

Proposed Fair Rents (Scotland) Bill



A proposal for a Bill to protect private sector tenants by introducing measures to limit rent increases and to increase the availability of information about rent levels.

**Consultation by
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FOREWORD by Pauline McNeill MSP

Over the past 15 years, a private rented home has become the only housing option for an increasing number of households across Scotland, for whom home ownership and renting in the social sector are not an option. Notably, more families with children are living in the private rented sector.¹

Research shows that dramatic increases in rent in numerous parts of the country² are causing hardship and making life more precarious for many households and families. This, in turn, is increasing the risk of the number of adults and children living in poverty, and a bigger crisis in homelessness.

There should be more parity of treatment between those renting in the social sector and the private sector.

I am proposing a Member's Bill in the Scottish Parliament to begin to tackle rising rents in the private rented sector by capping annual rent increases. Rent Pressure Zones, which were brought in by the Scottish Government to control rents in designated high-pressure areas, have not worked and we need an alternative.

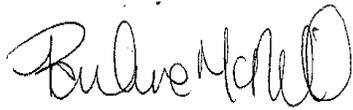
There is no doubt in my mind that much greater reform is needed of the private rented sector to create fairness and improve standards; however, it is a larger commitment and

¹ "Increasing Number of Families Calling Scotland's PRS Home", Citylets News, 4th February, 2019, <https://www.citylets.co.uk/blog/increasing-numbers-of-families-calling-scotlands-prs-home/>

² Private Sector Rent Statistics, Scotland, 2010-2018. <https://www.gov.scot/publications/private-sector-rent-statistics-2010-2018/>

would more practically be achieved by the Scottish Government. I propose to begin by making significant changes to housing law to start reshaping the private rented sector in Scotland.

A decent warm home at an affordable price is a basic human right.³

A handwritten signature in black ink, appearing to read 'Pauline McNeill', written in a cursive style.

Pauline McNeill

³ Universal Declaration of Human Rights, Article 25, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”

https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://www.parliament.scot/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

AIM OF THE PROPOSED BILL

Why this Bill is Required

The Private Rented Sector (PRS) has grown dramatically in the last 15 years. In 2017, 15% of Scottish householders were renting privately, up from 5% in 1999.⁴ In Edinburgh and Dundee as many as 26% of households rent privately.⁵ At the same time, the level of social housing available has fallen⁶, and changes to the mortgage market since the global financial crash of 2008 have meant that it has been more difficult for many to get a mortgage.⁷ These factors have combined to mean that the private rented sector is playing a greater role in more of our lives.

The private rented sector is also becoming home to more families.⁸ There is now a slightly higher percentage of households with children renting in the private sector (27%) than renting in the social sector (25%).⁹ Furthermore, the number of children in private rented housing living in severe poverty has more than doubled in a decade. Scottish Labour analysis of Scottish Government data reveals that 20,000 children in the private rented sector were living in severe poverty during the three-year period between 2005/06 - 2007/08. However, the latest three year period, covering 2015/16 to 2017/18, reveals that figure has more than doubled to 50,000.¹⁰ Severe poverty is defined as being below 50% of UK median income after housing costs.¹¹

⁴ Scotland's People Annual Report 2017, A National Statistics Publication for Scotland, <https://www.gov.scot/publications/scotlands-people-annual-report-results-2017-scottish-household-survey/>

⁵ Ibid.

⁶ Ibid, p39.

⁷ "Are You a Mortgage Misfit?", The Guardian, 14th March, 2015, <https://www.theguardian.com/money/2015/mar/14/mortgage-misfit-borrowers-lenders-criteria>

⁸ Ibid, p73.

⁹ Scottish House Condition Survey: 2017 key findings, p4. <https://www.gov.scot/publications/scottish-house-condition-survey-2017-key-findings/pages/4/>

¹⁰ "Poverty and Income Inequality in Scotland: 2015-2018", Supplementary Child Poverty Tables, Scottish Government statistics, 28th March 2019, <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/03/poverty-income-inequality-scotland-2015-18/documents/copy-supplementary-child-poverty-tables/copy-supplementary-child-poverty-tables/govscot%3Adocument>

¹¹ "Severe Poverty in Scotland", Communities Analytical Services, Scottish Government, 16th March 2015, p14,

In theory, living in private rented accommodation can provide the means to live in a location a tenant chooses, allow a tenant to save for a deposit if they wish to buy a home, and provide a viable long-term housing option. However, for too many people, it does none of these things.

The cost of their accommodation in the private sector was a key reason tenants gave for adding themselves to a housing list. In the Scottish Household Survey 2017¹², 10% of private rented households stated that they were on a housing list. For just over a quarter (27%) of private rented households on a housing list, the main reason stated for being on a housing list was that they couldn't afford current housing or would like cheaper housing. This was a much larger percentage than the equivalent figure for social rented households (3%).¹³

Scottish Government statistics show that average private sector rents for all property sizes in the most densely populated areas of Scotland – Lothian and Greater Glasgow (combined population of over 2 million) – rose significantly faster than inflation between 2010 and 2018: 42.3% in Lothian and 31.3% in Greater Glasgow.¹⁴ These increases compare to the cumulative increase in the UK Consumer Price Index (CPI) from September 2010 to September 2018 of 18.7%.¹⁵

At a Scotland-wide level, there were also increases in rents above inflation for three-bedroom (8.7%), four-bedroom (11.8%) and one-bedroom shared properties (4.7%) between 2017 and 2018.¹⁶ These increases compare to UK CPI inflation of 2.4% in the year to September 2018.¹⁷

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2015/03/severe-poverty-scotland/documents/severe-poverty-scotland-communities-analytical-services/severe-poverty-scotland-communities-analytical-services/govscot%3Adocument>

¹² Scotland's People Annual Report 2017, A National Statistics Publication for Scotland, p66.

<https://www.gov.scot/publications/scotlands-people-annual-report-results-2017-scottish-household-survey/>

¹³ Ibid, p66.

¹⁴ Private Sector Rent Statistics, Scotland, 2010-2018, p1.

<https://www.gov.scot/publications/private-sector-rent-statistics-2010-2018/>

¹⁵ Ibid, p1.

¹⁶ Ibid, p1.

¹⁷ Ibid, p1.

While rents have not increased above inflation for all property sizes in all areas of Scotland, increases have not been limited to Scotland's cities, and any proposed legislation needs to be on a national level to give tenants certainty and protection into the future.

Some of the most recent rent increases have been dramatic. Between 2017 and 2018 the average rent for three-bedroom properties in the Lothians increased by 17.6%¹⁸ and for four-bedroom properties in the Borders it increased by 25.6%.¹⁹

As rents increase, benefits remain capped and earnings growth remains poor²⁰, housing costs are taking up more of people's incomes and making their lives more precarious. This is particularly the case for households on low incomes. In Scotland, those in the lowest income decile²¹ living in the private rented sector spend 57% of their income on housing costs. In contrast, those in the highest income decile spend 15%.²² In recent research by YouGov on behalf of Shelter Scotland, 36% of respondents said they would struggle to pay their rent or mortgage if it rose by as little as £50 a month during 2019.²³

There is more rent regulation across continental Europe than in the UK. In general, tenants have a more generous set of rights in Europe, where renting tends to be more popular and tenants are well supported. For example, the Swedish Union of Tenants²⁴ lobbies very effectively on behalf of their members, including blacklisting rogue landlords²⁵ and collectively negotiating fair rents.

Rent controls were introduced in Ireland at the beginning of 2017, but there have been teething issues. In Scotland, we have the opportunity to learn from the issues that Ireland has experienced.

¹⁸ Ibid, p14.

¹⁹ Ibid, p15.

²⁰ Fraser of Allander Institute Economic Commentary, April 2019, volume 43, number 1, <https://www.strath.ac.uk/business/economics/fraserofallanderinstitute/publications/commentary/>

²¹ The 10% of the population whose income is lowest.

²² ONS, "UK Private Rented Sector: 2018,"

<https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018>

²³ "More Scots Struggling to Pay Rent or Mortgage", Shelter Scotland, 4th January 2019,

https://scotland.shelter.org.uk/news/january_2019/more_scots_struggling_to_pay_rent_or_mortgage

²⁴ "The Swedish Union of Tenants", <https://www.hyresgastforeningen.se/in-other-languages/engelska/>

²⁵ "Tenant Union Names Sweden's Worst Landlords, The Local, <https://www.thelocal.se/20110125/31636>

One particular issue that Ireland has encountered, which has limited the success of rent controls, is the inability to successfully monitor the system. The Residential Tenancies Board (RTB), which is responsible for rent regulation, is not able to identify price hikes over the legal limit. Rather, it is for tenants to complain where this has taken place. There are two problems with this. The first is that tenants do not always know what the rent price was prior to their tenancy. And the second is that, given the pressures on housing supply, tenants may be willing to ignore unlawful rises in rent for the sake of having somewhere to live. This proposed legislation learns from the experience of Ireland and puts the responsibility on the landlord to record an increase in rent, with a fine if this is not carried out.

Current Law and Practice

In Scotland, private landlords are required to apply for registration with their local authority under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Operating as an unregistered landlord is a criminal offence²⁶ and applications must normally be renewed every three years.²⁷

Applicants must provide information about any criminal convictions and court or tribunal judgements, joint owners, addresses of all rental properties, repairing standards enforcements and other background information. The cost of registration is around £55 per local authority and £11 per property. It is relatively easy to apply and update an account online and any member of the public can use an address to find out the name of the landlord (owner) and (if separate) the person who manages that property.

On 1 December 2017, the new private residential tenancy (PRT) came into force, replacing the assured and short assured tenancy agreements for all new tenancies. This tenancy agreement provides more security, stability and predictability for tenants. The new legal requirements for landlords and tenants are detailed in the Private Housing

²⁶ Antisocial Behaviour etc. (Scotland) Act 2004, part 8, section 93, <https://www.legislation.gov.uk/asp/2004/8/section/93>

²⁷ "Renting Your Property Out", Scottish Government, <https://www.mygov.scot/renting-your-property-out/registration/>

(Tenancies) (Scotland) Act 2016.²⁸ Rent officers already play a role in adjudicating on rent increases for tenants with a private residential tenancy. This is set out in the Private Housing (Tenancies) (Scotland) Act 2016.²⁹ Under a PRT, a landlord can increase the rent no more than once a year and must give a tenant at least three months' notice of any increase.³⁰

As it stands, if a tenant thinks a proposed rent increase is unreasonable, they can apply to a rent officer at Rent Service Scotland for a rent adjudication. The rent officer will set the rent level based on a range of information about the property and can increase the rent if they decide it should be higher, as well as decreasing it if they think it is too high. If the landlord or tenant is dissatisfied with the change, the landlord or tenant will have a final course of redress to the First-Tier Tribunal for Scotland.

The process that rent officers and the First-Tier Tribunal currently employ to make adjudication decisions about market rent levels in appeal cases is opaque,³¹ primarily because of a lack of robust data on rents. And it is currently permissible, in cases in which tenants appeal their rent, for the rent adjudication to result in their rent being raised.³² This may be having a chilling effect on applications.

Lack of Robust Data

As noted by the Urban Big Data Centre, “the PRS is widely acknowledged to be a part of the housing system for which the quality and quantity of data is unsatisfactory.”³³ Currently, official statistics about private rents are drawn from Rent Service Scotland’s

²⁸ Private Renting, Private Residential Tenancy, <https://www.gov.scot/policies/private-renting/private-tenancy-reform/>

²⁹ Private Housing (Tenancies) (Scotland) Act 2016 <http://www.legislation.gov.uk/asp/2016/19/part/4/chapter/2/enacted?view=interweave>

³⁰ “About Rent Service Scotland”, Section 4, <https://www.gov.scot/publications/about-rent-service-scotland/>

³¹ “An Evaluation of Rent Regulation Measures within Scotland’s Private Rented Sector”, a report to Shelter Scotland by Dr Douglas Robertson and Dr Gillian Young, March 2018, p5. https://scotland.shelter.org.uk/_data/assets/pdf_file/0011/1527590/Shelter_RentReport_May18_screen3_1.pdf/_nocache

³² Ibid, p22 & p37.

³³ “Private sector rents in UK cities: analysis of Zoopla rental listings data”, Mark Livingston, Nick Bailey and Christina Boididou, Urban Big Data Centre, April 2018, p1. <https://www.ubdc.ac.uk/media/1709/data-note-260418-analysis-of-zoopla-rental-listings-data.pdf>

Rental Market Database³⁴. However, 97% of this data in 2016, for example, came from landlord advertisements and it does not seem possible to find out whether these rents were actually achieved.³⁵ “The sample size is also too small to permit private rental statistics to be produced at local authority level or, in the case of Scotland’s four main cities, below local authority level.”³⁶ Private company Citylets has teamed up with a blockchain specialist to devise a database that records rents.³⁷ However, it relies on gathering information on rents through letting agencies and a substantial number of landlords do not use agencies, therefore the database created will not be comprehensive.

In large part due to the lack of data, the process that rent officers and the First-Tier Tribunal use to make decisions on the fairness of rents is often not clear. “Decisions appear to rely on a mix of professional judgement and intuition.”³⁸

Part of my proposal is for better data on rents to be gathered. A tenant would be better informed as to whether the rent they are being charged is unfair if they were able to compare it to rents charged for similar properties in the area. This would allow them to make a better judgement as to whether they might want to appeal their rent.

In their report for Shelter on rent regulation measures in Scotland, Professor Douglas Robertson and Gillian Young note that: “The single biggest barrier to the effective operation of both ‘rent regulation’ provisions is the lack of robust data on the stock of private rented dwellings and the rents being charged. In particular, the ability of existing tenants to challenge a rent rise is compromised by a lack of robust evidence on actual rental market rates.”³⁹ Further to this, as the legislation stands, if a tenant appeals their

³⁴ “About Rent Service Scotland” <https://www.gov.scot/publications/about-rent-service-scotland/>

³⁵ Ibid, p24.

³⁶ Ibid, p5.

³⁷ “Wallet.Services links with Citylets for blockchain global first”, The Scotsman, 24th September, 2018, <https://www.scotsman.com/future-scotland/tech/wallet-services-links-with-citylets-for-blockchain-global-first-1-4791151>

³⁸ Ibid, p5.

³⁹ “An Evaluation of Rent Regulation Measures within Scotland’s Private Rented Sector”, a report to Shelter Scotland by Dr Douglas Robertson and Dr Gillian Young, March 2018, p5. https://scotland.shelter.org.uk/_data/assets/pdf_file/0011/1527590/Shelter_RentReport_May18_screen3_1.pdf/_nocache

rent, they run the risk of starting a process which may result in them being asked to pay a rent even higher than the amount initially appealed.⁴⁰

Rent Pressure Zones are not working

Rent Pressure Zones (RPZs) were introduced as part of The Private Tenancies (Housing) (Scotland) Act 2016 but have not yet been used by any local authority.⁴¹ If Scottish Ministers designate an area as an RPZ (after an application from a local authority) they can place a cap on how much the rent for tenants with a PRT in that area can increase each year. A cap can last for up to five years and will be at least the consumer price index + 1%. For example, if CPI is 1.6%, the minimum cap set by Ministers would be 2.6%. A landlord can also apply to a rent officer to increase rent a certain amount above the annual cap but only to reflect substantial improvements made to the property. A landlord can only do this by applying to a rent officer for a decision on how much additional rent they can charge.⁴²

In November 2018, a report by the City of Edinburgh Council concluded that RPZs are not fit for purpose and called for a review of the policy. Council officers suggested that to gather enough evidence to justify an RPZ being introduced could take between three and five years.⁴³

Similarly, recent academic research found that, “there are currently no private rents data sources that would provide the evidence needed to support a RPZ application.”⁴⁴ The study, conducted for Shelter Scotland on rent regulation in the private rented sector, concluded that the Scottish Government’s approach to rent regulation is

⁴⁰ Ibid, p22 & p37.

⁴¹ Rent Pressure Zone Checker, Scottish Government,
<https://www.mygov.scot/rent-pressure-zone-checker/>

⁴² Private Renting, Rent Pressure Zones,
<https://www.gov.scot/policies/private-renting/rent-pressure-zones/>

⁴³ “More Clarity Required into Introduction of Rent Pressure Zones”, Scottish Housing News, 6th November 2018.
<https://www.scottishhousingnews.com/article/more-clarity-required-into-introduction-of-rent-pressure-zones>

⁴⁴ “An Evaluation of Rent Regulation Measures within Scotland’s Private Rented Sector”, a report to Shelter Scotland by Dr Douglas Robertson and Dr Gillian Young, March 2018, p20.
https://scotland.shelter.org.uk/_data/assets/pdf_file/0011/1527590/Shelter_RentReport_May18_screen3_1.pdf/_nocache

“tentative” and the measures it currently employs to tackle the problem are “inadequate for the task”.⁴⁵

The Scottish Government must acknowledge that RPZs are unworkable and that it is time for a more meaningful intervention in the private rented sector to protect people from rising private sector rents.

DETAIL OF THE PROPOSED BILL

The proposed Bill would introduce a number of new measures to assist with the regulation of rent levels in the private rented sector. The key measure will be a cap in rent increases, and the subsidiary measure will have the useful effect of recording rents, allowing for a comprehensive nationwide database to be created.

Cap on Rent Increases

The proposed Bill would cap annual private sector rent increases across Scotland at one percentage point above inflation (measured according to the consumer price index (CPI) averaged over a 12-month period to September, as is used for the Scottish Government’s Private Sector Rent Statistics).⁴⁶ For example, if the rent on a property in the previous year had been £500 a month, and CPI had been 2% in that previous year, the next year’s maximum rent would be 3% higher – i.e. £515 a month. This would apply to both new tenants (if the property has been let previously) and existing tenants. It would be “grandfathered” for a new tenant where the property has been let previously, meaning when a property is let out to a new tenant, the landlord could only charge the previous rent, increased by one percentage point above inflation (measured using CPI increases over the period since rent was last charged). For example, if a property had previously been rented for £400 a month and was being re-let two years later, and if CPI had been 3.5% over that two-year period, the maximum rent now chargeable would be £418 a month. The initial price of new properties entering the

⁴⁵ Ibid, p6.

⁴⁶ Private Sector Rent Statistics, Scotland, 2010 to 2018, the Scottish Government, <https://www.gov.scot/publications/private-sector-rent-statistics-2010-2018/>

market will not be subject to a cap. Market forces should prevent a landlord from setting an initial rent unreasonably high.

The economic reality of renting in areas of lower demand should prevent the ceiling (i.e. the cap) from becoming the floor. This is evidenced in some parts of Scotland and for certain sizes of house where increases have been lower than the rate of inflation because of different market forces. Moreover, many landlords prioritise having long-term, happy tenants over increasing rent. However, currently there is little consistency and while the rent increase for one size of house in a certain area may be below inflation, this may not be the case for another size of house in the same area. I believe this legislation is necessary to stabilise rents while helping to achieve consistency in the sector, as well as being necessary in order to protect people from experiencing dramatic rent increases.

Property Improvements

As is the case currently with Rent Pressure Zones, this proposal allows for a landlord to be able apply to a rent officer to increase rent a certain amount above the annual cap to reflect substantial improvements which are made to the property. A landlord must do this by applying to a rent officer for a decision on how much additional rent they can charge.⁴⁷

Rent Appeals

A tenant will be able to appeal their rent in the same way as is available currently. However, when a tenant appeals their rent, rent officers and the First-Tier Tribunal will be able to either lower or maintain the rent, depending on their assessment, but will not be able to raise the rent.

Landlord Register

⁴⁷ Private Renting, Rent Pressure Zones,
<https://www.gov.scot/policies/private-renting/rent-pressure-zones/>

Landlords in Scotland must register their property every three years.⁴⁸ The proposed Bill would expand the landlord registration scheme so that landlords must input the rent that they charge when they register and update the system when they change the rent.

This will have the effect, not only of recording a specific rent to ensure it is not rising faster than inflation, but also of creating a comprehensive database of rents, resulting in a robust dataset of actual market rates.

This additional data collection would involve the expansion of the database to allow landlords to input how much rent they are charging and update it subsequently. This should be a one-off cost to expand the system. Local authorities send the data to the Registers of Scotland. There would be extra work involved for local authorities to collate the rents charged regularly, but this should be minimal. It is feasible that a good IT system would be able to automatically update changes in rents on to a system as well as notify the Registers of Scotland on a regular basis. The Urban Big Data Centre has also argued that the landlord registration scheme could be expanded to gather better data about the PRS.⁴⁹

Criminal Offences and Enforcement

It is currently a criminal offence for a landlord to rent out a property without registering it on the Scottish Landlord Register. A landlord can be fined up to £50,000.⁵⁰ It is also a criminal offence to knowingly fail to supply full information in the registration application and a landlord can be fined an amount not exceeding level 3 on the standard scale, which is currently £1,000.⁵¹ This Bill would simply expand the duty on landlords to state the level of rent they are charging. This will ensure that when landlords increase the rent it does not exceed one percentage point above inflation. The penalty system

⁴⁸ Scottish Landlord Register, <https://www.landlordregistrationscotland.gov.uk/>

⁴⁹ "Private sector rents in UK cities: analysis of Zoopla rental listings data", Mark Livingston, Nick Bailey and Christina Boididou, Urban Big Data Centre, April 2018, p1.
<https://www.ubdc.ac.uk/media/1709/data-note-260418-analysis-of-zoopla-rental-listings-data.pdf>

⁵⁰ Antisocial Behaviour etc. (Scotland) Act 2004, Section 93 (7),
<http://www.legislation.gov.uk/asp/2004/8/part/8/crossheading/enforcement>

⁵¹ Antisocial Behaviour etc. (Scotland) Act 2004, Section 83 (4),
<http://www.legislation.gov.uk/asp/2004/8/section/83>

would be expanded to cover these new obligations and be set at an appropriate level to ensure compliance.

Other Options Considered Regarding Rent Regulation

Another option which I considered in order to tackle the problem of rents rising faster than inflation was to amend the legislation surrounding Rent Pressure Zones (RPZs) to make it easier for a local authority to apply to create a zone. However, given that councils do not currently have access to a sufficiently robust dataset to apply to create a RPZ, there would need to be better data collected along the lines of the proposal in this consultation. Further, this option would place a burden on councils, which are already overstretched, to create detailed applications for an area to be designated an RPZ. This current legislation also takes a piecemeal approach and does not provide nationwide protection against exorbitant rents.

FINANCIAL AND SECTOR-WIDE IMPLICATIONS

As there is already a well-functioning landlord registration scheme where landlords register their properties on a national website, the only cost to recording rents would be the expansion of the database to allow landlords to input, or update, how much rent they are charging. This would be a one-off cost, and given that it is an online process, should be low. Updates would be sent on an annual basis to the Registers of Scotland by the relevant local authority.

Professor Nick Bailey from the Urban Big Data Centre has suggested that better use of landlord register data could prove to be financially beneficial to the Scottish Government. He notes that, “Under the new devolution settlement any additional income tax revenues would flow back to Scotland”.⁵² The register could be used to catch landlords who are not declaring their income from renting on their tax returns, as has been in the London borough of Newham.⁵³ Therefore, better use of the existing data could offset the cost of expanding the system.

⁵² The (multi-million pound) potential of landlord register data, Nick Bailey, 30th August 2017, <https://www.ubdc.ac.uk/news-media/2017/august/the-multi-million-pound-potential-of-landlord-register-data/>

⁵³ Ibid

While capping rent increases may cost landlords who would otherwise have sought to exploit demand for housing in certain areas, it should not affect responsible landlords. Capping rent increases will, however, stabilise costs for many renters as well as providing protection for all those who rent in the private sector. This should have the effect of re-balancing the system in the PRS, making it fairer and helping to reduce the number of people living precariously because of housing costs.

Some landlords may leave the sector, or be put off entering it in the first place, as a result of additional regulation. However, a reasonable cap on annual rent increases will not negate the existing financial benefits of renting out a property so I do not expect this legislation to cause the sector to shrink substantially. Responsible landlords will not be discouraged from letting their properties. Further, it will help to improve and professionalise the PRS if exploitative landlords are discouraged from operating within the sector.

Under my proposal, Ministers will have the power to change the inflation index, therefore if interest rates rise suddenly, and by a substantial amount, landlords will be protected. The Scottish Ministers may by regulations amend the relevant section to replace references in that section to one price index with references to another (as is currently the case with the legislation covering rent pressure zones⁵⁴).

EQUALITIES

There are more older people, young people, and families with children renting in the private sector than previously and this Bill would give them more protection. Further to this, as a 2017 Scottish Government report notes, “low income households may be especially vulnerable in the private rental sector”, and again, this Bill will give this group more protection.⁵⁵ For example, rates of fuel poverty are above the national average in

⁵⁴ Private Housing (Tenancies) (Scotland) Act 2016, Chapter 3, Section 41, <http://www.legislation.gov.uk/asp/2016/19/section/41/enacted>

⁵⁵ “The Life Chances of Young People in Scotland: An Evidence Review for the First Minister's Independent Advisor on Poverty and Inequality”, 2017, p1, <https://www.gov.scot/publications/life-chances-young-people-scotland-evidence-review-first-ministers-independent/>

the private rented sector at 27%.⁵⁶ Tenants will be better able to afford to heat their homes if they are paying more stable and affordable rents.

The level of older people now living in the private rented sector has doubled over the past 18 years. Specifically, the number of permanently-retired adults renting privately, has risen from an estimated 20,000 adults in 1999 to 40,000 adults in 2017.⁵⁷ The cost of housing as a proportion of income for those who own with a mortgage is substantially lower than for those in the private rented sector.⁵⁸

A 2017 Scottish Widows report indicated that in 15 years' time, those retirees who are renting in the UK will be spending 42% of their retirement income on rent.⁵⁹ This suggests that if getting on to the property ladder is unaffordable, money for rent or retirement will need to be found. This will clearly have a major impact on the number of pensioners living in poverty. This Bill should benefit those older people renting in the private sector and protect them from dramatic increases in their rent.

Young people have experienced a similar shift. Since the millennium, there has been an increase in younger households living in the private rented sector or with their parents rather than becoming owner occupiers.⁶⁰ The proportion of younger households (with an age 16 to 34 highest income householder) that live in the private rented sector has increased substantially since 1999, and this is now the most common tenure for these households.⁶¹

⁵⁶ Scottish House Condition Survey: 2017 Key Findings, the Scottish Government, p10,

<https://www.gov.scot/publications/scottish-house-condition-survey-2017-key-findings/>

⁵⁷ Scotland's People Annual Report 2017, A National Statistics Publication for Scotland, p74,

<https://www.gov.scot/publications/scotlands-people-annual-report-results-2017-scottish-household-survey/>

⁵⁸ "The Life Chances of Young People in Scotland: An Evidence Review for the First Minister's Independent Advisor on Poverty and Inequality", 2017, p16,

<https://www.gov.scot/publications/life-chances-young-people-scotland-evidence-review-first-ministers-independent/>

⁵⁹ Ibid, p3.

⁶⁰ "The Life Chances of Young People in Scotland: An Evidence Review for the First Minister's Independent Advisor on Poverty and Inequality", 2017, p1,

<https://www.gov.scot/publications/life-chances-young-people-scotland-evidence-review-first-ministers-independent/>

⁶¹ Scotland's People Annual Report 2017, A National Statistics Publication for Scotland

<https://www.gov.scot/publications/scotlands-people-annual-report-results-2017-scottish-household-survey/>

Finally, the private rented sector is now home to more families than previously.⁶² There is now a higher percentage of households with children renting in the private sector than renting in the social sector.⁶³ Additionally, the number of children in private rented housing living in severe poverty has more than doubled in a decade.⁶⁴

SUSTAINABILITY

The purpose of this Bill is to provide a more equitable economic arrangement for people housed in the private rented sector, which is expanding.

Introducing a cap would help prevent tenants facing unmanageable rent increases and could prevent people being priced out of their own neighbourhoods. The ability of private tenants to afford homes near their workplaces might be improved, and this, in turn might reduce the environmental impact and stress of commuting. The proposal may also improve the wellbeing of private tenants through a greater sense of security in their living situation. It should allow private tenants' households to be more resilient to other financial shocks or stresses, as they may be able to budget more effectively in the knowledge that the rent could only increase in line with CPI+1%.

Some landlords may view the proposal as having a negative impact on their income and, depending on the nature of the rent controls, may sell their rental properties. However, a cap on annual rent increases at one percentage point above inflation should not remove all of the current financial benefits of renting out a property.

The proposed Bill will ensure that improved data is available on the level of rent for different property types in a given area. This should allow tenants to be better informed regarding their level of rent and to lodge an appeal with a rent officer if necessary, which could lead to greater fairness in the levels of rent across the private rented sector in Scotland.

⁶² Ibid, p73.

⁶³ Scottish House Condition Survey: 2017 key findings, p4.

<https://www.gov.scot/publications/scottish-house-condition-survey-2017-key-findings/pages/4/>

⁶⁴ "Poverty and Income Inequality in Scotland: 2015-2018", Scottish Government statistics, 28th March 2019

<https://www.gov.scot/publications/poverty-income-inequality-scotland-2015-18/>

QUESTIONS

ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

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

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
 - I would like this response to be published anonymously

- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

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

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

YOUR VIEWS ON THE PROPOSAL

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

Rent cap

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Rent level appeals

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Landlord registration scheme

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Other options - Rent Pressure Zones

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Financial implications

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

- (a) Government and the public sector
- Significant increase in cost
 - Some increase in cost
 - Broadly cost-neutral
 - Some reduction in cost
 - Significant reduction in cost

Unsure

(b) Businesses – including landlords

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals – including tenants

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

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

Equalities

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

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

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

Sustainability

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

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

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

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/FairRentsBill/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

pauline.mcneill.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Pauline McNeill MSP
Room M1.14
The Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 6475.

Deadline for responses

All responses should be received no later than **Tuesday 6 August 2019**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website:

<http://www.paulinemcneillmsp.scot/prsr/>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data including special categories of personal data (formerly referred to as sensitive personal data) that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into normal category data.

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and the Data Protection Act 2018 (the DPA)

Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

"Not for publication" responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of "not for publication" responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing "not for publication" status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP's office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP's office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament's legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is "not for publication" or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member's Bill may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on SmartSurvey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then the information that we would normally publish – including all your answers to questions about the proposal (unless your response is "not for publication") and your name (unless you requested anonymity), but not your contact details – may be downloaded from Smart Survey to SPCB servers and retained until the end of the

session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was “not for publication”), together with your name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest, or in the substantial public interest, in accordance with Art 6(1)(e) GDPR, s8(d) DPA, or Art 9(1)(g) GDPR, s10 of and paragraph 6 of Schedule 1 of the DPA. The task is the support of Members seeking to introduce Members’ Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so. Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 28 June 2018.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance
The Scottish Parliament
Edinburgh
EH99 1SP
Telephone: 0131 348 6913 (Text Relay calls welcome)
Textphone: 0800 092 7100
Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113