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By email- DPLR.Committee@parliament.scot

18 June 2024

Dear Stuart,

Thank you for your letter of 6 June 2024 about the Housing (Scotland) Bill.

Detailed measures are brought forward in the Bill in some areas and in other areas the Bill sets out the framework that, supported by delegated powers, will allow for action to be taken in the future. In most cases, the use of these delegated powers is intended to be underpinned by consultation with stakeholders which will enable the Scottish Ministers to act in full knowledge and understanding of the circumstances prevailing at that particular time. The delegated powers will allow for flexibility in the implementation of the Bill provisions and complement the principal policies and structures set out on the face of the Bill.

In the attached Annex I have set out replies to the specific queries you raise. I hope this is helpful.

Kind regards,

SHIRLEY-ANNE SOMERVILLE

Section 1(4): Power to change time periods or dates for submission of subsequent reports on local authority assessment of rent conditions in local authority area.

The Committee asks the Scottish Government:

- a) what circumstances the Scottish Government envisages arising which could require the amending of the reporting period; and
- b) why the negative procedure is deemed appropriate, given that any regulations made under it would amend primary legislation and could place a more onerous duty on local authorities?

The Scottish Government responds as follows:

- a) The Scottish Government envisage that the amendment of the reporting period may be required in situations where there are significant changes in housing conditions, economic factors or legislative changes that would necessitate a more frequent review and reporting of rent conditions. The intention is that the five-year deadline would be maintained as a standard, but the provision in section 1(4) allows for adjustments in response to significant changes in the aforementioned factors. This approach ensures that the reporting process remains dynamic and responsive to the evolving landscape of housing, investment and economic conditions.
- b) The negative procedure is mostly used for technical, administrative, or procedural matters as in this case and allows the Scottish Government to respond effectively to changing circumstances while maintaining a level of oversight and accountability. This will be crucial in situations where timely action is required, particularly relevant in the context of housing and economic conditions, which can change rapidly and require immediate policy response.

Sections 13(1) to 21(2): Various powers relating to rent control

The Committee asks the Scottish Government:

- a) where there is currently no policy specified on the face of the Bill (sections 13(1), 14(1), 18(1), and new sections 43G(1)(b)(i) and 19(1)(a) of the 2016 Act):
 - i) if it considered making some provision on the face of the Bill in order that the Parliament could assess itself whether the measures are likely to strike a fair balance between landlords' and tenants' rights, and
 - ii) what policy development and discussion with stakeholders has taken place to date on what these provisions may include.

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- b) where there is policy on the face of the Bill, with a power to amend that policy (sections 15(7) and section 19(2)):
- i) whether it considers it likely that the power to amend will be exercised, and
 - ii) what circumstances it envisages arising that would require such use of those powers?

The Scottish Government responds as follows:

- a) The decision to place certain provisions in regulations rather than on the face of the Bill was primarily driven by ensuring that the measures have flexibility to adapt to future circumstances. This approach also ensures that the system remains dynamic and responsive to the evolving landscape of housing, investment and economic conditions as exemplified by the requirement for consultation with stakeholders. For example, the form of the rent cap is not stated in the Bill, instead it is determined separately in regulations by the Scottish Ministers to ensure that it takes account of the actual conditions in a particular area at that time. This helps to ensure that a fair balance between landlords' and tenants' rights can be maintained.

The Scottish Government has been actively engaging with both landlords and tenants to shape the legislative changes to be introduced through a Housing Bill. In December 2021, the Scottish Government opened a public consultation on proposals to deliver A New Deal for Tenants. The consultation invited views on a wide range of topics including rent controls, personalisation of a rented home, and reforms to the evictions process.

Following this, a more targeted consultation exercise was carried out in a questionnaire. The Landlord and Tenant Engagement Questionnaire¹ was open from 29 September to 27 October 2023. The responses to this questionnaire have been instrumental in informing the development of the Housing Bill. It asked respondents' views on a range of issues, including rent controls, ending joint tenancies, flexibility to personalise a home, keeping pets, and greater protections during the evictions process.

We continue to work with stakeholders across landlords, tenants and investors to deliver our vision, as we develop a rent control system that works for Scotland. To support this we have established a Private Rented Sector Stakeholder Group which includes representatives from across landlords, tenants, campaign groups and investors. We have also established a local authority working group to support the development of the approach to assessment of local conditions in relation to rent in local authority areas.

- b) The inclusion of the power in section 15(7) offers flexibility to amend the list of information which must be provided to a local authority by a landlord thereby enabling the Scottish Ministers to respond to operational experience of the local authority assessment process. As our experience of the assessment process develops, it is likely that the range of

¹ Rented sector reform: landlord and tenant engagement questionnaire - analysis report - gov.scot (www.gov.scot)

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information that could be collected in support of the assessment may change and as such it is envisaged that these powers will be likely to be exercised.

Section 19(2), gives the Scottish Ministers the flexibility to respond to changing circumstances or new information that could arise through the ongoing operation of rent control areas and change the list of properties classed as “previously let” or relax the restrictions on the frequency of rent increases. This will help to ensure that the system can take account of the range of factors that may arise as part of dynamic housing, investment and economic conditions. Whilst it is not envisaged that this power would be likely to be utilised it could for example be used if, in operation, it were to be determined that there were other circumstances where it would be fair to consider a property as being “previously let” or to authorise more frequent rent increases.

Section 29(2) and 30(2): Various powers in relation to keeping pets and personalising property

The Committee asks the Scottish Government:

- a) if it considered making some provision on the face of the Bill in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision being made by these powers on landlords and tenants;
- b) what policy development and discussion with stakeholders has taken place to date on what these provisions may include;
- c) how it is anticipated that these powers be exercised and how it intends to assess its Protocol 1 of Article 1 of the Human Rights Act 1998 right to peaceful enjoyment of property (A1P1) compliance;
- d) whether the scope of the powers are appropriate and whether they are capable of being further limited in their exercise to allow the Parliament to anticipate how these powers are likely to be exercised?

The Scottish Government responds as follows:

- a) The Bill intentionally sets out the overarching framework for the operation of the right to request and not be unreasonably refused to keep a pet or make changes to a private rented property. Consideration was given to making further provision on the face of the Bill, however, it is necessary to consult further with landlords and tenants on the detail to support the operation of the new rights. The new deal for tenants consultation and subsequent engagement sought views on strengthening rights for tenants to keep a pet and personalise, but did not go into the detail of the modifications allowed or reasonable refusal or conditions for approval.
- b) Some initial policy development and engagement with stakeholders on some aspects of future regulations has been carried out, for example on reasonable conditions for approval such as the potential for a supplementary deposit, the use of insurance or

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requiring work to be carried out by a professional tradesperson in the private rented sector. It is clear from this work and engagement that there are a range of views on the types of modifications that should fall into each category; indications that certain property types may require to be excluded; and differing views on what would be reasonable conditions for approval or refusal. In the social rented sector general practice is to give permission to keep pets, though there may be certain types of property that are deemed unsuitable for certain types of animal. Further engagement with the sector and detailed consultation is required on these aspects before they are legislated for to avoid unintended consequences and support effective implementation including the development of guidance.

- c) These powers are intended to be exercised prior to commencement of the following provisions under the Act – 64H, 64I, 64J, 64K, 31A, 31B, 31C, 8A. A full public consultation will be carried out to inform the development of future secondary legislation on:
- the types of modifications that should fall under Category 1 and Category 2 plus any property types that should be excluded from Category 1.
 - the reasonable reasons for refusal and reasonable conditions for approval of a request to make a Category 2.
 - the reasonable reasons for refusal and reasonable conditions for approval of a pet request (private and social rented sectors).

Making changes to let property – types of changes

Category 1 changes are intended to be minor alterations that do not materially affect the fabric of the building. Category 1 changes might include:

- Self-adhesive wall mounts for the placement of posters.
- Installations of picture hooks on surfaces other than exposed bricks, masonry or concrete walls.

Category 2 changes are intended to encompass larger changes. Category 2 changes might include:

- Painting of the internal walls of the rented property.
- Installation of picture hooks or screw wall mounts on exposed brick or concrete walls.
- Installation of wall mounts, shelves or brackets.
- Installation of wall anchoring devices on exposed brick or walls to secure items of furniture.

Reasonable reasons for refusal and approval conditions

Regulations on reasonable grounds for refusal and reasonable conditions for approval and guidance are intended to give practical support to tenants and landlords in using the new rights. Reasonable reasons for refusal could include the following:

- The modification would result in non-compliance with any other Act or law – for example the repairing standard.
- The modification would jeopardise the safety of tenants, dependents or other permitted occupiers.

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- Listed building consent under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 would be required for the modification (it may be unlikely this would arise with the proposed Category 2 changes, but could be included for clarity).
- A valid notice to leave the tenancy has been served on the tenant prior to a change request.
- The change would require modifications to other premises or common areas.

Reasonable conditions for approval for larger 'category 2' modification requests could include the following:

- Reinstatement of the property at the end of the tenancy or a requirement to leave the property in good decorative order.
- The payment of an additional amount of deposit within certain limits where no reinstatement back to the original condition is required at the end of the tenancy.
- The modification to be made by a suitably qualified person where applicable.

Reasonable reasons for refusal and reasonable conditions for approval of a pet request (private and social rented sectors)

Regulations on reasonable grounds for refusal and reasonable conditions for approval and guidance are intended to give practical support to tenants and landlords in using the new rights. Reasonable reasons for refusal could include the following:

- The animal is a breed under the terms of Dangerous Dogs Act 1991.
- Existing restrictions in the property's deeds.
- The welfare of the animal is threatened by keeping it in the property.

Reasonable conditions for approval could include the payment of an additional amount of deposit within certain limits in the private rented sector.

Impact assessments will also be completed to support the policy development and scrutiny of draft regulations.

The assessment of the balance required for A1P1 compliance will derive from the consultation exercise whereby the Scottish Government will be able to determine from stakeholders what the impact of any proposed use of the power will be. That assessment cannot be completed until we know how the powers will be used and what the consultation responses will be.

- d) We consider the scope of the power as currently framed is appropriate as it provides sufficient flexibility in the development of the detailed proposals following further consultation, however, we will take the Committee's suggestion on further limiting the scope of this power into consideration as we approach stage 2.

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Section 31(3): Power to amend the purpose for which unclaimed deposits may be used

The Committee asks the Scottish Government:

- a) for further detail on why it is considered necessary to be able to amend the use of the unclaimed funds by way of subordinate legislation and not via primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the potential significance of the policy provision that could be made by this power.
- b) whether the scope of the power is considered appropriate and whether it is capable of being further limited in its exercise, e.g. to be subject to specific criteria or the use must be housing related;
- c) whether consideration has been given to applying a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power?

The Scottish Government responds as follows:

- a) Our view is that amendment through affirmative secondary legislation with a statutory consultation requirement strikes the appropriate balance between robust scrutiny of any change to use of unclaimed deposit funds by Parliament and increased flexibility to make any changes necessary in a timely manner given the uncertainty around any future suitable primary legislative vehicle.
- b) We consider that the scope of the power is appropriate as currently framed however we will take the Committee's suggestion on further limiting the scope of this power into consideration as we approach stage 2.
- c) Consultation is a key part of the requirement for making any amendment to the use of how unclaimed funds can be used. While we have not included a statutory requirement to lay consultation documents or reports, we will take this into consideration.

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