

Fair Rents (Scotland) Bill

Delegated Powers Memorandum

Purpose

1. This memorandum has been prepared by Govan Law Centre on behalf of Pauline McNeill in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Fair Rents (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill Provisions

2. The aim of the Bill is to protect private sector tenants by introducing measures to limit rent increases, give tenants a new right to apply for a fair rent to be determined, and increase the availability of public information about private rent levels in Scotland.

3. The Bill contains 7 sections in 3 parts and would amend the Housing (Private Tenancies) (Scotland) Act 2016 (the "2016 Act") to:

- 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 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 commencement of the proposed legislation to publish a statement on the impact of the Bill.

4. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

Rationale for Subordinate Legislation

5. The Bill contains a number of delegated powers provisions, described in more detail below.

Section 1(2) With 1(3) – Power to Make Further Provision About the Fair Rent Consumer Prices Index Cap

Power Conferred On: The Scottish Ministers

Power Exercisable By: Regulations Made by Statutory Instrument

Parliamentary Procedure: Affirmative

Provision

6. Section 1(2), read with 1(3), gives the Scottish Ministers a discretion to make further provision about the fair rent CPI cap by way of regulations, including provision to:

- substitute, for the percentage figure for the time being specified there, a different percentage figure (providing that the percentage figure may be a figure to be subtracted from the consumer prices index);
- modify or remove its application;
- make different provision for different circumstances.

Reason for Taking Power

7. Some of the commercial respondents to the Bill's consultation were concerned that inflation was not an appropriate benchmark for a rent cap. The Bill takes on board concerns about a blanket or rigid approach by making provision in section 1 of the Bill for delegated legislation to modify or remove its application; to make different provision for different circumstances; and for the percentage figure to be added to the annual rate of CPI to be varied upwards or downwards.

Choice of Procedure.

8. Section 1(3) provides that regulations made under section 1(2) are subject to affirmative procedure. Section 1(2) amends section 22 of the 2016 Act. Section 1(3) amends section 77(3) of the 2016 Act, which makes provisions for certain delegated powers in the 2016 Act to be subject to affirmative procedure. The level of scrutiny that this procedure provides to the Parliament reflects the significance of making changes to the fair rent CPI cap, as well as altering its operation for different circumstances.

Section 2(2) – Power to Prescribe the Form of Application to A Rent Officer for A Tenant to Apply for A Fair Rent to Be Determined

Power Conferred On: The Scottish Ministers

Power Exercisable By: Regulations Made by Statutory Instrument

Parliamentary Procedure: Laid, No Procedure

Provision

9. Section 2(2) requires the Scottish Ministers to prescribe by regulations the form for a tenant's application to a rent officer for a fair rent to be determined under section 2 of the Bill. Section 2(2) also requires the Scottish Ministers to make provision for the manner of a tenant's application for a fair rent to be intimated to the landlord. Section 2(2) seeks to introduce a new section 22A to the 2016 Act.

Reason for Taking Power

10. The introduction of a right for a tenant to apply for a fair rent under new section 22A must be made in a particular form. The 2016 Act already makes provision for notices to be made in a prescribed form by way of regulations, including where a landlord gives notice of a rent increase under section 22 of the 2016 Act.

Choice of Procedure

11. Negative procedure is an appropriate level of parliamentary scrutiny in relation to both form and rules of intimation. For the sake of completeness, if the Bill was successful at Stage 1, the Member would bring forward a minor technical amendment to insert a reference to the new

section 22A in section 77(4) of the 2016 Act (regulations subject to negative procedure).

Section 6 – Commencement

Power Conferred On: The Scottish Ministers

Power Exercisable By: Regulations Made by Statutory Instrument

Parliamentary Procedure: Laid, No Procedure

Provision

12. Subsection (1) provides that this section comes into force on the day after Royal Assent.

13. Subsection (2) of the Bill provides that any remaining provisions of the Bill, once enacted, come into force on such date as the Scottish Ministers may by regulations appoint, but no later than 31 May 2021.

Reason for Taking Power

14. Subsection (2) enables the Scottish Ministers to bring the Bill's substantial provisions into force at a later date by means of commencement regulations, but no later than 31 May 2021. This is to enable tenants who are adversely affected by the economic impact of the Covid-19 pandemic to benefit from the provisions of the Bill as soon as possible. However, rather than prescribing these dates on the face of the Bill, taking this power provides for greater flexibility and it is usual practice for commencement provisions to be dealt with in this way.

Choice of Procedure

It is normal practice for commencement regulations to be laid before Parliament but not subject to any parliamentary procedure.

Commencement regulations bring into force provisions whose underlying policy has already been considered by the Parliament during the passage of the Bill. Any regulations under this section will be laid before Parliament as soon as practicable after being made. This is provided for by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

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

Delegated Powers Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - <http://www.parliament.scot/>

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: <http://www.parliament.scot/documents>