

This document relates to the Fair Rents (Scotland) Bill (SP Bill 76) as introduced in the Scottish Parliament on 1 June 2020.

Fair Rents (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Fair Rents (Scotland) Bill, introduced in the Scottish Parliament on 1 June 2020. They have been prepared by Govan Law Centre on behalf of Pauline McNeill MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and Pauline McNeill MSP, the member who introduced the Bill (SP Bill 76–LC);
- a Financial Memorandum (SP Bill 76–FM);
- a Policy Memorandum (SP Bill 76–PM).

3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

The Bill

4. The aim of the Bill is to protect private sector tenants by introducing measures to limit rent increases, give tenants a new right to apply for a fair rent to be determined, and increase the availability of public information about private rent levels in Scotland.

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5. The Bill will:

- introduce a general cap in Scotland on rent increases for private residential tenancies ("PRTs") at no more than the annual consumer prices index ("CPI") plus 1%;
- provide tenants under PRTs with the right to apply for a fair rent to be determined no more than once in any 12-month period;
- require private landlords to disclose the rents they charge for each property when they register or renew their registration on the Scottish Landlord Register;
- require the Scottish Ministers within 3 years from the commencement of the proposed legislation to publish a statement on the impact of the Bill.

6. The Bill is in three parts. Part 1 establishes "*the fair rent CPI cap*" which would limit annual rent increases for PRTs by no more than the annual consumer prices index plus 1%. This Part of the Bill also creates a new statutory right for tenants under PRTs to seek a fair rent which may be lower than their existing rent where the rent officer or First-tier Tribunal for Scotland (Housing and Property Chamber) (the "FTT") considers it reasonable to do so.

7. Part 2 establishes a new requirement for private landlords to disclose within their application to the Scottish Landlord Register at the point of registration, or renewal of registration, the monthly rent charged for each property, together with details of the number of occupiers, bedrooms and living apartments for each property. This Part of the Bill also creates a requirement for the Scottish Ministers to prepare and publish a statement on the operation of the Bill and lay this statement before the Scottish Parliament within 3 years of the Bill's commencement date.

8. Part 3 of the Bill sets out a short interpretation section, together with the commencement and short title provisions. The Bill, as drafted, would have to come into force no later than 31 May 2021 or such earlier date as the Scottish Ministers may appoint by way of regulations.

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Commentary on sections

Part 1 - Right to a fair rent for private sector tenants

Section 1

9. Section 1 establishes the fair rent CPI cap which would limit annual rent increases for PRTs by no more than the annual consumer prices index plus 1%. It does so by inserting new subsections (7) to (10) into section 22 of the Private Housing (Tenancies) (Scotland) Act 2016 (the "2016 Act"). At present, a landlord can increase rent payable under a private residential tenancy by serving the tenant with a rent increase notice in accordance with section 22 of the 2016 Act. Section 19 of the 2016 Act provides that rent under PRTs cannot be increased more than once in a 12-month period. New subsection 22(7) would restrict any rent increase to a sum not greater than the CPI for the 12 months preceding the date of the rent increase notice plus 1 percent.

10. New subsection (8) of section 22 of the 2016 Act (inserted by section 1(2) of the Bill) would render any rent increase notice above the fair rent CPI cap as having no effect in law and not being binding on the tenant. New subsection (9) defines CPI as the index published by the Statistics Board, which is the body corporate established by section 1 of the Statistics and Registration Service Act 2007. The Statistics Board is defined in section 5 of the Bill, and the form of words for CPI in the Bill is equivalent to that used for indexation in income tax legislation.¹

11. New subsection (10) of section 22 of the 2016 Act would empower the Scottish Ministers to vary the additional percentage to be applied to CPI in the fair rent CPI cap either upwards or downwards (with a negative percentage), or modify the application of the cap, or make different provision for its application to different circumstances. Such changes to the fair rent CPI cap would require to be made by regulations subject to affirmative procedure in terms of the change to section 77(3) of the 2016 Act made by section 1(3) of the Bill.

¹ See, for example, section 21 of the Income Tax 2007.

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Section 2

12. Section 2 establishes a new statutory right for tenants with PRTs to apply for a fair rent to be determined. It does this by inserting new sections 22A and 22B into the 2016 Act and, in section 2(3)-(6) of the Bill, by making consequential amendments to the 2016 Act to incorporate references to this new statutory right. This includes creating a right of appeal by either a tenant or landlord to the FTT where a rent officer makes an order following an application under section 22A.

13. New section 22A(1) entitles a tenant under a PRT to apply to the rent officer for a fair rent. Subsection (2) of section 22A provides that the rent officer must determine what a fair rent is by applying the requirements of new section 22B. Section 22A(3) provides that the effective date for an order under section 22A is the first date rent is normally due to be paid at least 14 days after the date of the rent officer's order. Section 22A(5) requires an application to the rent officer under section 22A to be in the prescribed form made by regulations by the Scottish Ministers. An application can be made no more than once within any 12-month period. Any consequential changes to FTT procedure can be made by the Scottish Civil Justice Council and the Court of Session in accordance with the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.²

14. New section 22B sets out the test for determining a fair rent for the purpose of an order under section 22A, or an appeal to the FTT under section 28 of the 2016 Act (where section 29 of the 2016 Act provides for the FTT's power to set rent). New section 22B(1) of the Bill requires the FTT to determine an appeal against a fair rent order under section 22A(2) in accordance with the principles set out in section 22B.

15. New section 22B(1) and (2) apply a similar hypothetical open market rent formula to section 32(1) and (2) of the 2016 Act, but subject to a number of important and significant differences. Section 22B(1) provides a mandatory direction to the order maker (the rent officer or FTT)

² See section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 Act.

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to give the matters in subsection (3) paramount consideration when determining a fair rent.

16. Subsection (3) of new section 22B requires the order maker to lower rent payable where it appears reasonable to do so having regard to a number of factors pertaining to the quality and standard of accommodation let, namely:

- the general poor condition of the property
- any failure to meet the repairing standard³
- the poor energy efficiency of the property, its appliances for space heating and hot water
- the inadequate standard of internal decor and furniture provided, and
- the overall amenity of the property.

Subsection (3) of section 22B requires the order maker to give these matters paramount consideration to such extent as they may apply.

17. Subsection (5) of new section 22B prohibits an order maker from increasing a tenant's rent on an application made under section 22A or any appeal thereon under section 28(1) of the 2016 Act. Subsection (6) of section 22B provides that a fair rent order made in accordance with section 22B under section 22A or section 29 will remain in force for 12 months from the effective date⁴. Any landlord rent increase notice issued during the 12 month period in section 22B(6) will be of no effect.

Part 2 - Availability of information about rents

Section 3

18. Section 3(1) of the Bill amends the Antisocial Behaviour etc., (Scotland) Act 2004 (the "2004 Act") to require landlords of private residential property to disclose certain additional information when they

³ Section 5 of the Bill defines "repairing standard" by reference to section 13 of the Housing (Scotland) Act 2016.

⁴ The effective date is defined in new section 22A(3), as set out in section 2(1) of the Bill.

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register or renew their registration with a local authority. That additional information in relation to each property let is:

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

19. Section 3(2) of the Bill inserts a consequential provision into section 88A of the 2004 Act to ensure that members of the public can access the additional information required to be disclosed by section 3(1).

Section 4

20. Section 4 of the Bill requires the Scottish Ministers to prepare, publish and lay before the Scottish Parliament a statement setting out the impact of the fair rent CPI cap on the affordability of rents for tenants, and the operation of section 2 of the Bill. This must take place within 3 years from the date of Royal Assent, and the statement must include:

- the number of applications made under section 22A of the 2016 Act,
- a summary of the outcomes of applications made under section 22A of the 2016 Act, and
- an assessment on the affordability of rents in relation to different income groups in relation to the fair rent CPI cap.

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