



Law Society  
of Scotland

# Written evidence

## Fair Rents (Scotland) Bill

December 2020



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to consider and provide written evidence to the Scottish Parliament's Local Government and Communities Committee<sup>1</sup> on the Fair Rents (Scotland) Bill<sup>2</sup> and have the following comments to put forward for consideration.

## Comments on the Bill

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We consider that the aims of the Bill are laudable. However, we are of the view that there may be unintended consequences arising as a result of the current drafting in two sections of the Bill and suggest that this would merit consideration.

### Section 1

Section 1 of the Bill amends section 22 of the Private Housing (Tenancies) (Scotland) Act 2016 concerning the landlord's power to increase rent. The Bill provides that a landlord may not increase rent by more than the percentage increase equivalent to the consumer prices index (CPI) for the 12 months preceding the date of the rent increase notice, plus 1%. This is referred to as "the fair rent CPI cap".

The CPI cap is calculated against increases in CPI in the last 12 months. This is a fixed period and does not tie into the period when the rent for the relevant property had, in fact, last been increased. We suggest that it would be more appropriate to link this to the period from the effective date of the last rent increase. We consider that as presently drafted, there is a risk that landlords would seek the maximum permitted increase in rent on an annual basis, at risk of losing out in the market in the longer term if no or limited rent

<sup>1</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/116268.aspx>

<sup>2</sup> <https://beta.parliament.scot/bills/fair-rents-scotland-bill>

increase is made. If the CPI cap was tied to the last rent increase for the particular property, we consider that this would reduce the potential for landlords making annual rent increases to 'keep up' with the market.

We consider that the CPI cap could discourage some landlords from improving a property given the limited potential for rent increase where there is a sitting tenant as a landlord may consider that they are unlikely to achieve a fair return for their investment. It is possible that this could lead to a landlord removing a tenant in order to rebase the rent following improvements. We note that section 42 of the 2016 Act provides for a rent officer to allow a rent increase in consequence of improvement to a property within a rent pressure zone. We wonder if there may be scope to have similar arrangements here.

## **Section 2**

Section 2 of the Bill also amends the 2016 Act, by inserting new sections 22A and 22B.

In relation to section 22B(1)(c), we suggest that the reference to the 'same terms' should expressly exclude the level of rental.

We note that section 22(B)(2) disregards any negative effect on rental value due to a failure by the tenant to comply with the terms of the tenancy. Section 22(B)(3) refers to the condition of the property and standard of internal decor and furniture of the property and in subsection (1), is stated to be paramount. As drafted, we consider that the provisions could be interpreted as meaning that subsection (3) would be paramount to subsection (2) in circumstances where the tenant has breached their obligations in a way which impacts on the condition or decoration of the property. It seems unlikely that this is the intention.

Clause 22(B)(6) means that any rent increase notice by the landlord within 12 months will be of no effect. We note that there does not seem to be a similar restriction on the tenant to prevent them seeking more than one determination of a fair rent within a 12-month period.

We also note that there is a different set of factors for determining the rental depending up on whether the review is instigated by a tenant or a landlord (the provisions in section 22(B)(3) only apply to a tenant application to review the rent, and not to a challenge to a landlord's proposed increase in rental). If both approaches are aiming to be a fair rent, it does not seem appropriate that there are different bases.

## **Sections 3 – 7**

No comment.

## **Other comments**

We note that at section 26 of the 2016 Act, a rent officer must issue a provisional order when making an order relating to a referral under section 24(1). The landlord and tenant may then ask the rent officer to reconsider. There does not appear to be a similar provision for a referral made in respect of a fair rent order and we query if this was considered?



Similarly, under section 34(1)(a) for the 2016 Act, rent officers and the First Tier Tribunal are required to make information publicly available about the rents they have taken into account in determining the open market rents. We consider there may be merit in a similar requirement in relation to fair rent reviews.

**For further information, please contact:**

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