

Fair Rents (Scotland) Bill
Local Government and Communities Committee Call for Views
Response from ARLA Propertymark
December 2020

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents, representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

Views

Question 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?

2. Propertymark does not agree with the overall policy aim to control rent levels in the private rented sector. We have two concerns. Firstly, the policy could lead to a reduction in supply. This is because, as landlords become more tightly regulated letting property will become a less attractive investment. Furthermore, as rent controls take away autonomy from landlords to set their rent levels, we believe that further "red tape" to what is already required to let property in Scotland, will further discourage investment into the sector. Secondly, it will have a negative impact on housing quality and existing housing stock. This is because, in many areas rent levels will be insufficient to enable landlords to maintain their properties. Property conditions in the private rented sector have vastly improved over the last decade, rent controls are likely to have the opposite effect and reverse the advancements made since deregulation. We believe that the provisions within the Private Housing (Tenancies) Act 2016¹ for landlords to only increase rent once a year are sufficient, create the right balance of power between private landlords and tenants, and further rent control must not be introduced.

Question 2 - Section 1 of the Bill it 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?

3. No, we do not agree with the proposals to prevent a landlord from increasing rent in any year by more than the Consumer Price Index (CPI) plus 1%. Furthermore, any cap would need to be reviewed monthly. Legislation introduced in December 2017 under the Private Housing (Tenancies) (Scotland) Act 2016 already contains a limit on rent increases and further rent controls should not be introduced. Under Part 4 of the legislation, rent cannot be increased

¹ <https://www.legislation.gov.uk/asp/2016/19/contents/enacted>

more than once in any twelve-month period and the landlord must give the tenant at least three months' notice before any increase can take place. Furthermore, if the tenant disagrees with the rent rise, they can take the matter to a Rent Officer who will ultimately decide if the proposed rent is fair and accurately reflects other market rents. Due to this provision in existing legislation, we do not see any reason as to why further rent controls should be introduced.

Question 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?

4. We are concerned about plans to only allow Rent Officers to maintain or lower rent levels. By not allowing rent levels to increase via this process, some landlords may not be able to increase rents where justified in cases where the tenant appeals. ARLA PropertyMark is aware of instances in the social rented sector, where the First-tier Tribunal concluded that a social rent increase had not gone far enough, and thus the tenants received a higher rent by decision. However, we are not aware of any circumstance where this has yet occurred in the private rented sector. For this reason, we believe there is little to no substantive evidence to amend the powers of Rent Officers to only maintain or lower rents in the private rented sector.

In any answer to question 3, the Committee also welcomes your views on— The right set out in section 2 to appeal a Rent Officer’s determination to the First-tier Tribunal. The matters set out in section 2 that must be taken into account in determining what is a “fair open market rent”.

5. Overall, we are concerned that as a consequence of implementing the proposals, landlords who would have otherwise not increased rents, may feel that they now have permission to do so on an annual basis. Whilst rents will be capped to increases that reflect CPI, this does not mean that a tenant’s income will also increase to reflect this. Consequently, this will mean that some tenants will pay higher rents without the market demand to reflect an increase. Furthermore, it is likely that in areas with low demand, tenants will end up paying more for housing than they would have done previously.

Question 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?

6. ARLA PropertyMark has concerns about expanding the landlord registration scheme so that landlords must input the monthly rent charged for a property, the number of occupiers and the number of bedrooms and living apartments. We have two concerns. Firstly, we would question whether exact rental figures should be attributed to individuals on a public database. If the Bill is to come into force, we believe that the database should attribute the average data in the area that the property is located, rather than the rents set by individual landlords.

Secondly, we are concerned about the additional burden on local authority staff when resources are already stretched. Landlord registration provides a search facility for anyone looking for information on a landlord, or property registrations for all private rented sector property in Scotland. However, by asking local authorities to process more documentation and diverting much needed resource for enforcement, we are concerned that this would create more of a burden on local authorities. The Scottish Government has previously stated that local authorities already struggle to process online applications and are finding it difficult to provide support for applicants with complex circumstances, therefore local authorities are unlikely to process rent charges and documents from landlords. In addition since 11 September 2019 information that landlords provide when registering has increased.² Introducing additional requirements will only frustrate the data collection and verification process for local authorities further.

Question 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.

7. The proposed Bill would significantly increase costs for private tenants and landlords as well as the Scottish Government and local authorities. We are concerned that a less profitable private rented sector will mean that landlords exit the market, resulting in less choice for tenants and putting further demand on local authorities and the social rented sector. The proposed Bill aims to create a better balance of power between private landlords and tenants giving greater financial protection for tenants, when in reality, it will achieve the opposite for many.
8. The proposed Bill will significantly increase costs for tenants. We have four concerns. Firstly, rent control does not meet the high demand for property in the private rented sector. Secondly, with landlords having no incentive to invest in their properties, tenants will be worse off in the long run. Furthermore, we would like to note that inflation rent rises could actually make some tenants worse off when compared with lower market led rises. Thirdly, rent controls will alienate many tenants from the sector as the remaining landlords become more risk averse. This will mean that landlords will only want to let their property to the “best” tenants, which will have a detrimental impact on the most vulnerable tenants. Fourthly, the vast majority of landlords provide decent accommodation that is free from hazards but should rent controls be introduced we would expect many of the good landlords to leave the sector. What will be left over is the rogue landlords who have consistently ignored their legal obligations. These landlords will avoid regulation, will not be registered, will set their own higher rents, and they will not ensure that their properties meet minimum requirements. This will result in some of the most vulnerable tenants putting up with high rents and poor property conditions just to keep a roof over their heads.

² <https://consult.gov.scot/landlord-registration/registration-fee/>

9. The proposed Bill will significantly increase the costs for landlords. We have three concerns. Firstly, a result of controlling rents is that landlords will have no incentive to maintain current properties. This will also mean that landlords are less likely to invest in purchasing new properties. What must be stressed is that rent rises in Scotland have not occurred on a whim, they have been a reaction to an increase in demand outstripping supply and other legislation affecting rental income. Secondly, we are concerned that this will result in a rise of poor-quality homes. Rents may only cover running costs, meaning that if landlords want to make cosmetic improvements to the property, they will not be able to recoup the cost. Where landlords can no longer afford to make cosmetic improvements to their properties, the quality of property will decline. Thirdly, rental income may not reflect a landlord's mortgage repayments. Where property has been purchased on a buy-to-let mortgage on a repayment basis, should their terms become less favourable over time, landlords may not be able to repay the mortgage from the rental income alone. If rental property becomes less of a lucrative asset, many will leave the sector and will not reinvest.
10. Without the private rented sector to rely on, local authorities will spend more to provide temporary housing for the homeless individuals/families. With a lack of both private rented and social rented stock, homelessness will increase. Furthermore, under the Homelessness etc. (Scotland) Act 2003³, from 2012 anyone finding themselves homeless through no fault of their own is entitled to settled accommodation, either in local authority or housing association property, or if not, privately rented. However, local authority stock has steadily declined since the 1980s, due to a decreased programme of social housing building, stock being transferred to Registered Social Landlords and the selling of existing stock through 'Right to Buy.' A decrease in private rented stock will take away much needed housing that makes up the shortfall between social housing and homeownership. This can only be remedied through enhanced public funding towards more social housing. As landlords leave the sector, tenancies are jeopardised and unless social rented stock adjusts to accommodate this, the number of homeless will drastically increase. This places onus on the local authority, and Scottish Government, to ensure that these tenants are housed elsewhere. Without houses being built or bought to replace private rented housing, the Scottish Government and public sector will instead spend more on temporary accommodation.

Question 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.

11. ARLA Propertymark thinks that the proposed Bill will have a negative impact on equality. As discussed throughout this response rent control will result in a reduction in the private rented sector. Without enhanced housebuilding for social rent a reduced private rented sector will in turn, mean that to mitigate risk the landlords will only take on the best and most reliable tenants. Subsequently, tenants out of work such as single parents, people with severe

³ <https://www.legislation.gov.uk/asp/2003/10/contents>

disabilities and pensioners will be deemed as more of a risk for landlords. The vulnerable and low-income people without access to the social rented sector, that rent controls are designed to help, will need to find an alternative to the private rented sector. This could mean them turning to the rogue and criminal operators, who actively flout their responsibilities including registering themselves, making them very difficult to track down.