

This document relates to the Fair Rents (Scotland) Bill (SP Bill 76) as introduced in the Scottish Parliament on 1 June 2020.

Fair Rents (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Fair Rents (Scotland) Bill, introduced in the Scottish Parliament on 1 June 2020. They have been prepared by Govan Law Centre on behalf of Pauline McNeill MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and Pauline McNeill MSP, the member who introduced the Bill (SP Bill 76–LC);
- Explanatory Notes Memorandum (SP Bill 76–EN);
- a Policy Memorandum (SP Bill 76–PM).

Background

3. The aim of the Bill is to protect private sector tenants by introducing measures to limit rent increases, to allow a tenant to apply for a fair open market rent to be determined and increase the availability of public information about private rent levels in Scotland.

Main provisions of the Bill

4. The Bill will:

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- introduce a general cap in Scotland on rent increases for private residential tenancies ("PRTs") at no more than the annual consumer prices index ("CPI") plus 1%;
- provide tenants under PRTs with the right to apply for a fair open market rent to be determined no more than once in any 12-month period;
- require private landlords to disclose the rents they charge for each property when they register or renew their registration on the Scottish Landlord Register;
- require the Scottish Ministers within 3 years from the date of Royal Assent of the proposed legislation to publish a statement on the impact of the Bill.

5. The Bill is in three parts. Part 1 establishes "the fair rent CPI cap" which would limit annual rent increases for PRTs by no more than the annual consumer prices index plus 1%. This Part of the Bill also creates a new statutory right for tenants under PRTs to seek a fair rent which may be lower than their existing rent where the rent officer or First-tier Tribunal for Scotland (Housing and Property Chamber) (the "FTT") considers it reasonable to do so.

6. Part 2 establishes a new requirement for private landlords to disclose within their application to the Scottish Landlord Register at the point of registration, or renewal of registration, the monthly rent charged for each property, together with details of the number of occupiers, bedrooms and living apartments for each property. This Part of the Bill also creates a requirement for the Scottish Ministers to prepare and publish a statement on the operation of the Bill and lay this statement before the Scottish Parliament within 3 years of the Bill's commencement date.

7. Part 3 of the Bill sets out a short interpretation section, together with the commencement and short title provisions. The Bill, as drafted, would have to come into force no later than 31 May 2021 or such earlier date as the Scottish Ministers may appoint by way of regulations.

Costs on the Scottish Administration

8. Part 1 of the Bill introduces a standalone right for a tenant to apply for a fair open market rent to be determined once per annum. The right to

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do so would be incorporated within the existing rent officer and First-tier Tribunal for Scotland (Housing and Property Chamber) (the "FTT") infrastructure in Scotland. Accordingly, no new costs would arise other than additional costs for convening more FTTs and the implementation of a new administrative procedure for tenants.

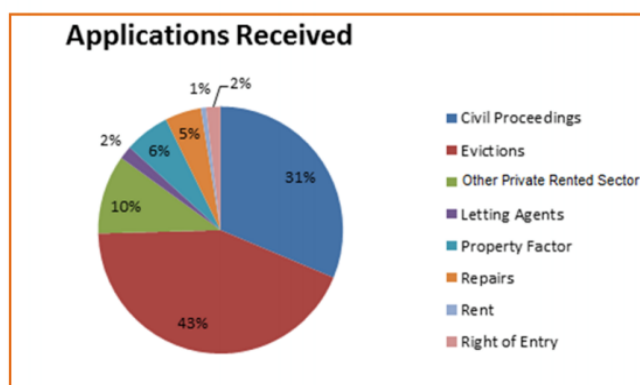
9. During the year, 1 April 2018 to 31 March 2019 the FTT received 3,781 applications across 10 of its existing jurisdictions, and 3,196 applications were closed during the year.¹ The vast majority (85%) of applications received fell within the new private rented sector jurisdiction. Almost half (43%) of all applications received were for eviction, while a further 31% were applications for civil proceedings in relation to private tenancies (see Figure 1 below). Most of the applications for civil proceedings were for payment orders. These typically accompany an eviction application and usually concern rent arrears and/or damage to rented property, although applications by tenants seeking damages have also been received. The third biggest category of applications overall (9%,) were applications for an order for payment of a sanction where the landlord has failed to comply with the duty to pay a tenancy deposit into an approved scheme.

1

<http://www.scotland--judiciary.org.uk/Upload/Documents/ScottishTribunalsAnnualReport201819.pdf>

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Figure 1 - Applications received by FTT 2018/19



10. Any additional costs to the Scottish Administration under Part 1 would depend upon tenant take-up of the new right in section 2 of the Bill. As Figure 1 above illustrates, rent cases presently make up a minor amount of the work of the FTT. The existence of a new tenant right for a fair open market rent would have an impact on landlord behavior in setting rents and proposed rent increases. Accordingly, any high uptake in the new right by tenants is likely to be short term in effect as the market would correct itself and landlord behaviour would be expected to change. Additional costs are difficult to estimate; however, they would not be significant given the utilisation of existing rent officer and FTT infrastructure. The FTT is part of Scottish Courts and Tribunal Service, whose annual accounts do not provide a breakdown on the cost of the FTT, generally or on an average case by case basis.² They do provide a breakdown of the volume of applications received, disposals and the days that the FTT currently sits in relation to different types of cases (see Figure 2 below); however rent cases are not separately identified. The Scottish Administration presently provides this infrastructure free of charge to private sector landlords and tenants.

² <https://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/publications/scts-annual-report-accounts-2018-19.pdf?sfvrsn=2>

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Figure 2 - FTT receipts of applications, disposals and hearing days

SCOTTISH COURTS & TRIBUNALS SERVICE -
ANNUAL REPORT & ACCOUNTS

First-tier Tribunal for Scotland (Housing and Property Chamber)			
Property Factor	2018-19	2017-18	2016-17
<i>Receipts</i>	225	196	192
<i>Disposals</i>	169	164	191
<i>Hearing Days</i>	125	114.5	93
Rent & Repairs			
<i>Receipts</i>	163	205	267
<i>Disposals</i>	230	217	306
<i>Hearing Days</i>	241	172	264
Third Party			
<i>Receipts</i>	44	38	58
<i>Disposals</i>	34	33	17
<i>Hearing Days</i>	29	26	38
Right of Entry			
<i>Receipts</i>	72	61	36
<i>Disposals</i>	73	58	29
<i>Hearing Days</i>	39	n/a	n/a
Letting Agents			
<i>Receipts</i>	66	10	-
<i>Disposals</i>	32	0	-
<i>Hearing Days</i>	30	0	-
Private Rented Sector			
<i>Receipts</i>	3,212	684	-
<i>Disposals</i>	2,656	27	-
<i>Hearing Days</i>	176	6	-

11. Parts 2 and 3 of the Bill would have no costs on the Scottish Administration other than the administrative cost of publishing the statement on the impact of the right to a fair rent in terms of section 4 of the Bill.

Costs on local authorities

12. Parts 1 and 3 of the Bill have no costs on local authorities. Section 3 of Part 2 of the Bill requires private landlords to disclose the monthly

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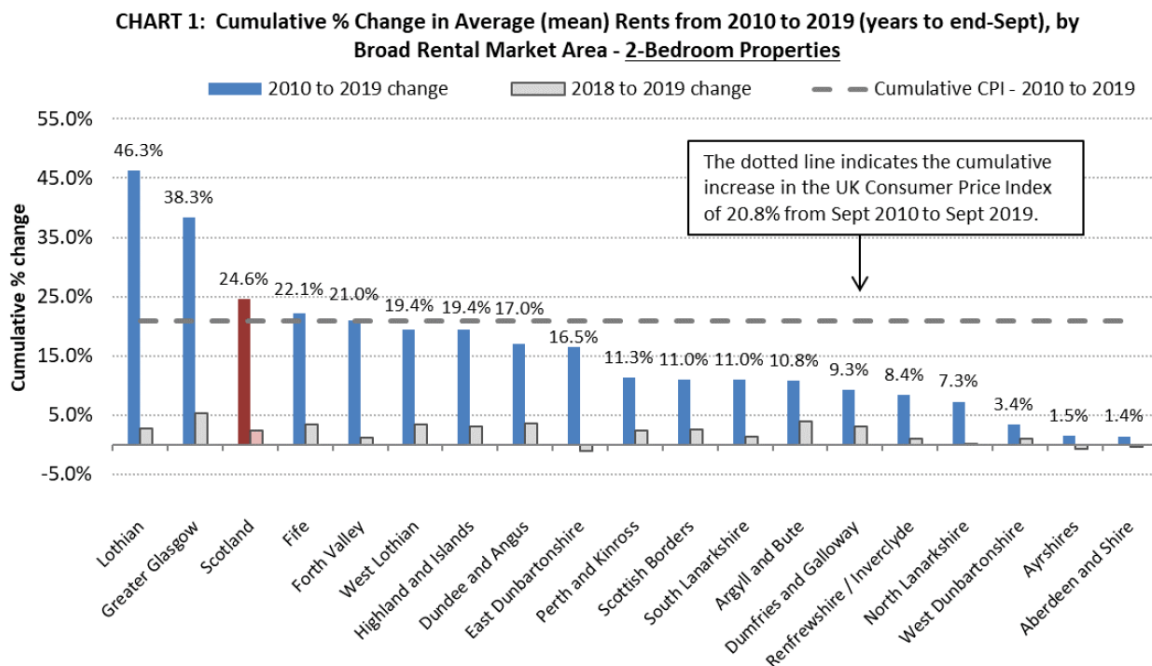
rent they charge for each property, along with details of the number of occupiers and bedrooms and living apartments in each property. This collection of this additional data will have a de minimis cost on local authorities because it only arises at the current point of landlord re-registration (which takes place every three years). Furthermore, the additional information would be a minor addition to the existing data collection process that local authorities already undertake as part of the private landlord registration process under the Antisocial Behaviour etc. (Scotland) Act 2004. Section 4 of Part 2 of the Bill has no costs on local authorities.

Costs on other bodies, individuals and businesses

13. Parts 2 and 3 of the Bill have no costs on other bodies, individuals and businesses. Part 1 of the Bill would result in private sector tenants paying less rent with annual rent increased capped at CPI plus a maximum of 1%; with a concomitant reduction in private landlord income. From the Scottish Government's Private sector rent statistics 2010-2019³ the Bill's proposed fair rent CPI cap would have a cooling impact on rent increases across Greater Glasgow and the Lothians, which have on average seen rents increase by almost double the rate of CPI. As the table below illustrates, many other parts of Scotland have had average rent increases around or less than CPI over the last nine years. However, these figures are averages over time, so the fair rent CPI cap will protect tenants across Scotland from spikes in rental increases way above inflation.

³ <https://www.gov.scot/publications/private-sector-rent-statistics-2010-2019/>

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14. Taking Greater Glasgow, as an example, the average rent for a 2-bed property in the private rented sector at September 2019 was £780.⁴ The annual average rent increase was 5.3%. If this was capped at CPI plus 1% a future annual rent increase could not exceed 2.5%.⁵ This would give a monthly rental increase of £19.50 (at 2.5%) instead of £41.34 (at 5.3%). The annual saving for a tenant would be £262.

15. Research by the New Economics Foundation confirms that 35% of private renters are living in poverty.⁶ More than 1 on 5 of the workers in the UK at the greatest risk of losing their job because of social distancing measures during the Covid-19 pandemic are private renters. Renters spend on average a third of their income on rent, so a reduction in income may make rents unaffordable. The Bill would counterbalance the risk to private renters in Scotland by ensuring rent increases were not excessive, while giving tenants the right - in principle - to seek a rent freeze or lower rent.

16. The Bill would contribute to public expenditure savings by helping to prevent an increase in evictions (due to unaffordable rent increases),

⁴ <https://www.gov.scot/publications/private-sector-rent-statistics-2010-2019/>

⁵ <https://www.ons.gov.uk/economy/inflationandpriceindices>

⁶ https://neweconomics.org/uploads/files/Suspending_Rents.pdf

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reducing the need for homelessness services, and the consequential cost to the health service when a tenant is subject to the threat of homelessness. Overall, the impact of the Bill would be to provide a stabilisation of future rent costs for private sector tenants in Scotland linked to the rate of inflation. The Bill has no other significant cost implications.

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