

Housing (Scotland) Bill consultation briefing



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Background

The Housing (Scotland) Bill (the Bill) is currently being considered by Parliament and is expected to be passed this summer. The rented sector elements of the Bill include proposals for a national system of rent control for the private rented sector (PRS) which has been one of the most divisive elements of the Bill.

Some have argued for rent control to be strengthened in favour of tenants, while others warn that the Bill, in its current form, risks stifling investment and may result in landlords leaving the sector, shrinking supply.

CIH Scotland and other social housing representatives have called for mid-market rent (MMR) homes to be exempt from rent controls to ensure that this affordable housing tenure remains viable and can continue to contribute to affordable housing supply.

The Scottish Government has resisted calls to include exemptions on the face of the Bill but has suggested that exemptions could be introduced through regulations after the Bill has passed. It is now consulting on what exemptions should be introduced, specifically looking at:

- Exemptions for MMR homes
- Exemptions for build to rent (BtR) homes
- Flexibilities linked to certain types of investment in the property
- Flexibilities for homes already being let below market rates

The Scottish Government is also seeking views on clarifying the process for ending joint tenancies in the PRS, but this briefing will focus on rent control measures. The consultation is [open until 18 July](#).

What does the Bill currently include on rent control measures?

The Bill as introduced would require local authorities to monitor and regularly report on the state of the PRS in their area. If evidence suggested that rents were increasing too rapidly, the local authority would be able to recommend that a rent control area should be designated. Local authorities would be given the power to request information about rents to support evidence collection.

The Bill does not currently specify what cap would be applied to rents in a rent control area leaving significant flexibility for caps to be set locally. Following concerns that this uncertainty risks stifling investment in the sector, the Scottish Government has confirmed that it will bring forward an amendment to set the rent cap at CPI + one per cent up to a maximum of six percent.

The rent cap would apply to all private rented tenancies (PRTs) within the designated area. Rent increases within the rent control area would be limited to one per year per property, regardless of whether a new tenancy is granted. Linking the rent increase to the property rather than the tenancy is intended to prevent significant rent increases between tenancies as seen during the emergency rent control measures.

Proposed exemptions for mid-market rent

The Scottish Government acknowledges the role of MMR homes in contributing to affordable housing supply, and that the vast majority delivered with Scottish Government grant funding are already subject to restrictions on rent levels linked to local housing allowance (LHA). However, there are questions about how MMR should be defined for the purpose of rent control exemptions. The consultation suggests consideration of:

- Properties provided at mid-market levels, which have binding restrictions on rent levels
- Including properties provided by:
 - Subsidiaries of registered social landlords
 - Local authority arms-length external organisations
 - Other organisations in receipt of Scottish Government financial support to deliver MMR.



Proposed exemptions for build to rent

BtR is purpose-built housing for the PRS, often delivered at scale which can help to boost housing supply. Recent research carried out by [Rettie & Co](#) suggested that Scottish Government emergency rent control measures brought in during the cost of living crisis had created significant uncertainty in the market and put £3.2 billion of investment “on hold” or “at risk.”

The Scottish Government is seeking views on whether BtR should be exempt from rent control measures to support increased housing supply and, if so, how it would be defined. Suggested criteria for consideration includes:

- New homes built at scale and offered exclusively for rent (apartments and/or houses)
- New homes provided at scale through the conversion of non-residential properties
- On a single site or related sites
- In single ownership
- With management services provided by a single legal entity via a management regime and a single site wide building insurance structure.

Other circumstances where exemptions may be appropriate

The consultation includes an open question about any other type of property that should be considered for exemptions. The consultation does not give any examples.

Demonstrating eligibility

The consultation seeks views on the information that landlords would need to provide to demonstrate their eligibility for exemption and what information should be provided to tenants.





Proposal to modify restrictions in certain circumstances

The previous sections cover exemptions which would be applied to a type of property. The consultation also considers where a landlord may be allowed to increase rent above the rent cap in certain circumstances:

- Where significant improvements to the property are undertaken
- Where a landlord is letting a property to a tenant at a rent significantly below market rates.

The consultation seeks views on the types of improvement that would be eligible, how these would be distinguished from routine property maintenance, and how the rent increase above the cap would be calculated.

In relation to rents below market rates, it asks how far below market rates the rent would need to have been and how this would be evidenced.

The consultation also acknowledges that some rural landlords may face higher costs due to private utility supplies and maintenance costs and so there may be a case for rents to be increased above the cap in certain cases, although it is not clear how these would be identified.

It also seeks views on whether some supported accommodation provided in the private sector could be permitted to increase rents above the rent cap.

Demonstrating eligibility

The consultation sets out two options for demonstrating eligibility to increase rent above a rent cap:

- The landlord applies to an external decision maker such as Rent Service Scotland (RSS) or the First Tier Tribunal (FTT) for a determination before applying the rent increase; or
- The landlord is allowed to increase the rent without requesting approval and the tenant would have the right to challenge the increase if they didn't think it was within the rules.

CIH Scotland view

Following consultation with our members throughout the development of the Bill, we have been clear that the Scottish Government should exempt MMR properties from rent control to ensure that it remains a viable contribution to the affordable housing supply programme. While we would prefer the exemption to be included in the Bill, we appreciate the Scottish Government working with the sector to develop a workable solution.

We also agree that some flexibility must be allowed to ensure that landlords are able to invest in properties to keep them in good condition and meet any new statutory requirements such as minimum energy efficiency standards.

In our option, the arguments for other exemptions are less clear and if the system allows for too many exemptions, it risks creating confusion and undermining the rent control system. It is not clear how RSS or the FTT would cope with a potentially significant volume of applications from landlords and/or challenges from tenants on an individual basis. However, we would be keen to hear from members if there is support for any of the proposed exemptions.

If you have comments on any aspect of the consultation, please get in touch at scotland@cih.org.

