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Thank you for your letter of 4 September on the Housing (Scotland) Bill. I have, at Annex A, responded to your questions about amendments that were made to the Bill at Stage 2.

I also take this opportunity to provide you with information about a number of Stage 3 amendments to the Housing (Scotland) Bill that I lodged on 11 September (see [Daily List](#)) and additional amendments that I lodged yesterday. These are set out in Annex B.

In most cases, the exercise of these delegated powers will be underpinned by consultation with stakeholders, which will help the Scottish Ministers to ensure that any such exercise of the powers takes account of the circumstances prevailing at the particular time. They allow for further provision to be made that takes account of this when implementing the Bill.

The first two sets of amendments in the table at Annex B seek to amend existing powers in Part 1 of the Bill. The third set of amendments seek to confer a new regulation-making power on the Scottish Ministers under Part 1 of the Bill. The fourth set of amendments seek to convert five existing duties to make regulations back into powers, but with a requirement to lay a first draft of each set of regulations as soon as reasonably practicable after each power takes effect. The final amendment seeks to confer a new regulation-making power on the Scottish Ministers to modify aspects of the Housing (Scotland) Act 1987.

I am copying this letter to the Convener of the Local Government, Housing and Planning Committee.

Yours sincerely,

MÀIRI MCALLAN

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Response to DPLRC questions about changes made to the Bill at Stage 2

No	Question	Scottish Government Response
1	<p>Section 9(1): Power to designate area as a rent control area and impose rent controls for area (and further restrictions on the power in section 10, 11 and 12)</p> <p>The Committee asks the Scottish Government: whether it plans to bring forward amendments which ensure that no redundant references remain in section 9 as passed.</p>	<p>We recognise the importance of ensuring there are no redundant references in the Bill and it is our intention to bring forward amendments which remove the references to 'student tenancies'. In addition, we also intend to bring forward an amendment which will remove the change to the definition of "rent payable", so that the definition is consistent across the legislation.</p>
2	<p>Section 14(1): Power to allow rent increases for specified properties that exceed the amount that is otherwise permitted</p> <p>The Committee asks the Scottish Government:</p> <p>a) to set out whether it has consulted further on this provision and what the findings of that consultation exercise were; and</p> <p>b) whether it intends to bring forward any amendments to limit the scope of this power at Stage 3.</p>	<p>a) A public consultation on the use of powers to use a modified rent cap in certain circumstances to allow rent increases above the cap in certain circumstances took place between April and July this year.</p> <p>We are currently undertaking analysis of the consultation responses and this will be published over the coming months. The detail of these regulations will be subject to consideration of the consultation responses and further stakeholder engagement ahead of laying regulations.</p> <p>b) It is not our intention to bring forward any amendments to limit the scope of this power at Stage 3.</p>
3	<p>Section 15(7A): Power to add or remove descriptions of persons from whom information may be sought</p> <p>The Committee asks the Scottish Government: to set out whether it considers it foreseeable that this power will be used, and to provide examples who such regulations may cover if so.</p>	<p>It is not anticipated that the regulation-making power to amend the list of persons from whom information may be obtained by local authorities and the Scottish Ministers would be exercised in the short term. Rather, this power is intended to future-proof the legislation.</p> <p>As data collection processes continue to develop and evolve, it may become necessary for the Scottish Ministers to expand the list to ensure that data can be gathered in the most efficient and cost-effective manner. For example, the list could be amended to include letting agents or other individuals acting on behalf of landlords.</p>

		<p>Given its nature, it is considered appropriate to require consultation prior to the exercise of this power. In addition, any use of the power would be subject to the affirmative procedure, thereby ensuring appropriate parliamentary scrutiny.</p>
4	<p>Section 18(1): Power to modify law in connection with the expiry of rent control area designation</p> <p>The Committee asks the Scottish Government: to set out why it was considered necessary to widen the scope of this power.</p>	<p>Section 18(1) is intended to allow temporary provision to be made in relation to the method by which a landlord can increase the rent, and appeals about such an increase, in connection with a rent control area expiring. For example, this could involve temporary modifications to the method by which landlords can increase rent during the transition out of rent control area restrictions.</p> <p>It may be necessary to make such changes in the lead up to the expiry of a rent control area. An amendment to the provision was considered necessary because the wording of this provision at introduction of "on...the expiry" is capable of being read as being exercisable only at the time of (or very proximate to) the expiry of the provision.</p> <p>To remove this potential uncertainty, our amendments clarified that the power in this Bill be framed as being exercisable "in connection with" the expiry of regulations under section 9(1). In addition, reference is now made to expiry or (earlier) revocation of the regulations too, to ensure that this can be exercised if a rent control area is revoked early, in advance of the expiry of the 5-year period.</p>
5	<p>Section 19(1B): Inserted new section 17C into the Private Housing (Tenancies) (Scotland) Act 2016 – replacing the power previously in section 13 of the Bill</p> <p>The Committee asks the Scottish Government:</p> <p>a) to set out whether it has consulted further on this provision and what the findings of that consultation exercise were; and</p>	<p>a) A public consultation on the use of powers to exempt certain types of property from rent controls (alongside the use of a modified rent cap in certain circumstances to allow rent increases above the cap, mentioned above) took place between April and July this year.</p> <p>In light of the considerable interest surrounding exemptions, we have expedited our analysis of consultation responses specific to this matter. This has now been published at: https://www.gov.scot/publications/housing-scotland-bill-consultation-interim-partial-analysis/</p>

	<p>b) whether it intends to bring forward any amendments to limit the scope of this power at Stage 3.</p>	<p>I have now set out that it is our intention, in principle, to bring forward regulations exempting mid-market rent and build-to-rent properties, where appropriate, from the relevant rent controls set out in the Bill.</p> <p>We are currently undertaking further analysis of the consultation responses and the full detail of regulations will be set out after further engagement with stakeholders.</p> <p>b) It is not our intention to bring forward any amendments to this power at Stage 3.</p>
6	<p>Section 30(2): Inserted new section 31B(1) of the Housing (Scotland) Act 2001 – duty to make provision about when a consent condition for keeping a pet is reasonable</p> <p>The Committee asks the Scottish Government: to set out whether it intends to bring forward amendments at Stage 3 to address issues previously raised by the Committee.</p>	<p>Our view remains that the provisions in the Bill provide an appropriate framework, with sufficient safeguards, for delivering increased rights for tenants to request to keep a pet and make changes to let property. While we note the continued concerns of the Committee regarding the scope of the regulation making powers, there must be a statutory consultation with landlords and tenants prior to laying draft regulations. This will help inform the content of the regulations. This is in line with the approach set out in our response to the Committee following Stage 1. The regulation making powers are also subject to the affirmative procedure ensuring further detailed Parliamentary scrutiny on the use of the powers. This will ensure these powers are exercised appropriately and that a balance of the rights of tenants and the property rights of landlords is achieved.</p> <p>As you have noted in your report, a number of amendments that were agreed at Stage 2 converted a number of the discretionary enabling powers for Scottish Ministers in Part 3 of the Bill into duties. While these amendments were agreed, the drafting of these provisions is not appropriate because they do not take account of the fact that Parliamentary approval is required for the making of affirmative regulations. In order to address this, a number of Stage 3 Government amendments have been lodged that will restore the powers but also separately require the Scottish Ministers, as soon as reasonably practicable after the powers take effect, to lay draft instruments containing the first regulations under each power, along with a requirement to make the regulations if they are approved by the</p>

		<p>Scottish Parliament. This achieves a similar outcome as the agreed amendments at Stage 2 but ensures the role of Parliament in deciding whether to approve such regulations is respected.</p>
7	<p>Section 38(3): Inserted new section 48A(4A) and (4B) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to vary the minimum and maximum pre-notice periods specified in section 48A(1)(a) and power to vary the period within which the joint-tenant must provide the other joint tenants with a copy of the notice to terminate and the landlord with a statement of compliance</p> <p>The Committee asks the Scottish Government: to set out a detailed justification for the need to amend such timescales. In so doing, it points out that the SDPM does not provide sufficient detail as to the necessity of the power, particularly given other primary legislation relating to housing sets out timescales on the face of the Act.</p>	<p>A regulation making power is needed to ensure that, should monitoring of the operation of the new measures indicate that the 2 month pre-notice period is too short in practice, then the timescale can be changed to address any negative consequences for joint tenants.</p> <p>The pre-notice period is intended to provide sufficient time for negotiations between all parties (joint tenants and the landlord). It is also intended to enable all the joint tenants time to consider their options, access advice and information and where necessary find suitable alternative accommodation. The requirement for the pre-notice to be given between 2 months and 3 months before the final notice is the result of engagement with stakeholders, however, as this will be a new administrative mechanism for ending a joint tenancy, we recognise that in practice the start and end of this pre-notice period may both need to be amended in the future to support the effective operation of these measures.</p> <p>Without a regulation making power, the ability to change the period would be restricted and dependent on a suitable primary legislative vehicle being identified. This could result in the inability to change the timescale for a number of years. A regulation making power is therefore sought to provide flexibility to amend the timescale in a timely way if necessary. Similarly, should monitoring of the system suggest that the 7 days' timescale to provide a copy of the notice to other joint tenants is problematic, it is important that changes can be made in a timely way.</p> <p>We agree with the Committee that any change in these timescales can have a significant impact on both landlords and tenants involved in the process. The affirmative procedure ensures Parliamentary scrutiny of the need and impact of exercising these powers. A change can only be</p>

		made where Parliament consider it necessary to do so based on the evidence prepared to support the regulations. In addition, engagement with relevant stakeholders would be a fundamental part of monitoring the operation to the system and the need and impact of any change.
8	<p>Section 41(6B): Inserted new section 40A(1) of the Housing (Scotland) Act 1987 – power to change the meaning of “homelessness” and “threatened with homelessness” in Part II of that Act</p> <p>The Committee asks the Scottish Government: for a detailed justification for the need to amend these fundamental definitions. The Committee highlights its view that the SDPM does not provide sufficient detail on the necessity of this power, and it is not obvious how this would provide further clarity as it simply permits key definitions, and as such those who can access homeless services, to be modified via subordinate legislation.</p>	<p>This power would enable the Scottish Ministers to modify the definitions of “homeless” and “threatened with homelessness” set out at section 24 of the Housing (Scotland) Act 1987. The power is proposed following concerns raised by key stakeholders that there are circumstances where these definitions have been interpreted narrowly so that, in some instances, those in crisis fall through the net. This power would allow clarification of these definitions to avoid them being interpreted too narrowly and thereby ensure that the legislation applies to those it was intended to.</p> <p>A regulation making power which is contingent on consultation and parliamentary scrutiny was considered more proportionate than making any changes via the Bill at pace and without adequate consultation. Modifying these definitions via regulations will allow time for stakeholder concerns to be raised while also allowing the Scottish Government to develop robust policy in light of those concerns. This is important as the definitions of “homeless” and “threatened with homelessness” are key definitions within homelessness legislation meaning any modification of section 24 should be fully considered.</p> <p>Before laying draft regulations, the Scottish Ministers must consult every relevant body and may consult any other person they consider appropriate. This regulation making power is subject to the affirmative procedure. This is thought to offer the appropriate degree of Parliamentary oversight given the potential for key definitions in homelessness legislation to be modified.</p>
9	Section 47B(2) and (6): Inserted new section 67E of the Housing (Scotland) Act 2010 - power to modify new Part 5A of the 2010	a) There has been engagement and discussions with Scottish Housing Regulator and with Scottish Federation of Housing Associations, Association of Local Authority Chief Housing

	<p>Act and make such further provision as Ministers consider appropriate in relation to the review and appeal of the Scottish Housing Regulator's decisions</p> <p>The Committee asks the Scottish Government to set out:</p> <p>a) what stakeholder engagement there has been in relation to this power to date;</p> <p>b) what consideration it has given to whether there should be a requirement to consult with the housing regulator or other affected stakeholders before making regulations under this power given the impact they may have on those involved in the process;</p> <p>c) whether it intends to bring forward amendments to this power at Stage 3</p>	<p>Officers and Glasgow West of Scotland Forum of Housing Associations, as representatives of social housing providers, in connection with the measure in relation to appeal of the Scottish Housing Regulator's decisions.</p> <p>b) We foresee that any potential change that is deemed necessary would arise from discussions with the Scottish Housing Regulator or social housing providers on the operation of the appeals mechanism. Whilst not a mandatory requirement to consult, there would be a full exploration of any such issues with those affected stakeholders before a decision to seek to make a change was put into motion.</p> <p>c) It is not our intention to bring forward any amendments to this power at Stage 3.</p>
10	<p>Section 51F(1) and (5): Duty to make regulations to define what constitutes a housing emergency and evidence of exit from a housing emergency, and a power to set out the actions that may be listed in the Scottish Ministers strategy to end a housing emergency (where one is declared)</p> <p>The Committee asks the Scottish Government to set out:</p> <p>a) why the detail of what constitutes a housing emergency and what type of provision may be made in respect of actions to be taken is not provided on the face of the Bill which would provide clarity to the public;</p>	<p>It is our intention to support amendments at Stage 3 with a view to replacing section 51F of the Bill with a power to make provision by regulations for, or in connection with, the declaration of a national housing emergency by the Scottish Ministers.</p> <p>We envisage that this would allow for provision about the circumstances in which a national housing emergency may or must be declared and the circumstances in which it ceases to apply, the actions that may or must be taken by the Scottish Ministers following such a declaration, and the conferral of information-gathering powers to assist the Scottish Ministers in its actions. We would also support any such new power being subject to the affirmative procedure, so that a draft of the regulations must be approved by the Scottish Parliament before they can be made.</p>

	<p>b) what type of provision may be made by these regulations;</p> <p>c) what consultation has taken place with stakeholders and the public to date on what the provisions may contain;</p> <p>d) what consideration it has given to whether there should be a requirement to consult with the public or other affected stakeholders before making regulations under this power; and</p> <p>e) whether it intends to bring forward any amendments to this power at Stage 3.</p>	<p>We support in principle replacing section 51F with a more flexible regulation-making power, rather than putting more detailed provision on the face of the Bill, because it will allow more time for meaningful consultation with stakeholders about how best to cater for a national housing emergency and offer the flexibility needed to make appropriate and proportionate provision in connection with such declarations. We would wish to consult with such stakeholders before proposing any regulations.</p>
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Government amendments that seek new, or significant changes to, delegated powers

Set of amendments	Proposed change	Reason for seeking this change
60 to 64	<p>Rent control areas - removal of duty to designate etc.</p> <p>These amendments seen to adjust section 9 of the Bill to reinstate the discretion of the Scottish Ministers to designate an area as a rent control only in cases where this is considered by them to be necessary and proportionate.</p>	<p>Section 9 of the Bill was amended at Stage 2 to remove the Scottish Ministers' discretion to designate a rent control area in cases where a local authority recommended that an area should be designed as a rent control area. This would require the Scottish Ministers to lay regulations seeking to designate such an area even if the available evidence demonstrates that to do so would be disproportionate. The amendments seek to reverse these Stage 2 changes and thereby reinstate the Scottish Ministers' discretion to designate an area as a rent control area only if they consider that this is necessary and proportionate to protect the social and economic interests of tenants, and that it is a necessary and proportionate to control of a landlord's use of their property. This will ensure that any additional rent controls are only imposed where it is proportionate to do so.</p>
65 to 70, 122	<p>Verification of exempt properties</p> <p>These amendments modify an existing regulation-making power inserted into another Act by section 19 of the Bill so that the inserted power may also provide that a property is an exempt property only if this is confirmed by a separate verification process. Any such exempt property would not be subject to additional rent controls applying in of a rent control area.</p>	<p>This amendment would create a power for the Scottish Ministers to make provision in regulations for a process for determining whether a property is exempt. A property will only qualify to be an exempt property if it meets the description of an exempt property as set out in the regulations and it has been verified as exempt via the process for determining whether a property is exempt. As part of our engagement with stakeholders after Stage 2, it became clear that a process to verify that a property meets the exemption criteria is essential to ensure that an exemption can be relied on with certainty. Taking this power will provide for such a verification process but will also allow time to consult on the detail of how this will operate and who will be responsible for the process. The power being modified is already subject to the affirmative procedure.</p>
74, 121	<p>Rent control - penalties for landlords</p>	<p>There is existing provision in the Bill to ensure that rent increases can be challenged via Rent</p>

	<p>These amendment confer a regulation-making power on the Scottish Ministers to make provision for or in connection with enabling the First-tier Tribunal to require landlords to pay financial penalties or compensation (to tenant) if landlord fails to comply with rent controls within a rent control area. The power is subject to the affirmatives procedure, and requires prior consultation.</p>	<p>Service Scotland or the First Tier Tribunal, helping to ensure that increases do not exceed what is permitted. However, this is reliant on the tenant taking action and it is considered that a stronger deterrent may be needed to discourage landlords from seeking to increase rent above permitted amounts – knowing that there they risk a potential penalty if doing so. A power is therefore being sought to provide for this. This responds to concerns raised at Stage 2. Taking a regulation-making power allows time for further development to determine the optimal approach. Any such provision can then be taken forward in a timely manner without further primary legislation. A draft of such regulations must be approved by the Parliament before they can be made, and Minister would be required to consult beforehand with persons representing the interest of landlords and tenants. If the power were to be used to make such provision, it can also provide for a reasonable excuse defence and a right of appeal for landlords.</p>
<p>88 to 93, 95 to 100, 102 to 104</p>	<p>Keeping pets etc – turning duties to make regulations into powers</p> <p>These amendments seek to revert 5 duties to make regulations back into powers, but they would also separately require Ministers to lay a draft of the first regulations under each power as soon as reasonably practicable after each takes effect.</p>	<p>The duties (as amended at Stage 2) are found in provisions inserted into other Acts by sections 29 and 30 of the Bill. The duties are in inserted sections 64E(1), 64F(1), 64L(1) and 64M(1) and section 30B(1). The duties were originally regulation-making powers when the Bill was introduced, but they were turned into duties to make regulations at Stage 2. The breadth of the resulting duty to make provision by regulations and the fact that regulations must be made even if the Parliament does not approve a draft of the regulations make these changes problematic. The amendments are intended to ensure that decisions of the Parliament on whether or not to approve draft regulations are respected, whilst also seeking to ensure that the intention behind the Stage 2 changes is achieved by requiring Ministers to lay a draft of the first regulations under each power as soon as reasonably practicable after each power takes effect.</p>

326	<p>Power to modify provision about a person becoming homeless intentionally</p> <p>These amendments confer a regulation-making power on the Scottish Ministers to modify provisions of the Housing (Scotland) Act 1987 relating to whether a person became homeless intentionally. The power would be subject to the affirmative procedure and prior consultation.</p>	<p>The power is being sought in response to changes proposed and debated during Stage 2 of the Bill which considered whether any changes should be made to provisions in Part 2 of the Housing (Scotland) Act 1987 relating to persons becoming homeless intentionally. The Scottish Government has committed to carry out a consultation in relation to this, and the power being sought is intended to enable the relevant provisions of the 1987 Act to be modified in a timely manner, without the need for primary legislation, if the government considers that, after consulting relevant stakeholders, changes ought to be made.</p>
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