

Housing (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Housing (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 45–EN);
 - a Financial Memorandum (SP Bill 45–FM);
 - a Policy Memorandum (SP Bill 45–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 45—LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

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 our 'New Deal for Tenants' and some aspects of 'Housing to 2040', while contributing to our ambition to end homelessness in Scotland.

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

6. The Bill has 7 Parts which are summarised in the Policy Memorandum which accompanies the Bill. Further information about the background and the policy intention behind the Bill is set out in the Policy Memorandum.

Rationale for subordinate legislation

7. The Bill contains delegated powers which are explained in more detail below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.

8. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the importance of each matter has been considered against:

- The need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- The need to ensure proper use of parliamentary time;
- The possible frequency of amendment; and
- The need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

9. The delegated powers provisions are listed below, with a short explanation of what each power allows and why subordinate legislation, including also guidance and direction making powers, are considered appropriate. For the decision on negative or affirmative procedure, the degree of Parliamentary scrutiny that is thought to be required for the instrument has been carefully considered, balancing the need for the appropriate level of scrutiny with the need to avoid using up Parliamentary time unnecessarily. The balance reflects the views on the importance of the matters being delegated by the Parliament.

Delegated Powers

Section 1(3): Power to change date for submission of first report on local authority assessment of rent conditions in local authority area

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

10. Section 1 sets out the mandatory duty on local authorities to carry out an assessment of rent conditions in their local authority area and to prepare and submit a report in relation to that assessment to Scottish Ministers. Section 1(2)(a) sets out the

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date (30 November 2026) by which the local authority must submit their first report to Scottish Ministers. Section 1(3) provides power for Scottish Ministers to make regulations to amend the date by which local authorities are required to submit their first report on their assessment of rent conditions.

Reason for taking power

11. The purpose of this power is to build in flexibility to allow for an adjustment to the date on which local authorities will be required to submit their first report should this be required.

Choice of procedure

12. Regulations made under section 1(3) will be subject to negative procedure. The choice of negative procedure and attendant level of scrutiny is considered appropriate given the nature of the power is to allow for the flexibility to make an administrative change to the date on which the first report must be submitted. This choice of procedure reflects the limited scope of the power.

Section 1(4): Power to change time periods or dates for submission of subsequent reports on local authority assessment of rent conditions in local authority area

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

13. Section 1 sets out the mandatory duty on local authorities to carry out an assessment of rent conditions in their local authority area and to prepare and submit a report in relation to that assessment to Scottish Ministers. Section 1(2)(a) sets out the date (30 November 2026) by which a local authority must submit their first report to Scottish Ministers. Section 1(2)(b) sets out the requirement on local authorities to submit subsequent reports to Scottish Ministers no later than the expiry of five years from the deadline for submission of the previous report. Section 1(4) provides a power for Scottish Ministers to make regulations to modify section 1(2)(b) to substitute another time-period or to specify a date (or dates) by which one or more subsequent reports must be submitted.

Reason for taking power

14. The purpose of this power is to build in flexibility to allow for an adjustment to the time periods or dates on which local authorities will be required to submit one of more subsequent reports should this be required.

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Choice of procedure

15. Regulations made under section 1(4) will be subject to negative procedure. The choice of negative procedure and attendant level of scrutiny is considered appropriate given the nature of the power is to allow for the flexibility to make an administrative change to the date on which the first report must be submitted. This choice of procedure reflects the limited scope of the power.

Section 3(5): Power to direct the carrying out of interim assessment of rent conditions

Power conferred on: Scottish Ministers

Power exercisable by: Direction

Parliamentary procedure: No procedure

Provision

16. Section 3 sets out the circumstances in which an interim assessment of rent conditions can or must be carried out by a local authority and requires a report on that assessment to be submitted to the Scottish Ministers. Section 3(5) provides power for the Scottish Ministers to direct a local authority to carry out an interim assessment of the level of rents, or the rate of increase in rents (or both) in the local authority area and submit a report on that assessment where the Scottish Ministers consider that there has been a significant change to the level of rents, or the rate of increase in rents in the area since the submission by the local authority of its most recent report.

17. Under this process, the Scottish Ministers may specify in their direction a time limit by which a report on an interim assessment must be submitted. The Scottish Ministers must give a direction in writing and the direction must be published.

Reason for taking power

18. To provide a system that supports ongoing, systematic assessment of conditions in relation to rent in the longer term, local authorities are required to carry out an assessment and submit a fresh report and recommendation on a five yearly basis. To ensure that the system is adaptable to changes impacting on rent conditions during the 5-year reporting cycle, local authorities will have the ability to voluntarily carry out an interim assessment and make an interim report to the Scottish Ministers. The purpose of the power is to enable the Scottish Ministers to direct local authorities to conduct a mandatory interim assessment and submit a report where the Scottish Ministers consider circumstances in that local authority's area (or nationwide) have significantly changed.

Choice of procedure

19. The Scottish Ministers' direction is an administrative decision which is not made by statutory instrument. Accordingly, no Parliamentary procedure is considered

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appropriate. The use of directions means that the Scottish Ministers can act quickly and specifically in response to a significant change in circumstances that requires a mandatory interim assessment of rent conditions to be carried out by a local authority. This ensures a targeted response to a particular set of circumstances.

Section 5(2): Power to direct the carrying out of further assessment of rent conditions

Power conferred on: Scottish Ministers

Power exercisable by: Direction

Parliamentary procedure: No procedure

Provision

20. Section 5(2) provides a power for the Scottish Ministers to direct a local authority to carry out a further assessment of rent conditions and submit a further report on that assessment where the Scottish Ministers consider that (i) the assessment of conditions to which the report relates was inadequate or (ii) the local authority did not have regard to the relevant guidance on the carrying out of the assessment or the preparation of the report. Under this process, a direction must be in writing and the Scottish Ministers must specify in their direction the timing and manner of the local authority's further assessment and report.

Reason for taking power

21. Decisions that will be taken by the Scottish Ministers about whether to designate an area as a rent control area will be informed (in part) by the reports submitted by local authorities on their assessment of rent conditions in their local authority area. If the assessment that has been conducted by the local authority is inadequate, or the local authority has failed to follow the relevant guidance in relation to the assessment or report, the value of the assessment will be lessened and this will have a negative impact on the information available to the Scottish Ministers on which to base their decisions. The purpose of the power is to enable the Scottish Ministers to go back to local authorities to require them to carry out a further assessment and submit a fresh report to ensure that these are as comprehensive as possible and follow the requisite guidance.

Choice of procedure

22. The Scottish Ministers' direction is an administrative decision which is not made by statutory instrument. Accordingly, no parliamentary procedure is considered appropriate. The use of directions means that the Scottish Ministers can act quickly and specifically in response to a set of circumstances that requires a mandatory further assessment of rent conditions to be carried out by a local authority. This ensures a targeted response to a particular set of circumstances.

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Section 6(1): Power to issue guidance about carrying out of further assessments of rent conditions

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: No procedure

Provision

23. Section 6(1) provides a power for the Scottish Ministers to issue guidance for local authorities about the carrying out of assessments of rent conditions. Section 6(2) sets out some illustrative examples of the kind of things that may be included in the guidance.

Reason for taking power

24. The outcome of the assessments carried out by local authorities will provide the information that supports the Scottish Ministers' consideration of whether and in which locations rent control areas should be designated. The purpose of providing guidance will be to support local authorities to carry out the assessment in a consistent and robust manner, ensuring that there is a uniform approach to how the assessments are carried out. Local authorities must have regard to such guidance.

Choice of procedure

25. Guidance issued by the Scottish Ministers is not subject to any parliamentary procedure. The Scottish Ministers are required to consult with local authorities and representatives of landlords and tenants before issuing guidance. Any guidance issued under these provisions must be published.

Section 7(1): Power to issue guidance about reports

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: No procedure

Provision

26. Section 7(1) provides a power for the Scottish Ministers to issue guidance for local authorities about the reports to be prepared following assessments of rent conditions. Section 7(2) sets out some illustrative examples of the kind of things that may be included in the guidance.

Reason for taking power

27. The reports prepared by local authorities and the recommendations made in those reports will support Scottish Ministers' consideration of whether and in which

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locations rent control areas should be designated. The purpose of providing guidance will be to support local authorities to prepare reports in a consistent and robust manner, ensuring that there is a uniform approach to how the reports are prepared. Local authorities must have regard to such guidance.

Choice of procedure

28. Guidance issued by the Scottish Ministers is not subject to any parliamentary procedure. Scottish Ministers are required to consult with local authorities and representatives of landlords and tenants before issuing guidance. Any guidance issued under these provisions must be published.

Section 9(1): Power to designate area as a rent control area and impose rent controls for area

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

29. Section 9(1) gives the Scottish Ministers power to make regulations to designate all or part of a local authority area as a rent control area in light of a report from a local authority issued following an assessment of rent conditions (whether a periodic assessment, interim assessment or further assessment). Section 9(3) requires that regulations made under section 9(1) also specify that the rent payable under a private residential tenancy of a property in the area (that is not an exempt property) may not be increased by more than a maximum amount as specified in the regulations. The maximum amount may be specified in the form a percentage, range, with reference to other factors or criteria (such as a formula) etc.

30. Under Section 9(2), the Scottish Ministers can only designate an area using the power in section 9(1) if they are satisfied that restricting the rate of increase in rent payable under private residential tenancies in the area is both necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area, and is a necessary and proportionate control of landlords' use of their property in the area.

31. Section 9(4) states that regulations will remain in force for a maximum of 5 years from the date on which they came into force (unless they are revoked before the expiry of that period).

Reason for taking power

32. Local authorities will be under a duty to make a recommendation to the Scottish Ministers about whether, in their opinion, based on their assessment of local rent conditions, the Scottish Ministers should exercise their power to impose rent control in

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all or part of that local authority area. However, local authorities are not being asked to be the ultimate decision maker about whether rent controls should be imposed.

33. The purpose of the power is for the Scottish Ministers to be the ultimate decision maker and to have discretion in making decisions about whether rent controls should be introduced. Delegated powers are appropriate to deal with variations in rent conditions across different localities within a local authority area and recognises that the imposition of rent control over a whole local authority area may not be necessary or proportionate. The provisions provide scope for the Scottish Ministers to have broad powers over the extent of the areas they can designate as a rent control area.

34. The content of any regulations laid using this power will by necessity also depend on the nature of the issue with rent conditions in a local authority area that has been identified. The power, therefore, is broad in terms of the form and level of the cap on rent increases that may apply so as to allow for flexibility in the potential response to addressing the identified issue with rents. It does however provide for a built in restriction whereby the Scottish Ministers can only exercise their power to designate an area as a rent control area where they are satisfied that restricting the rate of increase in rent payable under private residential tenancies in the area is both necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area, and is a necessary and proportionate control of landlords' use of their property.

35. Taking a power to impose rent control via regulations ensures the necessary flexibility to respond quickly where changes in the conditions relating to rent in an area are identified requiring a variation or revocation of regulations made under section 9(1).

Choice of procedure

36. It is considered that the affirmative procedure is appropriate. The imposition of rent control in an area would be a significant change which could have a material impact on landlords. Given the wide-ranging nature of the power to both (i) designate areas as rent control areas and (ii) specify the form and level of the rent cap that will apply, it is appropriate that an increased level of scrutiny and opportunity for debate is afforded to the Scottish Parliament.

37. Before laying regulations designating an area as a rent control area, the Scottish Ministers must carry out a consultation exercise. This will provide an additional level of scrutiny for the exercise of these powers. The Scottish Ministers are required to set out details of that consultation and the reasons why they consider that regulations should be laid (including reasons for specifying an area as a rent control area and for the form and level of the rent cap) in a report to be laid along with the regulations.

Section 13(1): Power to define what is an “exempt property”

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

38. Section 13(1) gives the Scottish Ministers the power to make regulations to define, for the purposes of section 9(3), what is an “exempt property”. The Scottish Ministers have a power in section 9(1) to designate an area as a rent control area and a duty in section 9(3) to specify the level of the restrictions in rent increases when making regulations under section 9(1). The level of restrictions specified under section 9(3) being what will be known as the “rent cap”. The rent cap will apply to any private residential tenancy of a property in the area, unless the property is an “exempt property”.

Reason for taking power

39. Under section 9(2), the Scottish Ministers can only designate an area as a rent control area if they are satisfied that restricting the rate of increase in rent payable under private residential tenancies in the area is (a) necessary and proportionate for the purposes of protecting the social and economic interests of tenants in the area, and (b) a necessary and proportionate control of landlords’ use of their property in the area. Exempt properties are not subject to the rent cap which otherwise applies throughout the rent control area.

40. The purpose of the power in section 13(1) is to enable the Scottish Ministers to set out, where they consider that the impact of rent control on certain landlords may be disproportionate, certain categories of property which will be exempt from rent control. As the regime enables the rent cap to reflect the circumstances prevailing in an area at the time, the power to define “exempt properties” via secondary legislation means that this can be tailored to the form and level of the rent cap that applies. This will help to ensure that, where necessary to deliver a proportionate system of rent control, the individual circumstances of landlords are taken into account before an area is designated as a rent control area. This approach of creating landlord safeguards will support the delivery of a rent control regime that is proportionate in its application.

41. The power to create categories of properties that are exempt from rent control is framed broadly to enable properties to be defined by reference to matters that Ministers consider appropriate, including circumstances relating to the landlord, the tenant or the property type. This ensures that there is flexibility in terms of the safeguards that can be deployed.

42. In making use of the regulation making powers, the Scottish Ministers are required to consult private tenants, landlords and other relevant stakeholders. This will provide an additional level of scrutiny on the use of these powers.

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Choice of procedure

43. Regulations under this power will exempt landlords of certain categories of property in rent control areas from the scope of rent control, which could have a significant impact on landlords and tenants. It is considered that the affirmative procedure is appropriate in order to ensure appropriate Parliamentary scrutiny and oversight in respect of the categories of property in rent control areas that may be exempted from the restrictions resulting from the imposition of rent controls.

Section 14(1): Power to allow rent increases for specified properties that exceed the amount that is otherwise permitted

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

44. Section 14(1) gives the Scottish Ministers power to make regulations to provide that a landlord of certain specified properties in a rent control area may increase the rent payable under the tenancy by more than would otherwise be permitted. The power can make provision for such an increase to require the approval of a specified person or to be increased without approval.

Reason for taking power

45. Under section 9(2), the Scottish Ministers can only designate an area as a rent control area if they are satisfied that restricting the rate of increase in rent payable under private residential tenancies in the area is (a) necessary and proportionate for the purposes of protecting the social and economic interests of tenants in the area, and (b) is a necessary and proportionate control of landlords' use of their property in the area.

46. The purpose of the power in section 14(1) is to enable the Scottish Ministers, where they consider that the impact of rent control on certain landlords may be disproportionate, to create certain categories of "specified property" for which landlords would be able increase rent above the level of the rent cap. As the regime enables the rent control that is imposed to reflect the circumstances prevailing in an area at the time, the power to define "specified properties" via secondary legislation means that this can be tailored to the form and level of the rent cap that applies. This will help to ensure that, where necessary to deliver a proportionate system of rent control, the individual circumstances of landlords are taken into account before an area is designated as a rent control area. This approach of creating landlord safeguards will support the delivery of a rent control regime that is proportionate in its application.

47. The power to create categories of specified properties that are subject to modified rent controls is framed broadly to enable properties to be defined by reference to matters that the Scottish Ministers consider appropriate, including circumstances

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relating to the landlord, the tenant or the property type. This ensures that there is flexibility in terms of the safeguards that can be deployed as appropriate.

48. In making use of the regulation making powers, the Scottish Ministers are required to consult people who appear to them to represent private tenants and landlords. This will provide an additional level of scrutiny on the use of these powers.

Choice of procedure

49. Regulations under this power will enable landlords of certain categories of property to increase rent above the level of the rent cap that applies in their area, which could have a significant impact on landlords and tenants. It is considered that the affirmative procedure is appropriate in order to ensure appropriate Parliamentary scrutiny and oversight in respect of defining the categories of property in rent control areas that may be subject to a less stringent form of rent control.

Section 15(7): Power to change the information that may be requested by a local authority

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

50. Section 15 creates a right for a local authority to request certain property and tenancy information from both landlords and tenants for the purpose of assisting the local authority and the Scottish Ministers in carrying out their functions under Chapter 1 of the Bill. Section 15(2) provides a list of the information that local authorities can request. Section 15(7) creates a power for the Scottish Ministers to add to or remove information that may be requested.

Reason for taking power

51. The power for local authorities to request information is integral to carrying out the assessment of rent conditions in the area. The power in section 15(7) provides flexibility for the Scottish Ministers to amend the list of information that can be requested to ensure that it remains aligned with supporting the assessment process and that only information that is required in that context is included.

Choice of procedure

52. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation. It also affords the appropriate level of parliamentary scrutiny of changes that could lead to the requirement of additional information from landlords by local authorities.

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Section 18(1): Power to modify law in connection with the expiry of rent control area designation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

53. Subsection 18(1) provides the Scottish Ministers with a regulation-making power which can be used on or in anticipation of the expiry of regulations designating a rent control area. Regulations may make provision in connection with the method by which a landlord may increase rent and any decision, review or appeal in connection with such increases. Section 18(2) provides that, before laying draft regulations, the Scottish Ministers must consult representatives of landlords and tenants. Section 18(3) provides that any regulations under section 18(1) will cease to have effect after 12 months unless they are revoked.

Reason for taking power

54. This power allows for the Scottish Ministers to make time-limited changes to support an orderly transition away from a period of rent control, to help ensure that the removal of a rent cap does not result in excessive increases for tenants in single step once a previously applied cap is removed.

Choice of procedure

55. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation. As the power can be used to make changes to the method by which a landlord may increase rent, affirmative procedure ensures an appropriate level of scrutiny and opportunity for debate is afforded to the Scottish Parliament.

Section 19(2): Inserted new section 43B(4) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to modify the meaning of expressions included in that new section

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

56. New section 43B of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”) contain key definitions, used in new Part 4A, that are relevant to the provisions restricting the initial setting of rent of private residential tenancies of properties in a rent

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control area and increases in rent of those properties. New section 43B(4) of new Part 4A provides a power for the Scottish Ministers to make regulations to adjust the meaning of expressions included in the new section.

Reason for taking power

57. More stringent restrictions on rent increases at the start of a tenancy apply to properties that fall within the definition of “previously let”. The purpose of the power is to provide flexibility to respond to changing circumstances enabling the factors that determine whether a property is defined as “previously let” to change over time if that is needed. It also provides flexibility to adjust the related meaning of “immediately preceding tenancy” on the same basis.

Choice of procedure

58. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation. It also affords the appropriate level of parliamentary scrutiny of changes that could impact on the inclusion or exclusion of certain properties from the more stringent rent control measures that apply to properties that are “previously let”.

Section 19(2): Inserted new section 43G(1)(b)(i) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards property that was not previously let)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

59. New section 43G of the 2016 Act sets out provisions for the frequency with which rent may be increased in a rent control area. If a let property does not fall within the definition of “previously let”, the rent may not be increased during the first 12 months of the tenancy. Section 43G(1)(b)(i) creates a power for the Scottish Ministers to specify in regulations circumstances in which the rent can be increased in the first 12 months of the tenancy.

Reason for taking power

60. The purpose of the power is to provide flexibility to enable Ministers to respond, where appropriate, to set out limited circumstances in which the rent for a property that was not previously let could be increased by the landlord in the first 12 months of the tenancy. This helps support a rent control regime that is proportionate and responsive to wider circumstances.

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Choice of procedure

61. Regulations made under this power are subject to affirmative procedure. Regulations under this power will enable a landlord to increase the rent within 12 months of the tenancy commencing which could have a significant impact on tenants. Accordingly, it is considered that affirmative procedure will afford the correct level of parliamentary scrutiny. Affirmative procedure is also appropriate as regulations made under this power could textually amend primary legislation.

Section 19(2): Inserted new section 43J(3)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to specify requirements to be fulfilled by rent-increase notice

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative

Provision

62. Section 43J(3) sets out the procedural requirements that a rent increase notice served by a landlord in a rent control area must fulfil. Section 43J(3)(b) creates the power for the Scottish Ministers to specify any other requirements to be fulfilled by a rent increase notice.

Reason for taking power

63. The power to amend the requirements of a rent increase notice in a rent control area is to ensure there is parity with the provisions which already apply for rent increase notices under section 22(2)(b) of the 2016 Act (and which will be modified to apply only to properties that are not in rent control areas or are exempt properties).

Choice of procedure

64. It is considered that negative procedure is appropriate as this will allow for flexibility for adjustments to the procedural requirements for rent increase notices to take place whilst providing an appropriate level of scrutiny by the Scottish Parliament. Negative procedure also applies to the prescribing of requirements for rent increase notices under existing section 22(2).

Section 19(2): Inserted new section 43L(3) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe form, fee and manner of intimation of referral to a rent officer

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative

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Provision

65. Section 43L sets out the process by which a tenant in a rent control area can make a referral to a rent officer following receipt of a rent increase notice. Section 43L(3) creates the power for Scottish Minister to prescribe the form, fee and manner of intimation of a referral to a rent officer under section 43L.

Reason for taking power

66. The power for the Scottish Ministers to prescribe various matters in respect of a referral to a rent officer by a tenant of a property in a rent control area is to ensure there is parity with the provisions which already apply for referrals to a rent officer under section 24 of the 2016 Act (and which will be modified to apply only to properties that are not in rent control areas and exempt properties). The prescribing of these matters will also ensure there is due process in the manner in which a referral in relation to a rent increase notice is made. This will also support a clear system of notifying a landlord of a referral which will pause the effective date of a rent increase that has been notified to the tenant via that rent increase notice.

Choice of procedure

67. It is considered that negative procedure is appropriate as this will allow for flexibility for adjustments to the procedural requirements for making referrals to a rent officer to take place whilst providing an appropriate level of scrutiny by the Scottish Parliament. Negative procedure applies to the powers to prescribe the form and manner of notices under section 24.

New section 43O(2)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe form of request under that section

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

68. Section 43O sets out the process by which a tenant in a rent control area can request a review of an order made by a rent officer in relation to the rent payable under a private residential tenancy by a different rent officer. Section 43O(2)(b) sets out the power for the Scottish Ministers to prescribe the form in which a review request must be made.

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Reason for taking power

69. The power for Scottish Ministers to prescribe the form by which a request for a review by another rent officer must be made is to ensure there is uniformity in the approach taken by landlords and tenants and that due process is followed.

Choice of procedure

70. It is considered that negative procedure is appropriate as this will allow for flexibility for adjustments to the procedural requirements for making requests for reviews of an order of a rent officer to take place whilst providing an appropriate level of scrutiny by the Scottish Parliament.

New section 43Q(4)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe manner of intimation of application to First-tier Tribunal under that section

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

71. Section 43Q sets out the process by which a tenant in a rent control area, who has received a rent increase notice, can apply to the First-tier Tribunal for a determination about certain aspects in relation to the rent increase notice. Section 43Q(4)(a) creates the power for the Scottish Ministers to prescribe by regulations the manner by which a tenant must intimate an application to the Tribunal to the landlord.

Reason for taking power

72. The power for the Scottish Ministers to prescribe the manner in which a tenant must intimate to a landlord an application that a tenant has made to the Tribunal in relation to a rent increase notice is to ensure that due process is followed. This will ensure that it is clear how a landlord will be notified of any application which will pause the effective date of a rent increase that has been notified to the tenant via that rent increase notice.

Choice of procedure

73. It is considered that negative procedure is appropriate as this enables flexibility for adjustments to be made to the procedural requirements for intimations of applications by a tenant to a landlord. Negative procedure provides the appropriate level of scrutiny for a procedural change of this nature.

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Section 20(2): Inserted new section 17A(5) of the Private Housing (Tenancies) (Scotland) Act 2016 - power to change information required in advertisements referred to in the new section

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

74. Section 20(2) inserts section 17A into the 2016 Act which requires that any person advertising a property for let in a rent control area must include specified information in the advert. Section 17A(2) lists the information to be included in the advert and section 17A(5) enables the Scottish Ministers to make regulations to modify that list of information. Section 17A(5) also enables the Scottish Ministers to make regulations to modify how a property that is previously let is defined in section 17A(3) and (4).

Reason for taking power

75. The power under section 17A(5) for the Scottish Ministers to amend the list of information to be included in a property advertisement provides flexibility to ensure that the requirements remain reflective of what is needed to support the effective operation of rent control areas. The power also enables the Scottish Ministers to ensure that the information to be provided by the landlord remains fair, having regard to the interests of the landlord and prospective tenant.

76. Section 17A(3) and (4) explain what is meant when references are made to a property which is previously let. There are different requirements on the landlord of a property being advertised for let depending on whether that property is described as having been previously let. The power in section 17A(5) for the Scottish Ministers to amend the definition of properties which are to be considered as previously let will ensure that the requirements remain reflective of what is needed to support the effective operation of rent control areas. The power also enables the Scottish Ministers to ensure that the advertising requirements placed on landlords when marketing their property for let adequately balance the interests of the landlord with the interests of the prospective tenant.

Choice of procedure

77. Regulations made under this power will be subject to affirmative procedure as the power enables the Scottish Ministers to modify primary legislation. The power is akin to other powers in the 2016 Act which oblige a landlord to provide information to a tenant (see sections 11 and 12 of the 2016 Act) and those powers are also subject to affirmative procedure.

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

Section 21(2)(a): Inserted new section 19(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards let property not in rent control area)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

78. Section 21 modifies section 19 of the 2016 Act so as to provide that rent increases cannot take place in the first 12 months of the tenancy. Section 21(2)(a) provides that the Scottish Ministers can, through regulations, prescribe circumstances where the prohibition on rent increases during the first 12 months of the tenancy will not apply.

Reason for taking power

79. 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 the tenancy. Section 21(2) provides that rents cannot increase in the first 12 months of a tenancy other than in circumstances prescribed by Scottish Ministers through regulations. The power to prescribe the circumstances where this restriction on rent increases will not apply allows the Scottish Ministers to relax the restriction where it is justified and proportionate to do so. This will enable the Scottish Ministers to safeguard the interests of landlords in circumstances where the restriction may be seen as unfair.

Choice of procedure

80. Regulations made under this power will be subject to affirmative procedure. This power will enable a landlord to increase the rent within 12 months of the tenancy commencing which could have a significant impact on tenants. Accordingly, it is considered that affirmative procedure will afford the correct level of parliamentary scrutiny.

Evictions: duties to consider delay

Section 24(2): Inserted new section 51A(6) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to modify the matters to be considered by the First-tier Tribunal in considering whether to delay eviction

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

81. Section 24(2) inserts new section 51A into the 2016 Act. Section 51A(2) sets out matters which the Tribunal may take into account in specifying in an eviction order the date on which the private residential tenancy will end, and whether a delay to the tenancy being brought to an end should be applied. Section 51A(6) provides power for the Scottish Ministers to make regulations to modify the list of factors in section 51A(2).

Reason for taking power

82. The purpose of this power is to provide flexibility to respond to changing circumstances if and when required by enabling the modification of section 51A(2) which sets out factors that may be considered by the Tribunal or court in determining whether a delay in bringing a tenancy to an end is reasonable.

Choice of procedure

83. Regulations made under section 51A(6) will be subject to the affirmative procedure. Whilst the list of factors in section 51A(2) is non-exhaustive and not mandatory they are given greater prominence by having a formal statutory basis. Affirmative procedure has been chosen as the appropriate procedure because it provides the flexibility to amend the factors that the Tribunal and Court may take into account, while ensuring appropriate Parliamentary scrutiny and consideration of changes, given the potential impact on tenants and landlords from any future changes.

Section 25(2): Inserted new section 16A(6) of the Housing (Scotland) Act 2001 – power to modify the matters to be considered by the court in considering whether to delay eviction

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

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

Provision

84. Section 25(2) inserts new section 16A into the Housing (Scotland) Act 2001 in relation to orders for recovery of possession for Scottish secure tenancies. Section 16A(6) provides power for the Scottish Ministers to make regulations to modify section 16A(2) which sets out the factors that may be considered by the court in determining whether a delay in the date for recovery of a property is reasonable.

Reason for taking power

85. The purpose of this power is to provide flexibility to respond to changing circumstances, by enabling the modification of section 16A(2) which sets out factors that may be considered by the court in determining whether a delay in bringing a tenancy to an end is reasonable.

Choice of procedure

86. Regulations made under section 16A(6) will be subject to the affirmative procedure. Whilst the list of factors in section 16A(2) is non-exhaustive and not mandatory they are given greater prominence by having a formal statutory basis. Affirmative procedure has therefore been chosen as the appropriate procedure because it gives flexibility to amend the factors that the Court may take into account while ensuring appropriate Parliamentary scrutiny, and consideration of changes, given the potential impact on tenants and landlords from any future changes.

Section 25(3): Inserted new section 36A(6) of the Housing (Scotland) Act 2001 – power to modify the matters to be considered by the court in considering whether to delay eviction

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

87. Section 25(3) inserts new section 36A into the Housing (Scotland) Act 2001 in relation to orders for recovery of possession for short Scottish secure tenancies. Section 36A(6) provides a power for the Scottish Ministers to make regulations to modify the list in section 36A(2) which sets out the factors that may be considered by the court in determining whether a delay in the date for recovery of a property is reasonable.

Reason for taking power

88. The purpose of this power is to provide flexibility to respond to changing circumstances, enabling the modification of section 36A(2) which set out factors that may be considered by the Tribunal or court in determining whether a delay in bringing a tenancy to an end is reasonable.

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

Choice of procedure

89. Regulations made under section 36A(6) will be subject to the affirmative procedure. Whilst the list of factors in section 36A(2) is non-exhaustive and not mandatory, they are given greater prominence by having a formal statutory basis. Affirmative procedure has been chosen as the appropriate procedure because it provides the flexibility to amend the factors that the Court may take into account while ensuring appropriate Parliamentary scrutiny and consideration of changes, given the potential impact on tenants and landlords from any future changes.

Section 26(2): Inserted new section 20A(6) of the Housing (Scotland) Act 1988 – power to modify the matters to be considered by the First-tier Tribunal in considering whether to delay eviction

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

90. Section 26(2) inserts new section 20A into the Housing (Scotland) Act 1988 (“the 1988 Act”). Section 20A(2) sets out a list of matters which the First-tier Tribunal may consider in specifying in an order for possession the date on which the tenancy will end, and whether this should be delayed. Section 20A(6) provides power for the Scottish Ministers to make regulations to modify the list in section 20A(2).

Reason for taking power

91. The purpose of this power is to provide flexibility to respond to changing circumstances, enabling the modification of section 20A(2) which sets out factors that may be considered by the court in determining whether a delay in bringing a tenancy to an end is reasonable.

Choice of procedure

92. Regulations made under section 20A(6) will be subject to the affirmative procedure. Whilst the list of factors in section 20A(2) is non-exhaustive and not mandatory they are given greater prominence by having a formal statutory basis. This has been chosen as the appropriate procedure because it provides the flexibility to amend the factors that the court may take into account while ensuring appropriate Parliamentary scrutiny and consideration of changes, given the potential impact on tenants and landlords from any future changes.

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

Section 27(2): Inserted new section 12ZA(6) of the Rent (Scotland) Act 1984 – power to modify the matters to be considered by the First-tier Tribunal in considering whether to delay eviction

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

93. Section 27(2) inserts new 12ZA into the Rent (Scotland) Act 1984. Section 12ZA(2) sets out matters which the First-tier Tribunal may consider in specifying in an order for possession the date on which the tenancy will end and whether a delay should be applied. Section 12ZA(6) contains a power for the Scottish Ministers to make regulations to modify the list of factors in section 12ZA(2).

Reason for taking power

94. The purpose of this power is to provide flexibility to respond to changing circumstances, enabling the modification of section 12ZA(2) which sets out factors that may be considered by the Tribunal in determining whether a delay in bringing a tenancy to an end is reasonable.

Choice of procedure

95. Regulations made under section 12ZA(6) will be subject to affirmative procedure. Whilst the list of factors in section 12ZA(2) is non-exhaustive and not mandatory they are given greater prominence by having a formal statutory basis. This has been chosen as the appropriate procedure as it provides the flexibility to amend the factors that the Tribunal may take into account while ensuring appropriate Parliamentary scrutiny and consideration of changes given the potential impact on tenants and landlords from any future changes.

Section 29(2): Inserted new section 64B(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for request to keep a pet

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

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

Provision

96. Section 29(2) inserts new section 64B(1)(b) into the 2016 Act which contains a power for the Scottish Ministers to prescribe requirements on a tenant's request for a landlord's consent to keep a pet, for example the form or content of the request.

Reason for taking power

97. The purpose of this power is to enable the Scottish Ministers to support the operation of the overarching new rights for tenants to request to keep a pet. This approach will support effective implementation of the measures by providing clarity for landlords and tenants as to the correct procedure which must be adopted when a tenant requests to keep a pet at the property.

Choice of procedure

98. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the power. There are similar powers in the 2016 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

Section 29(2): Inserted new section 64B(3)(d) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for landlord's notice

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

99. Section 29(2) inserts new section 64B(3)(d) into the 2016 Act which contains a power for the Scottish Ministers to prescribe requirements on the form or content of a landlord's notice responding to a tenant's request to keep a pet.

Reason for taking power

100. It is considered appropriate that these procedural details should be set out in subordinate legislation if and when required to support implementation of the framework. This approach will support effective implementation of the measures by providing clarity for landlords and tenants as to the correct procedure which must be adopted when a landlord responds to a tenant's request to keep a pet at the property.

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

Choice of procedure

101. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the power. There are similar powers in the 2016 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

Section 29(2): Inserted new section 64C(3) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for tenant’s notice

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

102. Section 29(2) inserts new section 64C(3) into the 2016 Act which contains a power for the Scottish Ministers to prescribe requirements for the form or content of a tenant’s notice to the landlord in connection with the tenant appealing the landlord’s refusal or a consent condition imposed by the landlord in response to the tenant’s request to keep a pet.

Reason for taking power

103. It is considered appropriate that these details should be set out in subordinate legislation if and when required to support implementation of the framework. This approach will support effective implementation of the measures by providing clarity for landlords and tenants as to the correct procedure which must be adopted when a tenant appeals the landlord’s refusal to consent, or a condition imposed by the landlord on their consent, in response to the tenant’s request to keep a pet at the property.

Choice of procedure

104. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the power. There are similar powers in the 2016 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

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

Section 29(2): Inserted new section 64E(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when it is reasonable to refuse consent to keep a pet

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

105. Section 29(2) inserts new section 64E(1) into the 2016 Act which contains a power for the Scottish Ministers to prescribe certain examples of when it is reasonable for a landlord to refuse a tenant's request to keep a pet.

Reason for taking power

106. The purpose of this power is to enable the Scottish Ministers to set out further detail to support the operation of the overarching new right for tenants to keep a pet. Being able to prescribe examples of when refusal of a pet request would be reasonable will support effective implementation of the measures and provide greater clarity for stakeholders. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2016 Act.

Choice of procedure

107. These regulations will be subject to the affirmative procedure. This is considered appropriate given that the regulations would have a substantial effect on the operation of the right to request to keep a pet, by setting out reasonable reasons for refusal of a request to keep a pet. There is also a requirement to consult prior to laying these regulations, which provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers in the development of these regulations.

Section 29(2): Inserted new section 64F(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when a consent condition to keep a pet is reasonable

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

108. Section 29(2) inserts new section 64F(1) into the 2016 Act which contains a power for the Scottish Ministers to prescribe examples of reasonable consent conditions

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that landlords may adopt in their conditional consent notice in connection with their response to a tenant's request to keep a pet.

Reason for taking power

109. The purpose of this power is to enable the Scottish Ministers to set out further detail to support the operation of the new right for tenants to request to keep a pet. This will support effective implementation of the measures and will provide greater clarity for tenants and landlords on the intended operation of the legislation. It will also ensure that it can be amended if appropriate. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2016 Act.

Choice of procedure

110. These regulations will be subject to the affirmative procedure. This is considered appropriate given that the regulations would have a substantial effect on the operation of these measures by setting out reasonable consent conditions that landlords may impose. The inclusion of a consultation requirement in connection with the exercise of this power also provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers in the development of these regulations.

Section 29(2): Inserted new section 64I(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a tenant's request to make a category 2 change to a let property

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

111. Section 29(2) inserts new section 64I(1)(b) into the 2016 Act which contains a power for the Scottish Ministers to prescribe requirements on the form and content of a tenant's request for their landlord's consent to make what is to be known as a category 2 change to a let property. A category 2 change to the property by the tenant will require the consent of the landlord which consent cannot be unreasonably refused.

Reason for taking power

112. The purpose of this power is to enable Scottish Ministers to set out further detail to support the operation of the new right for tenants to request to make a category 2 change to a let property by prescribing the details to be included in a tenant's request to their landlord. This approach will support effective implementation of the measures by

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providing clarity for landlords and tenants as to the correct procedure which must be adopted when a tenant requests the landlord's consent to make a category 2 change to the property.

Choice of procedure

113. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the power. There are similar powers in the 2016 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

Section 29(2): Inserted new section 64I(3)(d) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a landlord's notice

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

114. Section 29(2) inserts new section 64I(3)(d) into the 2016 Act which contains a power for the Scottish Ministers to prescribe requirements for the form and content of a landlord's notice responding to a tenant's request to make a category 2 change to a let property.

Reason for taking power

115. The purpose of this power is to enable the Scottish Ministers to set out further detail to support the operation of the new right for tenants to seek to make a category 2 change to a let property. This approach will support effective implementation of the measures by providing clarity for landlords and tenants as to the correct procedure which must be adopted when a landlord responds to a tenant's request to make a category 2 change to the property.

116. This will help to ensure that the types of information to be included in a landlord's notice are refined, and that these can be amended as appropriate. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2016 Act.

Choice of procedure

117. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the

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

power. There are similar powers in the 2016 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

Section 29(2): Inserted new section 64J(3) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a tenant’s notice

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

118. Section 29(2) inserts new section 64J(3) into the 2016 Act which contains a power for the Scottish Ministers to prescribe requirements on the tenant’s notice to the landlord given prior to appealing a refusal of, or a condition on, the landlord’s consent in connection with the tenant’s request to make a category 2 change to the let property.

Reason for taking power

119. The purpose of this power is to enable the Scottish Ministers to set out further detail to support the operation of the new right for tenants to seek to make a category 2 change to a let property. This approach will support effective implementation of the measures by providing clarity for landlords and tenants as to the correct procedure which must be adopted when a tenant seeks to appeal the refusal of consent, or a condition placed on consent, by the landlord in relation to a tenant’s request to make a category 2 change to the property.

Choice of procedure

120. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the power. There are similar powers in the 2016 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure.

121. Exercise of this power can only change the requirements for the form or content of a notice so the change would relate to procedural matters to help the smooth running of the framework. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

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

Section 29(2): Inserted new section 64L(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to specify changes to let property and categorise changes as a category 1 or category 2 change

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

122. Section 29(2) inserts new section 64L(1) into the 2016 Act which contains a power for the Scottish Ministers to specify types of changes to a let property and whether these are classed as either ‘category 1’ or ‘category 2’.

Reason for taking power

123. The purpose of this power is to enable the Scottish Ministers to set out further detail to support the operation of the new right for tenants to make changes to a let property. This approach will support effective implementation of the measures by ensuring that the types of changes prescribed under each category have been considered in detail and that there is clarity on the nature of changes that would fall within each category for the purposes of the legislation. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2016 Act.

Choice of procedure

124. Regulations made under this section will be subject to affirmative procedure. This is considered appropriate given that the regulations would have a substantial effect on the operation of these measures by setting out the types of changes that would be allowed without a landlord’s consent. The inclusion of a consultation requirement in connection with the exercise of this power provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers in the development of these regulations.

Section 29(2): Inserted new section 64M(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when it is reasonable to refuse consent to make a category 2 change

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

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

Provision

125. Section 29 inserts new section 64M(1) into the 2016 Act which contains a power for the Scottish Ministers to make provisions about the circumstances when it would be reasonable for a landlord to refuse to consent to a tenant's request to make a category 2 change to a let property.

Reason for taking power

126. The purpose of this power is to enable the Scottish Ministers to set out further detail to support the operation of the new right for tenants to request to make a category 2 change to a let property. Being able to prescribe examples of when a landlord's refusal to consent to a category 2 change would be reasonable will support effective implementation of the measures by providing landlords and tenants with clarity as to when a request to make changes to a property can be reasonably refused. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2016 Act.

Choice of procedure

127. These regulations will be subject to the affirmative procedure. This is considered appropriate given that the regulations would have a substantial effect on the operation of the right to request to make a category 2 change to a let property. The inclusion of a consultation requirement in connection with the exercise of this power provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers in the development of these regulations.

Section 29(2): Inserted new section 64N(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when a consent condition to make a category 2 change to a let property is reasonable

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

128. Section 29(2) inserts new section 64N(1) into the 2016 Act which contains a power for the Scottish Ministers to specify when a condition placed on the landlord's consent to a tenant's request to make a category 2 change to a let property would be reasonable.

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

Reason for taking power

129. The purpose of this power is to enable Scottish Ministers to set out further detail to support the operation of the new right for a tenant to request permission from their landlord to make a category 2 change to a let property. This approach will support effective implementation of the measures. They will also help to ensure that there is clarity on reasonable conditions for approval and ensure that these can be amended as appropriate. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2016 Act.

Choice of procedure

130. These regulations will be subject to the affirmative procedure. This is considered appropriate given that the regulations would have a substantial effect on the operation of these measures by setting out what is a reasonable condition of a landlord's consent. The inclusion of a consultation requirement in connection with the exercise of this power provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers in the development of these regulations.

Section 30(2): Inserted new section 31B(1) of the Housing (Scotland) Act 2001 - power to make provision about when a consent condition for keeping a pet is reasonable

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

131. Section 30(2) inserts new section 31B(1) into the Housing (Scotland) Act 2001 ("the 2001 Act") which contains a power for the Scottish Ministers to make regulations about when a condition on the keeping of a pet is reasonable. This power relates to Scottish secure tenancies under the 2001 Act.

Reason for taking power

132. This power enables the Scottish Ministers to make regulations to set out what sort of conditions a social landlord may place on their consent to a tenant's request to keep a pet. This approach will support effective implementation of the legislation and provide greater clarity for tenants and landlords. They will also help to ensure that there is clarity on reasonable conditions for the landlord's consent to the request to have a pet in the property and ensure that these can be amended as appropriate. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2001 Act.

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

Choice of procedure

133. These regulations will be subject to the affirmative procedure. This is considered appropriate given that the regulations would have a substantial impact on the implementation of the measures by prescribing reasonable consent conditions on a tenant's right to request to keep a pet. The inclusion of a consultation requirement in connection with the exercise of this power provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers.

Section 30(2): Inserted new section 31C(1) of the Housing (Scotland) Act 2001 - power to make provision about when it is reasonable to refuse consent to keep a pet

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

134. Section 30(2) inserts new section 31C(1) into the 2001 Act which contains a power for the Scottish Ministers to make regulations about when it is reasonable for a landlord to refuse to consent to a tenant's request to keep a pet. This power relates to Scottish secure tenancies under the 2001 Act.

Reason for taking power

135. The Bill provides for 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. This regulation making power enables the Scottish Ministers to make regulations to set out the circumstances and factors when it is reasonable for a landlord to refuse to consent to a request to keep a pet. This power will help to ensure that there is clarity for social landlord and tenants on when the landlord can refuse consent to the request to have a pet in the property and ensure that these circumstances can be amended as appropriate. It is considered appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the 2001 Act.

Choice of procedure

136. Regulations made under section 31C(1) will be subject to the affirmative procedure. This is considered appropriate given that the regulations would have the effect of prescribing when it would be reasonable to refuse consent to a tenant's request to keep a pet. The inclusion of a consultation requirement in connection with the exercise of this power provides a safeguard to ensure that landlord, tenant and other representatives have an opportunity to make representations to the Scottish Ministers.

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

Section 30(3): Inserted paragraph 8B of new Part 1A of schedule 5 of the Housing (Scotland) Act 2001 - power to prescribe requirements for a tenant's application to keep a pet

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

137. Section 30(3) inserts new Part 1A of schedule 5 of the 2001 Act which contains tenancy terms which are to be implied terms of every Scottish secure tenancy. Paragraph 8B of the new Part 1A of schedule 5 provides a power for the Scottish Ministers to make regulations about the requirements for a tenant's application to keep a pet.

Reason for taking power

138. The purpose of this power is to enable the Scottish Ministers to support the operation of the new right for tenants to request to keep a pet so that the form and content of a tenant's application to keep a pet can be prescribed. This approach will support effective implementation of the measures by providing clarity for landlords and tenants as to the correct procedure which must be adopted when a tenant requests the social landlord's consent to keep a pet at the property.

Choice of procedure

139. Regulations made under this section will be subject to negative procedure. It is considered that the negative procedure is appropriate given the procedural nature of the power - it will only change the requirements for the form or content of a tenant's application to keep a pet. There are similar powers in the 2001 Act to prescribe the form and manner of notices which must be issued under the Act and those powers are also subject to the negative procedure. The use of the negative procedure will support implementation of the measures whilst providing appropriate scrutiny by the Scottish Parliament.

Section 31(3): Inserted new section 122B(1) of the Housing (Scotland) Act 2006 - power to direct the transfer of unclaimed deposits

Power conferred on: Scottish Ministers

Power exercisable by: Direction

Parliamentary procedure: No procedure

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

Provision

140. Section 31(3) inserts section 122B into the Housing (Scotland) Act 2006 (“the 2006 Act”). Section 122B(1) enables the Scottish Ministers to direct a tenancy deposit scheme administrator to transfer any unclaimed deposits held under the deposit scheme to the Scottish Ministers.

Reason for taking power

141. The purpose of section 31 is to establish a procedure whereby all unclaimed deposits held by a deposit scheme administrator can be transferred to the Scottish Ministers (or a third-party fund administrator) on request and then used by the Scottish Ministers for the benefit of private tenants in general. Tenancy deposits will become unclaimed five years after the tenancy ends so there will be varying amounts of unclaimed deposits held by the deposit scheme administrator from time to time. As a result, there would be limited value in monies being transferred to the Scottish Ministers to a rigid timescale. The power in section 122B(1) (as inserted by section 31 of the Bill) will enable the Scottish Ministers to request a transfer whenever appropriate following discussion with the scheme administrator as to the level of unclaimed deposits they hold.

Choice of procedure

142. The Scottish Ministers’ direction is an administrative decision which is not made by statutory instrument. Accordingly, there is no need for any Parliamentary scrutiny of the exercise of this power. There are other means of Parliamentary scrutiny over this process as section 31 (via the insertion of section 122D into the 2006 Act) obliges the Scottish Ministers to prepare a report on the use of unclaimed deposits that have been transferred to them. The report must be published within 3 years and laid before Parliament as soon as reasonably practicable after publication.

Section 31(3): Inserted new section 122C(4) of the Housing (Scotland) Act 2006 – power to change purposes for which transferred unclaimed deposits may be used

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

143. Section 31(3) inserts section 122C into the 2006 Act. Section 122C provides that the Scottish Ministers must use the unclaimed deposits that are transferred to them for specified purposes – those purposes, in general terms, would benefit private tenants. Section 122C(4) provides a power for Scottish Ministers to make regulations to modify the specified purposes for which unclaimed deposits may be used by the Scottish Ministers or a third-party fund administrator. Section 122C(5) requires Scottish Ministers

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to consult representatives of tenants, the scheme administrators or their representatives and other persons they consider appropriate before laying draft regulations.

Reason for taking power

144. The Bill sets out the purposes that unclaimed funds can be used for and the regulation making powers will provide flexibility to amend the purposes that unclaimed funds can be used for enabling Scottish Ministers to respond to changing circumstances.

Choice of procedure

145. Affirmative procedure is considered to be appropriate to allow public and Parliamentary scrutiny of the intended use by Scottish Ministers of unclaimed funds to ensure that any new or modified use of the funds is appropriate in the circumstances. Affirmative procedure is also considered appropriate as the power enables the modification of primary legislation. Before making regulations, section 122C(5) requires the Scottish Ministers to consult representatives of tenants, the scheme administrators or their representatives and other persons they consider appropriate. This also provides public scrutiny of the proposed change to the purposes for which the funds can be used.

Section 31(3): Inserted new section 122D(3) of the Housing (Scotland) Act 2006 – power to direct a fund administrator to provide a report to the Scottish Ministers

Power conferred on: Scottish Ministers

Power exercisable by: Direction

Parliamentary procedure: No procedure

Provision

146. Section 31(3) inserts section 122D into the 2006 Act. Section 122D places reporting duties on the Scottish Ministers in relation to the use of transferred unclaimed deposits. Under section 122B of the 2006 Act (as also inserted by section 31(3) of the Bill) the Scottish Ministers can direct that the unclaimed deposits are transferred to a third-party fund administrator (as noted above). In those circumstances the fund administrator would be using the funds for the purposes specified in section 122C of the 2006 Act (as inserted by section 31(3) of the Bill). Section 122D(3) enables the Scottish Ministers to direct a third-party fund administrator to report to the Scottish Ministers on their use of the unclaimed deposits transferred to them under section 122B. The report must be provided as soon as reasonably practicable after the Scottish Ministers request it and the Scottish Ministers can direct the information to be contained in the report.

Reason for taking power

147. Section 122D of the 2006 Act (as inserted by section 31(3) of the Bill) places the Scottish Ministers under a duty to prepare and publish a report on the use of unclaimed

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deposits which have been transferred to them (or to a third-party fund administrator). If the unclaimed deposits have been transferred to a fund administrator, the Scottish Ministers will not be aware of how those funds have been used unless the fund administrator informs them. The power in section 122D(3) to direct the provision of a report by the fund administrator to the Scottish Minister is therefore to ensure that the Scottish Ministers always have sufficient information with which to complete their statutory report under section 122D.

Choice of procedure

148. The Scottish Ministers' direction is an administrative decision which is not made by statutory instrument. Accordingly, there is no need for any Parliamentary scrutiny of the exercise of this power. The report under section 122D will be laid before Parliament so the information obtained from the exercise of this power will be presented to Parliament via that report.

Section 33(2)(b): Inserted new section 37(6)(b) of the Housing (Scotland) Act 2014 – power to specify information provided by virtue of section 30(2)(f) of the Act for purpose of new section

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

149. Section 33(2)(b) modifies section 37 of the Housing (Scotland) Act 2014 (“the 2014 Act”) to insert new section 37(6)(b) which contains a power for Scottish Ministers to make regulations setting out information which letting agents have a duty to inform Scottish Ministers of where there is a change of circumstances.

Reason for taking power

150. Section 37 of the 2014 Act requires a letting agent to inform the Scottish Ministers where the information contained in their initial application for registration changes. Section 30(2) of the 2014 Act lists the information which must be provided in the application for registration and section 30(2)(f) provides that the application must include such other information as the Scottish Ministers may specify in regulations. Section 37(6)(b) (as inserted by section 33(2)(b) of the Bill) provides a regulation-making power for the Scottish Ministers to specify when information provided by virtue of section 30(2)(f) is relevant information for the purpose of section 37 of the 2014 Act.

Choice of procedure

151. Regulations made under this power will be subject to negative procedure. The choice of negative procedure and attendant level of scrutiny is considered appropriate given the limited scope of the power. The power will reduce the burden on letting agents

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to provide information rather than increasing it. The power in section 30(2)(f) to prescribe information which must be contained in the application for registration is also subject to negative procedure.

Section 38(3): Inserted new section 48A(1)(b)(ii) of the Private Housing (Tenancies) (Scotland) Act 2016: power to require evidence to support statement that pre-notices given properly

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

152. Section 38(3) of the Bill inserts section 48A into the 2016 Act which creates a mechanism whereby a joint tenant who wishes to terminate the joint tenancy must first give the remaining joint tenants two months' notice of their intention to do so. When the joint tenant serves the notice to terminate the tenancy on the landlord, that notice must be accompanied by a statement that the joint tenant has complied with the two-month notice requirement. Section 48A(1)(b)(ii) provides that the notice to the landlord must also be accompanied by such evidence in support of that statement as the Scottish Ministers may prescribe in regulations. Section 48A(4) clarifies that the power may be exercised so as to require that the evidence must contain specified information, be in a specified form or be given in a specified manner.

Reason for taking power

153. Section 38 of the Bill amends the 2016 Act in order to enable a joint tenant to unilaterally terminate a joint tenancy, but the joint tenant must first give two months' notice of the intention to do so to their remaining joint tenants. When the joint tenant serves the notice to terminate on the landlord, the landlord will want to be satisfied that the two-month notice requirement has been complied with and may seek evidence of this for their own reassurance. The reason for taking the power to prescribe the form or manner of evidence is to provide clarity for landlords and tenants as to what evidence would be acceptable in these circumstances.

Choice of procedure

154. Regulations made under this power will be subject to negative procedure by virtue of amendments to section 77 of the 2016 Act made by paragraph 6(8) of the schedule of the Bill. It is considered that the negative procedure is appropriate as there is no modification of primary legislation via exercise of this power and prescribing the nature of evidence to be provided in a notice to terminate a tenancy is akin to prescribing the form of a notice under the 2016 Act and those powers are also subject to negative procedure.

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Section 38(3): Inserted new section 48A(3)(c) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a pre-notice (for ending of a joint tenancy)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

155. Section 38 inserts section 48A into the 2016 Act setting out a requirement for a joint tenant who is terminating a joint tenancy to provide a two-month pre-notice to the remaining joint tenants informing them of the joint tenant's intention to terminate the joint tenancy. Section 48A(3) provides a power for the Scottish Ministers to make regulations to set out what requirements the two-month pre-notice must fulfil. Paragraph 6(8) of the schedule of the Bill amends section 77 of the 2016 Act to provide that regulations under section 48A(3)(c) may include requirements as to the form, content and manner of service of the pre-notice.

Reason for taking power

156. The purpose of this power is to enable Scottish Ministers to set out further detail on how the pre-notice provided for in this provision is to operate. This approach will support effective implementation of the measures by providing further clarity on the form and manner of service of the pre-notice. It follows other similar powers in the 2016 Act to prescribe the form and manner of notices which require to be served under the Act.

Choice of procedure

157. Regulations made under this power will be subject to negative procedure. It is considered that the negative procedure is appropriate as the power does not involve the modification of primary legislation. There are similar powers already in the 2016 Act to prescribe the form and manner of notices which require to be served under the Act and those powers are also subject to negative procedure.

Section 40(2): Inserted new paragraph 6(1) of schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 - power to appoint day on which a relevant assured tenancy converts to a private residential tenancy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

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

Provision

158. Section 40 modifies the 2016 Act by adding a paragraph 6 to schedule 5 of the 2016 Act. Paragraph 6(1) provides that the Scottish Ministers may make regulations to appoint a date (at least 12 months after the regulations come into force) when an assured tenancy (which includes a short-assured tenancy) under the 1988 Act ceases to be an assured tenancy and becomes a private residential tenancy. But the regulations cannot convert a tenancy that is an assured tenancy into a private residential tenancy if the tenancy cannot be a private residential tenancy (see schedule 1 of the 2016 Act). Sub-paragraph 6(5) requires the Scottish Ministers to consult such persons who appear to them to represent the interests of landlords and tenants under assured tenancies before laying draft regulations.

Reason for taking power

159. To enable the Scottish Ministers, on an appointed date, to convert assured tenancies under the 1988 Act to private residential tenancies under the 2016 Act. Although new assured and short assured tenancies can no longer be created in most cases, some existing ones have not come to an end. This provision would enable tenants with tenancies under the 1988 Act to benefit from the protections available in respect of private residential tenancies, and to reduce the complexity and confusion in relation to different forms of tenancies which currently exist in the private rented sector. A regulation making power is required to allow a suitable appointed date to be chosen following consultation.

Choice of procedure

160. Regulations made under this section are subject to the affirmative procedure. This provides the appropriate level of scrutiny given the importance of the subject matter for both landlords and tenants. Before laying regulations, the Scottish Ministers must consult such persons as appear to them to represent the interests of tenants and landlords under assured tenancies.

Section 41(4)(c): Inserted new section 32(2C) of the Housing (Scotland) Act 1987 – power to prescribe types of advice and assistance in relation to homelessness

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

161. Section 41 amends the Housing (Scotland) Act 1987 (“the 1987 Act”) to insert section 2C. This provides power for Scottish Ministers to make regulations to set out what should be considered in the provision of advice and support by local authorities to prevent a person’s homelessness.

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

Reason for taking power

162. As set out in the Policy Memorandum, clarifying the ‘reasonable steps’ local authorities should consider when supporting people at risk of homelessness, creates more consistency and transparency around the support available from local authorities. Further to this, it addresses concerns raised by the Scottish Housing Regulator on the non-statutory Housing Options approach in Scotland which included calls 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 Regulator’s review made clear the importance of ensuring prevention activity did not result in people being unable to realise their legal rights as a household which is homeless or threatened with homelessness.

Choice of procedure

163. Regulations made under these powers will be subject to negative procedure. The choice of negative procedure and attendant level of scrutiny is considered appropriate given the nature of the power and the planned engagement with stakeholders ahead of the introduction of draft regulations. This choice of procedure reflects the limited scope of the power to detail a list of activities local authorities should consider in line with household need.

Section 41(8): Inserted new section 43A(1) of the Housing (Scotland) Act 1987 - power to modify the meaning of “relevant body” in Part 2 (homeless persons) of the 1987 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

164. Section 41 inserts section 43A into the 1987 Act. Section 43A(1) provides a power for the Scottish Ministers to make regulations to modify the meaning of “relevant body” in section 43 to add or remove a person or a description of a person. “Relevant bodies” are placed under a duty, by virtue of section 41 of the Bill, to ask individuals if they are homeless or threatened with homelessness and to take certain steps in response. These duties are referred to in the following paragraphs as the duty to “Ask and Act”.

Reason for taking power

165. The bodies to which the duty to ‘Ask and Act’ applies are listed in the Bill, and a power is sought to update this list in the future as required via secondary legislation. This is to ensure the list remains current and relevant to the organisations who are in a position to prevent homelessness from across the public sector.

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Choice of procedure

166. The power allows for the amendment of a list contained within primary legislation. Affirmative procedure is therefore considered to offer the appropriate level of scrutiny. Before laying draft regulations to add a person or a description of a person to the definition, subsection (3) requires Scottish Ministers to consult the person or someone who appears to represent the person (or a person so described). The inclusion of the requirement to consult provides a safeguard to ensure that stakeholder views can be reflected and taken account of with any changes made to the list of bodies to whom 'Ask and Act' applies.

Section 53(1): Power to make ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if making textual amendments to an Act, but otherwise negative

Provision

167. Subsection 53(1) gives the Scottish Ministers power to make regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision of the Bill.

Reason for taking power

168. The Scottish Ministers consider it to be appropriate for the full range of ancillary powers to be available to facilitate the transition from the current law on housing to the new arrangements as provided for in the Bill. The power will enable the modification of primary and secondary legislation.

Choice of procedure

169. It is considered that the negative procedure is appropriate given that the Scottish Parliament will have considered the provisions of the Bill and these regulations are concerned with making provision for the purposes of, or in connection with, giving full effect to the Bill. Where primary legislation is amended, the affirmative procedure is considered to be more appropriate.

Section 56(2): Power to appoint days on which provisions of the Bill come into force

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

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

Provision

170. Part 7 of the Bill, with the exception of section 55, will come into force on the day after Royal Assent. Section 56(2) provides that the Scottish Ministers may, by regulations, appoint days on which other provisions of the Bill come into force. Subsection (3) provides that regulations may include transitional, transitory or saving provision and make different provision for different purposes.

Reason for taking power

171. This power will enable the Scottish Ministers to bring the provisions of the Bill into force and to manage the effects of their commencement.

Choice of procedure

172. As is now usual for commencement regulations, the default laying requirement will apply, as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. The Scottish Ministers consider this appropriate because the policy behind the provisions will already have been considered by the Parliament during the passage of the Bill.

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

Housing (Scotland) Bill

Delegated Powers Memorandum

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