

Shelter Scotland: Response to the consultation on the Fair Rents (Scotland) Bill

7th December 2020

Shelter Scotland welcomes the opportunity to respond to the consultation on the proposed Fair Rents (Scotland) Bill. This Bill will allow the Scottish Parliament to explore the critical issue of high rents with key stakeholders. So, we believe that there is merit in this Bill, albeit it is a step along the way to reform rather than the final word; and parliamentary scrutiny should provide an opportunity for further clarifications.

We hope that Parliament will use this Bill as an opportunity to discuss with key stakeholders how to effectively address market failings, which we believe can result in tenants paying higher rents than the quality of accommodation justifies and blunts incentives for landlords to improve quality to justify price. We hope that this work will be built upon, and further reform will be considered. There is an urgent need to address the high rent levels in hot spots like Edinburgh and Glasgow, and some specific localities where rents have been increasing way above inflation for years and are already unaffordable to large numbers of people.

1. The Member in Charge thinks there is a need to make private rents fairer for tenants and to create a better balance of power between private landlords and tenants. Do you agree with this overall policy aim? If so, do you think the Bill will help achieve this outcome?

Shelter Scotland supports this overall policy aim. We welcome the aspirations of the Fair Rents (Scotland) Bill to make renting privately fairer for tenants and to create a better balance of power between landlords and tenants.

The need to make private rents fairer for tenants:

During a long period of reform to private renting over the last two decades we have argued that price, affordability and value for money remain unfinished business. The related reforms in the 2016 Act were rushed and, in the case of Rent Pressure Zones, ineffective. The pandemic of 2020 has amplified issues of affordability and balances of power, with long-lasting effects and made reform even more timely.

There are 340,000 households in the PRS in Scotland, making up 14% of all households. In comparison, in 1999 only 5% of Scottish households were in the PRS. The PRS is now a housing option for many low-income households. As of February 2020, over a quarter (25.7%) of households living in the PRS were receiving housing support (in the form of Housing Benefit or the Housing Element of Universal Credit) in order to help pay their rent. Of the families living in the PRS, over half (52%) are in receipt of housing support¹. Households living in the PRS are more likely to be struggling financially. According to the Scottish Household Survey 13% of tenants in the PRS are not managing well financially. This figure is 9% for households overall².

Alongside the increasing size of the PRS, and the high numbers of low-income households in the sector, private rents in some areas of Scotland are rising above inflation and have been for a long time. Between 2018 and 2019 the average rent of a 2-bedroom home (the most common property type) rose above inflation in 11 out of 18 broad rental market areas. Rents increasing well above the rate of inflation are particularly a problem in high demand areas, such as Lothian and Greater Glasgow. Between 2010 and 2020 these two areas have seen average rents increase above the rate of inflation

¹ Dept for Work and Pensions: StatXplore

² Scottish Government: [Scottish Household Survey 2018: Annual Report](#)

across all property sizes, and for a 2-bedroom property the rent has increased 24.4% above inflation in Lothian and 19.4% in Glasgow³. The PRS is becoming increasingly unaffordable in these areas in Scotland, at a time when rent affordability is of utmost importance. We therefore agree with the overall policy aim of making private rents fairer for tenants, thus improving the affordability of the PRS.

The need to create a better balance of power between private landlords and tenants:

Shelter Scotland also welcomes the aim of the Bill to create a better balance of power between private landlords and tenants. The Bill makes it possible for tenants to challenge their rent, not just at the point of increase, and have it lowered, if they feel the amount they are paying does not correspond to the quality or standard of their accommodation. We consider that this will serve as an incentive for landlords to improve the quality of their property or enable the tenant to pay a rent consistent with the quality of the property. We also support the provision that such a challenge cannot result in the Rent Officer determining a higher rent; if this were the case it would act as disincentive for tenants to challenge.

2. Section 1 of the Bill prevents a landlord of a private residential tenancy from increasing rent in any year by more than the Consumer Price Index plus 1%? Do you agree with this? Section 1 also gives the Scottish Government a power to vary the cap by order. Do you agree with this?

The most recent data on PRS rent levels in Scotland show that in many areas rents are increasing above the level of inflation (CPI), from 2019 to 2020 the average rent of a 2 bedroom home increased above CPI inflation in 11 out of 18 broad rental market areas. The highest increase was in East Dunbartonshire where the rent increased at 4%, significantly higher than the rate of inflation over the same time period .

In some areas, rents have been increasing above the level of inflation for a long period of time. Lothian and Greater Glasgow have seen average rents increase above the rate of inflation between 2010 and 2020 across all property sizes. Forth Valley and Fife have seen average rents rise above the rate of inflation for all property sizes except 1-bedroom properties. There is a case for action to stop rents increasing well above inflation in many areas and becoming increasingly unaffordable as a result.

At this stage CPI+1% seems a reasonable starting point, especially in the context of a power to vary the “+x” formula and the wider requirement to review after 3 years. However, we would add the following points:

- CPI+1% acts as a brake on the speed at which rents are becoming unaffordable but does not address their affordability per se.
- Markets vary throughout Scotland and variation may need to take account of geography.
- Capping rises in any one year may result in landlords adopting annual rent rises as the norm. Since this is standard practice in the social rented sector we do not regard that as fatal but it may result in increases which otherwise may not have happened, even with market pressures.
- Section 1 (2) (10c) allows for variation of the cap for different circumstances. The most obvious example is where a landlord makes significant investment in a property which benefits the tenant, either in increased amenity or, in the case of energy efficiency, reduced fuel bills. We would not wish to reduce incentives to make such improvements and to reflect that in rents and it may be helpful to be more explicit on the face of the Bill that such exception to the cap is legitimate.

³ Scottish Government: [Private rent statistics 2010-2020](#)

3. Section 2 allows a tenant in a private residential tenancy to apply to have a “fair open market rent” determined by a Rent Officer. Do you agree with section 2?

As above, section 1, the application of a rent cap of CPI+1%, is not designed to address the current unaffordability of rents in some locations. Section 2 is focused on challenging existing rents, whether or not an increase is proposed. We support what is proposed here; however, we envisage it being more useful for an individual tenant who has a significant case to make as regards the quality of the property as set out in 22B(3) compared to the rent. The mechanism of individual challenge via the Rent Officer and Tribunal make it more likely to be a route of individual redress than to shape the market level of rents. Put another way, the scale at which such challenges would start to shape the market would need to be very significantly greater than the capacity for handling such applications would allow, even if there was appetite for initiating them.

This does not mean that either of the reforms in sections 1 and 2 are not helpful; just that in the short to medium term they won't reduce the general level of high rents in the PRS or the pressing problems of affordability across the board.

4. Section 3 requires the following to be entered into the Scottish Landlord Register: the monthly rent charged for a property, the number of occupiers, and the number of bedrooms and living apartments. The MSP who introduced the Bill thinks this change will help ensure we have more public data about private rent levels. Do you agree with section 3?

Shelter Scotland has argued for some time for a dataset which shows what tenants in tenancies are currently paying in each area. The only data currently available on PRS rents are from advertised rents, we therefore have no data on the rents for properties that are currently occupied by tenant, which means that the data currently available does represent actual market conditions. A better and more accurate data set on market rents would also allow us to analyse the current system of setting market rents.

Therefore, we welcome the proposal in the bill to introduce a requirement for landlords to enter rent level data as part of their landlord registration entry. **However, we strongly argue that this should be done annually rather than every 3 years**, as these data are vital in enabling us to fully analyse the current model for the PRS, where the rents are set according to the market.

5. What financial impact do you think the Bill will have – on private tenants, on landlords in the private rented sector, on local authorities, on Rent Services Scotland, on the First-tier Tribunal, or on anyone else.

We consider that this Bill will have positive financial impacts for private tenants, especially those living in areas where rents have risen considerably above inflation over a long period of time. It will help to ensure that more tenants are able to continue to afford their rent and stay in their homes. This is particularly important for tenants who are on low income and rely of financial support to help pay their rent. This Bill will mean they are less vulnerable to high rent increased forcing them out of their home and putting them at risk of homelessness.

In terms of the financial impact on Rent Services Scotland and the First-Tier Tribunal, we consider that there need to be further consideration of the additional capacity and resources that will be needed to allow tenants to challenge their rents. Further, the capacity of advice and support agencies to assist tenants needs to be considered.

6. We welcome any other comments you may have on the Bill that you think are relevant and important, including its likely impact (positive or negative) on equalities, human rights and quality of life issues.

We consider the Bill to be a welcome first step in addressing the increasing unaffordability of rents in the private rented sector in some areas in Scotland. We also welcome that this Bill is calling for a much-needed data set on the actual rents that current PRS tenants are paying, although we would argue an annual return on rent charges from landlords is required.

However, as the Bill recognises, we believe, the Bill is a step along the way to reform rather than the final word. The affordability of the sector will not be fundamentally altered by a brake on future rises or a mechanism for individual challenge to rents. The Scottish Government needs to consider international experience in more systemic ways of tackling high housing costs and potentially using the new data on in-tenancy rent patterns to do that. Beyond that, rents are a product of lack of choice to be tackled, first of all, by sustained investment in high quality attractive not-for-profit alternatives and also in tackling, through taxation, and other means the corrosive problem of property price inflation as whole.