & Public Sector There are two key areas where the public sector will see increased costs. The first will be in the implementation, management and enforcement of the scheme. This would require new bureaucracy and enforcement as well as potentially greater burden on the tribunal system. To implement rent caps, a strong evidence base would be required and therefore investment and maintenance in data systems would also need to be funded. Secondly, if, as other examples and studies have shown, rent caps lead to a reduction in supply and dis-incentivisation of PRS investment and the burden for housing provision will fall back on the public sector, with associated additional costs for housing provision and benefit.

Businesses inc. Landlords There are obvious costs for management rental businesses and landlords in meeting new bureaucratic standards, but in addition, rent caps will likely have a cost in lost investment as well tax revenue. It is also worth noting that while rent caps may constrain income from a property, they are detached in operation from the cost of ownership and the maintenance of the property. This disconnect, alongside ADS and tax changes, have the potential to change investment in the sector, leading to disinvestment, which would see capital invested in alternative asset classes outside of housing, further weakening the country's housing stock. An additional consideration is the cost of lost institutional investment. Investment in the BTR sector, which will be required to increase supply within the Scottish market, especially with private PRS investors being squeezed from the sector, is often international in nature and therefore compares investment locations outside national borders. In the event of rent caps, the investment case for BTR in these markets, compared to others without such caps, will clearly be weakened.

Individuals inc. Tenants As noted, studies have shown that while rent controls can benefit some lower income households, these households are often not the main beneficiaries in the long-term and the inefficient allocation of housing stock, hoarding of housing space, falling supply and quality, as well as displacement and gentrification pressures, can actually increase the cost of housing, often for less affluent and younger households.

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

The introduction of rent caps is an indiscriminate mechanism for addressing issues of affordability. It would be anticipated that a more targeted approach through use of local housing allowance and benefits would allocate resources more directly to those facing housing affordability issues. This would likely be more cost-effective than a rent cap system, which has the potential to disadvantage the groups it is aimed to assist, while requiring the additional cost of set-up and management in the public and private sectors as well as long-run economic disadvantages regarding workforce mobility, inward investment and housing stock maintenance.

Ultimately, the rising cost of housing in parts of Scotland is about lack of supply in relation to demand, particularly of affordable properties. All governments over the last 40 years have failed to deal with this basic problem. Until adequately addressed, these price pressures will remain. And when price pressures are artificially suppressed, the pressures will instead impact on supply levels. The problem will simply switch from affordability to scarcity. This has been the experience of places such as Stockholm in Sweden and San Francisco in the US.

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?

Slightly negative

Please explain the reasons for your response.

As noted above, studies have found that one of the by-products of the introduction of rent caps can be the reduction of supply, increased candidate vetting, and potential opportunity for discrimination; advantaging of incumbent tenants often leading to greater intergenerational inequality and benefits for affluent households. In these circumstances, there is a higher risk of groups in the protected characteristics being disadvantaged under a rent cap system.

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

It has been noted that studies suggest rent caps can lead to behavioural changes, which negatively impact certain groups. It has been suggested that for rent controls to operate effectively the burden of provision should not be placed solely on the landlord and that the government / council authority should contribute to the financial burden. This approach may remove some of the most extreme incentivisation encouraged in their implementation that would most negatively impact equality.

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?

No

Please explain the reasons for your response.

The majority economic theory and empirical studies point to a number of economic, social and environmental impacts of rent caps that can have a negative long-term impact. In many cases, rent controls are discontinued because of these impacts and, when this happens, this then causes a number of other issues surrounding rent and house price inflation, including gentrification and inequality. Any implementation of rent caps would therefore have to be undertaken with a horizon of implementation in mind and consideration of the potential long-run effects of the legislation beyond the current parliamentary cycle.

General

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

The proposals need to consider the downsides as well as the upsides of rent caps and empirical evidence from elsewhere needs to be closely considered. There is also no evidential basis to justify their introduction - there is no quality dataset on actual rents paid in Scotland. If these were to go-ahead, piloting in a small number of hot-spot areas for a limited period of time would allow for the effects to be understood and possibly mitigated in a Scottish context,