

Local Government, Housing and Planning Committee
Tuesday 17 February 2026
7th Meeting, 2026 (Session 6)

Subordinate legislation: Affirmative instruments on housing issues and council tax – evidence session

Introduction

1. The Local Government, Housing and Planning Committee will take evidence from stakeholders on the following subordinate legislation to inform its consideration of the instruments:
 - [Private Housing Rent Control \(Exempt Property\) \(Scotland\) Regulations 2026 \[draft\]](#) (exemptions from rent control areas);
 - [Investigation and Commencement of Repair \(Scotland\) Regulations 2026 \[draft\]](#) (known as ‘Awaab’s Law’);
 - [Council Tax \(Variation for Unoccupied Dwellings\) \(Scotland\) Regulations \[draft\]](#); and
 - Anticipated subordinate legislation on minimum energy efficiency standards in the private rented sector.
2. This paper provides background information to inform the evidence session.

Background

3. At its [meeting on the 27th January](#), the Committee agreed to hold a combined evidence session on three affirmative Scottish Statutory Instruments (SSIs) on housing issues which were anticipated to be laid in the near future.
4. These were:
 - exemptions to the rent controls introduced by the Housing (Scotland) Act 2025 (exempting mid-market rent and build-to-rent properties);
 - regulations bringing into force ‘Awaab’s Law’ to improve housing conditions and landlord responses to reports of issues with properties in the rental sector; and
 - anticipated regulations introducing minimum energy efficiency standards for private rental sector (PRS) properties.
5. Since then two of the three anticipated affirmative instruments have been laid before the Parliament:
 - [Private Housing Rent Control \(Exempt Property\) \(Scotland\) Regulations 2026 \[draft\]](#) (exemptions from rent control areas)

- [Investigation and Commencement of Repair \(Scotland\) Regulations 2026 \[draft\]](#) (known as 'Awaab's Law')
6. The Cabinet Secretary [wrote to the Committee](#) on 9 February 2025 noting further correspondence on the PRS regulations would be forthcoming.
 7. This evidence session will seek witnesses' views on the anticipated energy efficiency regulations for PRS, based on the Scottish Government's consultation in 2025 on its proposals for regulation.
 8. In addition, at its meeting on [3 February 2026](#) the Committee agreed to [write to local authorities](#) and to take oral evidence on the following draft affirmative instrument which would allow councils to increase the council tax premium for second homes and long term empty homes from 1 April 2026:
 - [Council Tax \(Variation for Unoccupied Dwellings\) \(Scotland\) Regulations \[draft\]](#)
 9. Given the overlap in stakeholder organisations who have an interest in these regulations with those providing evidence on the housing regulations above, today's evidence session will also incorporate questions on the council tax affirmative instrument.
 10. Annexe A provides more detailed background on each of the regulations under consideration.

Evidence

11. The Committee will hear from two panels of witnesses during this evidence session as listed in the agenda.
12. The Committee has also received written briefings and information from the following organisations ahead of the evidence session:

Investigation and Commencement of Repair (Scotland) Regulations 2026 [draft] (Awaab's law)

- A [joint written submission](#) from the Scottish Federation of Housing Associations (SFHA) and the Association of Local Authority Chief Housing Officers (ALACHO)
- The [Glasgow and West of Scotland Forum of Housing Associations](#)

Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations [draft]

- [Highland Council](#)

Private Rented Sector minimum energy efficiency standards

- [Energy Savings Trust](#)

All regulations

- The [Scottish Association of Landlords \(SAL\)](#)
- [ALACHO](#)

Awaab's Law and PRS minimum energy efficiency standards

- [Existing Homes Alliance](#)

Exemptions from rent control areas

13. The draft [Private Housing Rent Control \(Exempt Property\) \(Scotland\) Regulations 2026](#) were laid on 29 January 2026 and introduce specific exemptions for mid-market rent (MMR) properties and build-to-rent (BTR) properties from the rent control provisions introduced by the Housing (Scotland) Act 2025.
14. Mid-market rent aims to provide more affordable rents for homes – in effect a form of rent control - and is aimed at assisting people on low and modest incomes to access affordable rented accommodation. It helps those who have difficulty accessing social rented housing, buying their own home or renting privately on the open market.
15. In its scrutiny of the Housing (Scotland) Bill at Stage 1 the case was made to the Committee that the MMR sector should be excluded from rent controls, and it concluded that the Bill should be amended accordingly to introduce an exemption for MMR properties.
16. The Committee also heard at Stage 1 about the importance of sustaining inward investment in the housing sector, and the risk that introducing rent controls may limit that investment. Our Stage 1 report on the Bill noted that:

“There is strong evidence that investment in the build-to-rent sector has stalled whilst it remains unclear how rent controls will operate. In the long-term this may be to the detriment of the supply of rental properties, exacerbating existing shortages.”
17. In its Policy Note accompanying the regulations the Scottish Government notes that there was a reduction in investment following the announcement of rent control in August 2021, and that the intention of the regulations is to remove the barrier to investment in purpose-built homes for rent and to promote their retention in the private rented sector.

Awaab's Law

18. The issue of [damp and mould in rented housing](#) gained prominence following the tragic death of two-year old Awaab Ishak in 2020 because of a severe respiratory condition due to prolonged exposure to mould in his English housing association home.

19. [Awaab's Law](#), which came into force in England in October 2025 now requires social landlords in England to investigate and fix damp and mould hazards within strict timeframes.
20. The Housing (Scotland) Bill was amended at Stage 2 to provide for a regulation-making power for Scottish Ministers on repair standards in social rented homes. At the time, the Scottish Government said its policy intention extended to the private rented sector also and this could be achieved through existing powers.
21. The draft [Investigation and Commencement of Repair \(Scotland\) Regulations 2026 regulations](#) to introduce Awaab's Law in Scotland were laid on 21 January 2026 and introduce new duties on both social and private rented landlords to investigate reports of damp and mould and to commence any repairs within a set timescale (unless the landlord is unable to do so for reasons outwith its control).
22. Existing legislation also provides for Scottish Ministers to make regulations about the "Repairing Standard" that private landlords have to meet.

Minimum energy efficiency standards for private rental sector (PRS) properties

23. In June 2025, the [Scottish Government consulted on a minimum energy efficiency standard \(MEES\)](#) for private rented homes. A [draft instrument](#) was included in the consultation document.
24. The consultation proposed that all private rented homes, as far as possible, would reach reformed EPC Heat Retention Rating (HRR) band C from 2028 for new tenancies and by 2033 for all tenancies. Exemptions and a cost cap were proposed. The [consultation](#) closed on 29 August 2025.
25. There is no existing MEES for owner occupiers. The [Draft Buildings \(Heating and Energy Performance\) and Heat Networks \(Scotland\) Bill](#) proposes a framework for Scottish Ministers to make regulations on a MEES for buildings where there are no clean heating systems. The draft Bill does not include any specific requirements or dates.
26. The [draft Climate Change Plan](#) stated that the Scottish Government was "considering options to introduce powers to set minimum energy efficiency standards for owner/occupier and non-domestic properties, subject to further consideration".

Council tax premium for second homes and long term empty homes

27. Section 33 of the Local Government in Scotland Act 2003 and associated regulations (the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 as amended) allows councils to impose a council tax surcharge of up to 100% for unoccupied dwellings (long-term empty homes and second homes).

28. Section 75 of the Housing (Scotland) Act 2025 amended section 33 of the 2003 Act. It repealed section 33(1A) which had limited the variation in council tax for unoccupied dwellings to double the existing amount. This means that the Scottish Ministers may by regulations vary the amount of council tax for such dwellings, without any limit on the increase.

29. The effect of the draft [Council Tax \(Variation for Unoccupied Dwellings\) \(Scotland\) Regulations](#) is that there will be no limit on the extent to which that percentage premium may be increased, or decreased, by local authorities. They may also choose not to apply a premium, or to apply a discount.

30. As the [Policy Note to the draft regulations](#) explains:

“In particular, the Regulations:

- establish a national default rate for Council Tax premiums for second homes and long-term empty homes of 100 per cent; and
- enable local authorities to vary that rate, including increasing or reducing the premium, applying no premium, or applying a discount, and to apply different approaches for different cases, classes of dwelling or areas.

This amendment gives local authorities greater discretion over the Council Tax treatment of unoccupied dwellings in their areas, allowing them to respond to local housing pressures. In exercising these powers, local authorities will be supported by statutory guidance issued by the Scottish Ministers.”

Next steps

31. The Committee will take evidence from the Scottish Government on the affirmative instruments. It will then debate and formally consider Scottish Government motions to recommend approval of the SSIs at future meetings.

Clerks to the Committee
February 2026

Annexe A

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

The Private Housing Rent Control (Exempt Property) (Scotland) Regulations 2026

The [draft regulations](#) would exempt ‘mid-market’ (MMR) and ‘build to rent’ (BtR) properties from any rent increase caps in designated rent control areas. The [policy intention](#) is to, “remove the reported barriers to investment created by the intention to introduce rent controls, prioritising efforts to increase the availability of rented housing.”

Background

The Housing (Scotland) Act 2025 introduces a framework to allow rent control areas (RCAs) to be designated in local authority areas. Within an RCA, rent increases for private residential tenancies would be subject to a cap of the Consumer Prices Index (CPI) + 1%, with a maximum cap of 6%.

The 2025 Act allows Scottish Ministers to make regulations creating exemptions from the rent control provisions based on circumstances related to the landlord or tenant, or the type of property.

[During Stage 1 scrutiny of the Bill](#) there were mixed opinions from landlords and tenants on creating exemptions from rent control. A recurring theme from landlords was a concern about the impact of rent controls on future investment in the private rented sector, particularly from BtR providers and MMR providers (generally subsidiaries of RSLs who can receive funding through the Scottish Government’s Affordable Housing Supply Programme). Other groups, such as Living Rent, opposed any exemptions arguing that there was no justification for exemptions.

The [Committee’s Stage 1 report](#) on the Housing (Scotland) Bill was supportive of the principle allowing for exemptions to rent control to apply in some limited circumstances.

It also noted that there is “an existing strong case for mid-market rent properties to be excluded from the rent control provisions in the Bill.”

In April 2025, the Scottish Government issued a [consultation paper on exemptions, and circumstances where rents could be increased above the level of the rent cap](#).

In September 2025, the Scottish Government published an [interim partial analysis of responses](#), and in January 2026, the [published the final analysis of consultation](#)

[responses](#). In September 2025 the [Scottish Government also announced its intention to bring forward regulations exempting mid-market rent and build-to-rent properties from rent controls](#) under the Act.

The [Policy Note to the regulations](#) summarises the outcome of the consultation:

“The consultation process revealed a significant divergence in opinion between different groups. Those who responded in support of a campaign response by Living Rent were opposed to any form of exemptions. ‘Developer or investor’ and ‘Social landlord or their representative bodies’ were generally strongly in favour of exemptions. There were more mixed views amongst other groups who responded to the consultation. In addition, exemptions for mid-market rent and BtR were a recommendation of the Housing Investment Taskforce, who published their report during the consultation period.”

The Policy Note accompanying the instrument also provides more detail on how the proposals have developed following consultation.

What do the regulations do?

The regulations provide that BTR and MMR properties are exempt properties. The definitions of these types of property are provided in regulation 4 and 5 respectively.

To summarise, the BtR exemption applies to groups of 6 or more residential properties, covered by the same planning permission, all in single or joint ownership and where the completion date for the property is on or after the 31 August 2021. This date reflects the Scottish Ministers’ announcement of the intention to introduce rent controls. The property must also be included in the property owners’ entry into the private landlord register

The exemption would no longer apply if the nature or the use of the property is changed e.g. if the property becomes owner-occupied, used for a short-term let, or removed from the landlord’s entry in the landlord register.

To summarise, the MMR exemption will apply to properties in the following circumstances:

- Where the landlord, or a third party, receives funding from the Scottish Government or local authority and there are conditions attached to that funding which restrict the landlord’s ability to increase the rent.
- Where the terms of the tenancy agreement for the property restrict the landlord’s ability to increase the rent.
- The specified level by which rents cannot be raised above is the median of market rent levels for a property of that size (or, in certain circumstances, similar size) in that broad rental market area (BRMA). This reflects the restrictions that are found in Scottish Government grant conditions for MMR housing provided through its Affordable Housing Supply Programme.

Views on the regulations

[ALACHO](#)'s submission expresses their support for exemptions for MMR but not for BtR on the basis that those representing the build to rent sector had made the case during scrutiny of the Housing (Scotland) Bill 2025 that the sector needs a degree of confidence in the stability and impact of any rent control regime rather than the removal of rent controls. ALACHO's view however is that the definitions of both MMR and BtR are fit for purpose and provide the necessary safeguards to ensure that the scope of the exemptions are properly limited and, in the case of MMR, will be lost if the property is let at rents above the accepted definition of "mid-market".

Some organisations have issued news releases on the exemptions. The Scottish [Federation of Housing Associations \(SFHA\) support the regulations stating:](#)

"Our Mid-Market homes are an increasingly important part of the housing market, often housing key workers and young people who can't afford private rented accommodation or access a social home.

Importantly, they are already effectively rent-controlled by being tied to local housing allowance. Tenants of MMR properties, as well as being able to live in an affordable home, also enjoy all the benefits of living in a social home often managed by housing associations. That should be protected, not put under threat. Everyone should have access to a safe, warm affordable home, because we know that allows people and Scotland to thrive, and MMR plays a crucial role in helping us to achieve that vision..."

[CIH Scotland](#) has also welcomed the regulations and the clarity it provides to investors:

"Exempting high quality, professionally managed and long-term rental homes from rent controls will ensure that Scotland is an attractive place for investors. It will boost the supply of much needed homes, support job creation and most importantly increase the supply of decent, safe and affordable homes across Scotland."

[The Scottish Property Federation](#) has also supported the regulations:

"After years of uncertainty and the freezing of a promising pipeline of BTR investment following the September 2022 rent freeze, which put some 17,000 new homes and £3bn of new investment at risk, the Scottish Government's decision recognises the need to support the growth of this sector and to rebuild investor confidence, enabling much-needed development to move forward."

In response to the Scottish Government's consultation, [Living Rent members argued against exemptions for both categories](#). Members argued that MMR renters need the same protections, if not more, as every other tenant. Other points made included that tenants already struggle with affording their MMR properties, the proposed CPI+1% formula already enables MMR landlords to make above inflation profits and there is no accountability mechanism in place for MMR landlords.

Similarly, Living Rent members argued against exemptions from BTR properties. [As one member commented](#):

“Build to Rent properties do not meet any affordability criteria. Exempting properties that do not meet any affordability criteria undermines the Bill’s purpose. Exempting BtR properties will mean that some private tenants will face unregulated increases, without any recourse to contesting them. Exemptions will create uncertainty, instability and multi-tiered rights for tenants. It will push up rents locally.”

Investigation and Commencement of Repair (Scotland) Regulations 2026

Summary

The [Investigation and Commencement of Repair \(Scotland\) Regulations 2026](#) will introduce new duties on social and private rented landlords to investigate reports of damp and mould and to commence any repairs within a set timescale (unless the landlord is unable to do so for reasons outwith its control).

The [Scottish Government’s policy aim](#) is to provide “greater certainty to tenants and seek to reduce instances of long term exposure to damp and mould, which can pose significant risk”.

To summarise, the timescales common to both private and social rented housing are:

1. Landlords must complete an investigation into the issue within 10 working days of being notified by the tenant or otherwise becoming aware of the issue. The investigation must be carried out by a competent person.
2. Following the completion of the investigation, the landlord must provide a written summary of the results of the investigation to the tenant within 3 working days.
3. If the investigation concludes that work is required, that work must commence within 5 working days of the completion of the investigation.

Given the differences between the legislative framework governing social and private rented housing, there are some differences about how the regulations will operate in practice. This is explained in more detail below.

The proposed commencement date is 6 October 2026, and the Scottish Government will develop guidance in collaboration with the representative from the housing sector. The Scottish Government intends to extend the provisions to other qualifying hazards over time.

Background

The issue of [damp and mould in rented housing gained more prominence following the death of two-year old Awaab Ishak](#) in 2020 because of a severe respiratory condition due to prolonged exposure to mould in his English housing association home.

The Local Government, Housing and Planning Committee's work on [building safety and maintenance](#) has included consideration of [damp and mould in rented housing](#).

On [18 March 2025, the Scottish Government announced](#) its plans to introduce an "Awaab's law" for Scotland via an amendment to the Housing (Scotland) Bill (the [SPICe briefing on Stage 2 on the Bill contains further detail](#) on the debate and amendments).

To inform the development of the regulations, the Scottish Government hosted a series of roundtables with stakeholders across the rented sectors. Further detail is contained in the [Business and Regulatory Impact Assessment](#).

The [Policy Note to the regulations](#) summarises feedback from the roundtable sessions:

"To inform the development of this instrument, a series of roundtables representing stakeholders across the rented sector were held in Autumn 2025. This included organisations representing landlords and tenants. As a result of the engagement, general themes included that any regulation should be proportionate, build upon the existing housing framework in Scotland, have an appropriate lead in time for implementation to enable sufficient preparations, and be deliverable for urban, rural and island communities. Feedback did not raise any specific concerns around the general scope and timescales proposed, acknowledging existing practices and the need for prompt action. "

The following section describes the current position for private and social rented housing and what changes the regulations will make.

Social housing

Currently, the Housing (Scotland) Act 2001 ('the 2001 Act') requires [social landlords to ensure that the properties they let are wind and watertight and in all other respects 'reasonably fit for human habitation'](#).

The 2001 Act and associated regulations (the [Scottish Secure Tenants \(Right to Repair\) Regulations 2002](#)), also gives tenants the right to have small urgent repairs (less than or equal to £350) carried out by their landlord within a given timescale. This is called the Right to Repair scheme.

If repairs are not started within the timeframe the tenant can instruct another contractor (from the landlord's list) to carry out the work and compensation is payable at £15 initially, and an additional £3 for each working day after the missed deadline until the repair is finished. The total compensation is capped at £100 for any single repair.

In addition, social landlords must ensure that the properties they let meet the Scottish Housing Quality Standard (SHQS) which includes that the [home must be substantially free from rising and penetrating damp](#) (this is also the same as the [statutory Tolerable Standard](#)) and the home must have satisfactory ventilation and meet minimum energy efficiency requirements.

Social landlords have their own policies about repairs which generally specify timescales for addressing emergency and non-emergency repairs. All social landlords are required to report to the Scottish Housing Regulator on the average length of time taken to complete emergency and non-emergency repairs.

The introduction of the regulations is part of a range of activity to help landlords address dampness and mould in homes. This includes, for example, the publication of SFHA, CIH and ALACHO joint good practice: [Putting Safety First: a briefing noted on damp and mould for social housing practitioners](#), and [updated Scottish Government guidance for private landlords on the Repairing Standard](#). From April 2026, [the SHR will also require social landlords to report on three new indicators on damp and mould](#).

Social housing - what do the regulations do?

The regulations amend the 2022 regulations to provide that the specified timescales for investigating and commencing a relevant repair, as outlined in the summary above will apply.

In addition (this is a summary):

- if a social landlord can't comply with the duty for investigating a complaint and commencing a qualifying repair for reasons beyond their control the landlord must inform the tenant in writing with a reason and the reasonable timescale within which the landlord is able to comply.
- until the landlord can comply with the duties, the social landlord must take reasonable steps are taken where practicable to minimise the extent to which the house is affected by damp or mould
- 'substantial damp or mould' is added as a qualifying repair in the schedule of the 2002 Regulations and sets the maximum period for repairs to be carried out at 20 days.
- following a qualifying repair, the landlord must ensure that the house is substantially free from damp and mould, and so far as reasonably practicable, the house will continue to be substantially free from damp and mould.
- compensation is payable to the tenant where:
 - the timescales for investigating and commencing a repair have not been complied with
 - (as is currently the case), where a qualifying repair has not been carried out in the required timescale.
 - as with the current regulations the level of compensation for not complying with the duties is £15 upfront plus an additional £3 per day of delay, capped at £100. Compensation is payable for each duty that has not been complied with.

Private rented housing

Currently, private landlords must ensure that the homes they let meet the 'Repairing Standard' which is set out in Chapter 4 of the Housing (Scotland) Act 2006 ('the 2006 Act').

The Repairing Standard includes that the home should meet the statutory [Tolerable Standard](#), part of which is that it is "substantially free from rising or penetrating damp."

If a tenant, or a local authority as a third party, thinks that a home does not meet the Repairing Standard they should inform the landlord of the problem and give the landlord time to fix it. The 2006 Act does not contain any set timescales for landlords to investigate or deal with repairs.

If, after notification, the landlord does not address the problem the tenant or local authority can take a case to the First Tier Tribunal ('the Tribunal') for a decision. The Tribunal has enforcement powers, for example it can issue the private landlord with a Repairing Standard Enforcement Order (RSEO) requiring the private landlord to carry out the repair.

In 2024-25, a total of [180 repairing standards cases were brought by residents to the Tribunal and further 34 reported by third parties](#). Some of these may already relate to damp and mould issues.

Private rented housing - what do the regulations do?

The regulations amend the 2006 Act to provide that the specified timescales for investigating and commencing a relevant repair, as outlined in the summary above will apply. In addition, the regulations provide that:

- when a private landlord cannot comply with these duties for reasons beyond their control the landlord must inform the tenant in writing with reasons why the landlord cannot comply, and the reasonable timescale within which the landlord is able to comply with the duty.
- until the landlord is able to comply with the duty, the landlord must take reasonable steps where practicable to minimise the extent to which the house is affected by damp or mould.
- the Tribunal must consider whether the landlord has complied with the new duties as part of its consideration as to whether a landlord has complied with the Repairing Standard.

There are no set timescales for repairs to be completed, unlike the Right to Repair scheme in social housing. As explained earlier, if a tenant thinks the Repairing Standard is not being met, then an application to the Tribunal for a decision can be made.

There are also no similar compensation arrangements to the social housing provisions which reflects the current legislation. If a tenant applies to the Tribunal and the Tribunal finds the landlord has not complied with the Repairing Standard it

can issue a Repairing Standard Enforcement Order. If the landlord fails to comply with the order a rent relief order may be issued. This would reduce any rent payable by the tenant of up to 90% of the rent.

Impact assessments

The Scottish Government has [published various impact assessments associated with the regulations](#).

In the [Business and Regulatory Impact Assessment](#), the Scottish Government concludes that as the regulations build on landlords existing duties, there will be not be a significant impact on businesses. It also notes that there are safeguards to ensure that the measures are reasonable, and landlords' rights are protected. For example, the regulations enable appropriate flexibility to account for circumstances out with a landlord's control.

Views on the regulations

The following summarises points made in written evidence received by the Committee.

[Scottish Association of Landlords \(SAL\)](#): The main points made by SAL's written evidence are:

- the timescales set out in the regulations will be a challenge to comply with in many situations, but it is satisfied that the wording of the regulations allows sufficient flexibility for the timescales to be extended where required.
- concern that enforcement via the Tribunal will not be swift. It expects an increase on an already strained system. It is vital that the Tribunal is sufficiently resourced to handle all cases in a timely manner.
- Wording of the Scottish Government guidance is crucial. It must explain how the tenants should look after the property to prevent condensation, which in its experience is a bigger cause of mould growth in properties than property defects.

[Glasgow West of Scotland Forum \(GWSF\)](#): The GWSF is broadly content with the detail of the proposed regulations. It also offers a wider perspective on damp and mould issues in social housing beyond the detail of the regulations.

GWSF points out that social landlords already act quickly on damp and mould, but many cases are complex and influenced by how homes are used rather than by clear-cut property defects.

At the same time, associations are increasingly worried about a rise in claims driven by 'no win, no fee' firms, with insurers often encouraging settlements even when landlords believe they have acted properly. Members report that landlords frequently take extensive action while some tenants do not follow advice, and they are concerned that this dynamic is rarely acknowledged publicly. It believes that the Scottish Government should emphasise that tenants, as well as landlords, have responsibilities in maintaining their homes.

[Existing Homes Alliance's written submission](#) welcomes the introduction of the regulations. Although it believes this is a positive step it states that fuel poverty is the main driver for a significant proportion of damp and mould cases and landlords have limited ability to directly address this. One way of helping is to improve the energy efficiency of properties which can be supported by minimum energy efficiency standards in private rented housing, scaling up of fuel poverty and energy efficiency schemes and a replacement for the UK Energy Company Obligation.

The joint written submission from the [Association of Local Authority Chief Housing Officers \(ALACHO\) and SFHA](#) presents a set of principles they believe should underpin the new regulations. A key element of the approach suggested was to build up the Scottish Housing Quality Standard with a requirement for the landlord to consider the occupant's actual needs when determining a course of action.

[ALACHO](#)'s individual submission notes local authorities' support for the regulations and although there are concerns about completing work by 6 October this year, they are making every effort to do so. It also however notes that the regulations' effectiveness will in practice depend on the quality of the guidance provided, the confidence that tenants have in using the new laws and, in the case of the PRS, the capacity of the First Tier Tribunal to respond quickly when issues are referred to it. It also believes there is a significant risk that some landlords will seek to disinvest because of a concern about the additional risk and administrative burden that these regulations will bring.

Citizens Advice Scotland (CAS) [published a report](#) in June 2025 on experiences of damp and mould in Scotland which recommends a number of actions including:

- Awareness-raising and training to support all tenures to improve energy efficiency. Scottish Government and local authorities should develop harsher penalties for landlords who attempt to evict tenants for reporting a repair.
- Strengthened enforcement against landlords who unreasonably and repeatedly refuse to address issues such as damp and mould
- COSLA should facilitate the urgent sharing of good practice for treating damp and mould across local authorities.
- Scottish Government should look at ways of expanding funding for local authorities to carry out repairs.

Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations)

The draft regulations would remove the existing limit on the council tax premium that councils can charge for second homes and long-term empty homes.

Background

Currently, the law provides councils will some discretion to vary the council tax for certain unoccupied properties ([that are not exempt from council tax](#)). Councils can:

- apply a discount of between 10% and 50%; or
- apply the standard Council Tax rate; or
- apply a premium of up to 100% on certain properties that have been empty for 12 months or more and for second homes (defined as a dwelling which is no one's sole or main residence, but which is furnished and is occupied in other than as a sole or main residence for at least 25 days during any 12-month period).

Councils have discretion to vary the council tax charged for different circumstances, and/or to apply discounts or increases in all or part of their areas, as they consider appropriate. [Scottish Government guidance emphasises the flexibility available to councils.](#)

The enabling legislation is contained in Section 33 of the Local Government in Scotland Act 2003 and associated regulations (the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013).

[The power to charge a council tax premium on second homes was introduced from April 2024](#) through regulations which [followed a joint Scottish Government/COSLA consultation in 2023](#). The aim of the change was to give councils powers to help achieve the right balance in the use of housing to meet local needs, encouraging more homes to be occupied where necessary. This change also brought policy in line with council tax for long term empty homes where, from April 2013, a 100% premium could already be applied.

The [2023 consultation also sought views](#) on introducing additional powers that would enable a premium of greater than 100% to be applied to both second and long-term empty homes. This change would require primary legislation as the 2003 Act limited council tax premiums to no more than 100% of the standard council tax rate.

At [Stage 2 of the Housing \(Scotland\) Bill](#), Ross Greer MSP lodged an amendment (which was agreed to) to remove the cap on additional council tax for unoccupied dwellings. The then Minister for Housing agreed to the amendment, arguing that local authorities should have greater flexibility in relation to the council tax that applies to unoccupied dwellings in their areas. Section 75 of The Housing (Scotland) Act 2025 repeals section 33 (1A) which had provided for the cap.

What do the regulations do?

The [draft regulations](#) would amend the 2013 regulations to:

- separate out the definition of second homes and empty homes from unoccupied dwellings
- establish a national default rate for council tax premiums for second homes and long-term empty homes of 100 per cent; (the current position is that there is a default rate of a 50% discount – the 50% default position will remain for unoccupied dwellings)

- enable councils to vary the default rate, meaning there is no limit on the extent to which the percentage premium may be increased, or decreased. Councils may also choose not to apply a premium, or to apply a discount.

As with current legislation councils can apply different approaches for different cases, classes of dwelling or areas.

As the [Policy Note to the draft regulations](#) explains:

“This amendment gives local authorities greater discretion over the Council Tax treatment of unoccupied dwellings in their areas, allowing them to respond to local housing pressures. In exercising these powers, local authorities will be supported by statutory guidance issued by the Scottish Ministers.”

Current council policy

Currently, all councils make use of the power to charge additional council tax for second/long term empty homes in some way.

The [latest council tax data \(in September 2025\)](#) shows that across Scotland there were:

- 20,927 second homes
- 44,453 properties liable for council tax that had been empty for more than 6 months. Of which, 73% (32,337) were categorised as long-term empty homes (i.e. empty for over 12 months).
- an additional 44,989 properties with unoccupied exemptions from council tax
- high rates of second and long-term empty homes in rural areas. Per 10,000 dwellings, the highest rates of second homes was in Na h-Eileanan Siar (588), empty homes was in Argyll and Bute (493), and long-term empty homes was in Na h-Eileanan Siar (376).
- 32,337 long-term empty properties were subject to either a council tax discount or a council tax increase. Of these, the majority (79%) received either a discount of less than 10% or a council tax premium. The remainder received a discount between 10% and 50%.

Compared with 2024, second homes decreased by 3% (-679) and long-term empty properties increased by 2% (741). The [statistical publication](#) notes that trends between years, “should be interpreted with some caution, given that increases and decreases can be caused in part by reclassification exercises which local authorities carry out from time to time, or issues with management information systems, rather than being real changes in the numbers of properties.”

Individual councils will monitor the impact of additional charges in their own area. For example, [Shetland Islands Council](#) recently reported that there was a drop in long term empty homes/second homes in their areas from:

“658 in 2024/25 to 604 in 2025/26, a difference of 54. Separate analysis shows that 145 properties came off the register and 91 came on leading to the 54 movement. Of the 145 who left 103 (71%) came back into use as main residences. Avoidance tactics such as deeming properties as main residences of couples living separately are carefully scrutinised and challenged appropriately.”

Potential use of the powers

Council tax premiums are one of several tools to reduce numbers of empty and second homes. For example, many councils use empty home officers to work with owners to bring their properties back into use. Owners purchasing a second home are also charged an additional 8% Land and Building Transaction Tax.

As the regulations are enabling it is not yet clear how councils might choose to change their current policies.

Council tax in England and Wales

The council tax systems in England and Wales allow local authorities to add a [premium on properties](#) that have been “unoccupied and substantially unfurnished” for certain periods of time.

In England, from April 2024, the maximum premium that can be applied for a long-term empty home is:

- 1 year or more: Up to 100% extra (200% of standard bill).
- 5 years or more: Up to 200% extra (300% of standard bill).
- 10 years or more: Up to 300% extra (400% of standard bill).

In England there is a [separate council tax premium of up to 100% on second homes](#) that came into force on 1 April 2025.

In Wales, the [premium for second homes and long term empty homes](#), is a maximum of up to 300%. This has been in place since April 2023.

Councils have taken different approaches to using the powers. For example, from information on Welsh council websites reveals appears that most councils do not charge the maximum premium of 300% for council tax for second homes. More commonly, a premium of 100% or 150% is applied. For example, [Gwynedd Council](#) charges a 150% premium on second homes. [Recent Gwynedd Council research](#) on the impact of council tax premium on second and long term empty homes, concluded that:

“It appears therefore (although the limitations of the information, and the other factors which could have impacted upon the situation, need to be borne in mind) that the premium has made a contribution towards returning second homes to use as main residences

However, it also notes that there has been a changed flow with more holiday units taxed under the non-domestic rate system, flowing to becoming second homes with the result that the total number of properties taxed as second homes is increasing (note there were also changes to the non-domestic rates taxation of holiday homes)."

Views on the regulations

The [Scottish Association of Landlord's written submission](#) suggests that premiums which can be set at a rate by councils are appropriate to discourage property owners from leaving their property as long term empty or from using as holiday lets in areas where there is a shortage of homes. However, it stresses that it is important that there is clear guidance for local authorities on when discretion could be used.

[ALACHO](#)'s written submission notes the importance in some areas of achieving a balance between second homes and those permanently occupied by local residents, and that local authorities are best placed to understand the pressures and the likely impact of these sorts of decisions as well as being accountable to local communities for the outcomes.

[Highland Council](#) and [Inverclyde Council's](#) written evidence both welcome the proposals.

The [analysis of responses to the 2023 Scottish Government consultation](#) revealed that the majority of respondents (60% of those answering) thought that councils should be able to charge more than the current maximum council tax premium of 100% for homes that have been empty for longer than 12 months. Those supporting the proposal referred to the negative impact of empty homes in local areas and agreed that the premiums would provide greater scope for councils to respond to the local context and to owners' individual circumstances.

Opposition to higher premiums was most linked to the varying reasons for a property remaining empty, with respondents arguing that higher premiums may not be effective in incentivising more owners to bring empty properties back into use.

On second homes most comments were related to the proposal at that point to allow councils to charge a 100% premium. Those supporting the proposal highlighted the negative impact of second homes on local housing supply. Those disagreeing expressed concern about the unfairness of the policy, for example, owners are already paying council tax and may have paid additional LBTT and were less likely to use council services as often as a full-time resident. Other points made included that the loss of many second homes could have a negative impact on the Scottish tourism and hospitality economy, including if people chose to buy property and/or holiday abroad instead.

Draft Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations: consultation

At the time of preparing this paper draft regulations, following the above consultation, had not been laid in the parliament.

On 6 June 2025, the [Scottish Government published a consultation paper](#) proposing plans to introduce regulations, made under the Energy Act 2011, requiring privately rented properties, as far as possible, to reach a minimum energy efficiency standard (MEES). The consultation document contains draft regulations.

The consultation paper notes that in 2023, 56% of Scottish homes were rated Energy Performance Certificate (EPC) band C or better. However, in the private rented sector 48% of properties are rated EPC D or lower, with the sector also having the highest percentage (14%) of E, F or G rated properties. The Scottish Government believes this is contributing to the high numbers of people living in fuel poverty in the private rented sector.

The development of a regulatory framework for private rented housing energy efficiency standards has a relatively long history, first being consulted on by the Scottish Government in 2017. In 2020, the Scottish Government [laid draft regulations](#) proposing a framework for private rented homes. These regulations were agreed to by the Scottish Parliament before being withdrawn due to the impact of the covid pandemic on the sector. A MEES for private landlords was then considered for inclusion as part of the [heat in building bill](#). However, following a changed approach to the bill, the [Scottish Government confirmed its intention to progress with a MEES for private rented sector through regulations made under existing legislation](#).

What will the MEES require?

The Scottish Government consultation proposed that the MEES will be based on the reformed Energy Performance Certificate (EPC) system. The Local Government, Housing and Planning Committee considered the regulations that will introduce the new [EPC system on 30 September 2025](#). The new system is planned to come into effect from 31 October 2026, with a transition period until 31 October 2027 allowing either old or new style EPCs for new lets.

The reformed EPC system will be underpinned by a Home Energy Model, which is being taken forward by the UK Government. [The Cabinet Secretary for Housing wrote to the Committee on 6 January 2026](#) outlining concerns about the risk to the delay to the implementation of the Scottish regulations given a lack of clarity about UK Government decisions. The Cabinet Secretary is seeking clarity from the UK Government how to best progress work to an achievable timeline.

Under the MEES proposals, new private rented tenancies from 2028 would have to meet the EPC Heat Retention Rating (HRR) band C with all privately rented homes meeting this by 2033.

The regulations would prohibit properties falling below the MEES to be let until the landlord has made any relevant energy efficiency improvements.

Exemptions

The Scottish Government proposed some exemptions from the MEES requirements and cover:

- consent

- negative impacts on the fabric or structure of a property
- temporary exemptions
- a cost cap - to support the final development of the cost cap exemption, the Scottish Government sought views on proposed cost cap of £10,000.

Enforcement

The consultation proposed that local authorities would carry out enforcement and compliance duties. As the enforcement authority, local authorities would have powers to serve a penalty notice for individual acts of non-compliance.

Views on the proposals

The written evidence from [Existing Homes Alliance \(EHA\)](#) welcomes the proposals arguing that address one of the root causes by requiring improvements to the building fabric that reduce the likelihood of damp and mould developing in the first place.

The EHA recommends setting PRS Minimum Energy Efficiency Standards at EPC Heat Retention Rating band C by 2030 to give landlords enough time to prepare. Short term lets must not be exempt. Tenants must be protected from cost-related rent increases, while landlords require accessible financial support, advice, and incentives. Progress on tenement law reform and sufficient local authority resourcing are essential for implementation. To minimise risks of landlords exiting the sector, regulations should be introduced early, with a long lead-in period, strong tenant safeguards, and support-first enforcement.

The [written evidence from the Scottish Association of Landlords \(SAL\)](#) is based on its response to the Scottish Government's consultation. It has concerns that the introduction of MEES will exacerbate the housing crisis as landlords choose to exit the private rented sector or increase rents because of the legislation. It believes that mandating action, as opposed to encouraging voluntary action, increases the risk of inappropriate measures being installed in a property. Other concerns raised by SAL include around:

- Scottish Government underestimation of improvement works, outlined in the consultation.
- Proposed timing of the MEES (April 2028) is too early given the planned timing on the reformed EPC system
- Details of the proposed exemptions and cost cap.

In their [written submission to the Committee, the Energy Saving Trust \(EST\)](#) supports the introduction of minimum energy efficiency standards in the private rented sector in Scotland, saying they will have an important role to play in improving the condition of private rented homes, reducing fuel poverty, and ensuring tenants benefit from more comfortable homes. EST highlights that the private rented sector in Scotland has the highest proportion of homes with poor energy performance of any housing tenure which is a key driver of the sector's high fuel poverty rate of 44%.

EST supports the Scottish Government's position outlined in their 2025 consultation that Band C represents a good level of energy efficiency which would also ensure consistency with proposals for the social housing sector, and that the backstop date should be 2030 with the standard applying to new tenancies from 2028 and also short-term holiday lets. They are concerned that exemptions could be misused by landlords through exerting pressure on tenants to refuse consent for improvements. It will be important to ensure that both tenants and landlords are aware of the standards, and that funding is provided for landlords to make the required changes.

[ALACHO](#) supports the introduction of MEES but notes that a C rating is lower than that required in the social housing sector. It also highlights that it is unfortunate that delays in progressing the Scottish Government's Heat in Buildings bill and related proposals has created a situation where it is not now possible to require compliance with this standard for new lets by 2028, but that ALACHO are supportive of 2030 as the target date for compliance. It also notes the possible risk of disinvestment in PRS.