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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Housing (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Foyso Choudhury
Scottish Labour



Tim Eagle
Scottish Conservative
and Unionist Party



Jeremy Balfour
Scottish Conservative
and Unionist Party

Introduction

1. At its meetings on 4 and 25 Juneⁱ and 3 Septemberⁱⁱ 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Housing \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

ⁱ Jeremy Balfour MSP submitted apologies for this meeting.

ⁱⁱ Foysof Choudhury MSP submitted apologies for this meeting.

Overview of the Bill

3. This is a Scottish Government Bill which was introduced on 26 March 2024. The lead committee is the Local Government, Housing and Planning Committee.
4. The Scottish Government states that the Bill contains a package of reforms in response to the need to improve housing outcomes for people in rented accommodation and facing homelessness to help deliver the “New Deal for Tenants”. The Bill makes provision over 7 parts to deliver the policy intent with the main areas being rent and rent control areas, evictions, tenants’ keeping of pets and personalisation, unclaimed tenancy deposits, registration of letting agents, conversion of certain tenancies, ending of joint tenancy agreements, homelessness prevention, as well as other housing matters.

Delegated powers

5. The Bill confers 50 delegated powers on the Scottish Ministers. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”), which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.
6. At its meeting on 4 June 2024, the Committee did not raise any queries for the Scottish Government with regard to the delegated powers listed in the Annexe to this report.
7. However, at that meeting, the Committee agreed to [write to](#) the Scottish Government to raise questions in relation to the following delegated powers:
 - 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;
 - Section 13(1): Power to define what is an “exempt property”;
 - Section 14(1): Power to allow rent increases for specified properties that exceed the amount that is otherwise permitted
 - Section 15(7): Power to change the information that may be requested by a local authority;
 - Section 18(1): Power to the modify law in connection with the expiry of rent control area designation;
 - Section 19(2): Inserted new section 43B(4) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to modify the meaning of expressions included in that new section;
 - Section 19(2): Inserted new section 43G(1)(b)(i) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards property that was not previously let);
 - Section 21(2)(a): Inserted new section 19(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards let property not in rent control area);
 - Section 29: Inserted new section 64E(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when it is reasonable for a landlord to refuse consent to the keeping of pets by tenants;
 - Section 29: Inserted new section 64F(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when a condition specified in a landlord’s notice is reasonable;
 - Section 29(2): Inserted new section 64L(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to specify changes to let property and categorise

changes as a category 1 or category 2 change;

- Section 29: Inserted new section 64M(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when it is reasonable to refuse consent to make a category 2 change;
- Section 29: Inserted new section 64N(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when a consent condition to make a category 2 change to a let property is reasonable;
- Section 30(2): Inserted new section 31B(1) of the Housing (Scotland) Act 2001 - power to make provision about when a consent condition for keeping a pet is reasonable;
- Section 30(2): Inserted new section 31C(1) of the Housing (Scotland) Act 2001 - power to make provision about when it is reasonable to refuse consent to keep a pet;
- Section 31(3): Inserted new section 122C(4) of the Housing (Scotland) Act 2006 - power to modify the purposes for which unclaimed deposits that are transferred.

8. The Scottish Government [responded](#) on 18 June 2024.
9. The Committee's consideration of the Scottish Government's response, and the other delegated powers contained in the Bill, are set out in the next section of the report.

Review of relevant powers

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provisions

10. Section 1 provides that each local authority must carry out an assessment of the level of rent payable under private residential tenancies and assured tenancies, and the rate of increase in rent payable under those types of tenancies in their area. Thereafter, it must prepare and submit a report to the Scottish Ministers. Section 1(2) states that the first report must be submitted by 30 November 2026, and that subsequent reporting periods will run for periods of 5 years from that date.
11. Section 1(4) provides that the Scottish Ministers may amend section 1(2) in order to substitute another time-period or to specify a date (or dates) by which one or more subsequent reports must be submitted.
12. Regulations made under section 1(4) are subject to the negative procedure.

Committee consideration

13. The Committee asked the Scottish Government about the circumstances it envisages arising which would require the amending of the reporting period. It also asked 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.
14. The Scottish Government responded that the amendment of the reporting periods 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. It stated that the intention is that the five-year deadline would be maintained as standard, but the provision in section 1(4) allows for adjustments where necessary. It also stated that it considers the negative procedure is appropriate as it believes such a change would be technical, administrative or procedural. It also stated that the negative procedure is necessary in situations where timely action is required, which it says is particularly relevant in the context of housing and economic conditions, which can change rapidly and require immediate policy response.
15. The Scottish Government's response illustrates that any change to the reporting period would be a policy choice rather than technical in nature. The Committee considers that any change to the reporting period could have an impact on local authority resource and planning and notes the Scottish Government's point regarding the negative procedure allowing for timely action. However, the Committee considers that the potential impact that such a change could have on

local authorities merits the allowing of reasonable period of time in order to allow local authorities to respond to new obligations. It therefore considers that any change to the reporting period should be subject to a higher level of Parliamentary oversight and as such recommends that the affirmative procedure should apply to regulations made under this power.

16. The Committee recommends that the affirmative procedure applies in respect of this power.

Section 13(1): Power to define what is an “exempt property”

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

17. Section 9 of the Bill contains the substantive power for the Scottish Ministers to designate, by regulations, rent control areas after having considered a report from a local authority. Section 9(3) provides that those regulations are to provide that they apply to private residential tenancies of properties which are not exempt properties. Section 13(1) provides that the Scottish Ministers may by regulations define what an exempt property is, and that those regulations may define a property by reference to matters the Scottish Ministers consider appropriate including: a description of the circumstances relating to the landlord of the property, a description of the circumstances relating to the tenant of the property and a description of the property according to its type.
18. Such regulations would be subject to the affirmative procedure. Scottish Ministers are required to consult with those who appear to represent the interests of tenants and landlords before making such regulations.

Committee consideration

19. The Committee asked the same questions in respect of the powers in 13(1), 14(1), 18(1) of the Bill and new sections 43G(1)(b)(i) and 19(1)(a) of the 2016 Act. Those questions were whether the Scottish Government had considered making provision on the face of the Bill, and what policy development and discussion with stakeholders has taken place thus far on what these provisions may include.
20. The Scottish Government responded that the decision to include such measures in regulations was driven by the need to ensure that there is flexibility to adapt to future circumstances. It stated that it has been engaging with landlords and tenants including through a public consultation which opened in December 2021 and a more targeted questionnaire which ran from 29 September to 27 October 2023. It stated that it continues to work with stakeholders across landlords, tenants and investors and has established a Private Rented Sector Stakeholder Group and a local authority working group.
21. The Committee considers that the use of this power could have a significant impact

on how the policy will operate in practice. At this time, no examples have been given as to what might be considered an “exempt property”. The Policy Memorandum states that a majority of respondents to the landlord and tenant engagement questionnaire thought that no categories of housing should be exempt from rent controls.

22. The question of whether there should be exemptions to rent controls and if so, what exemptions would be appropriate, is a policy matter for the lead committee to consider. This Committee is asked to consider whether it is appropriate that such measures are decided upon and implemented through regulations at a later stage. The Committee considers that this is a power which enables the Scottish Government to make a significant policy choice through regulations.

23. **The Committee highlights this power to the lead committee, noting that it could be used to make a significant policy choice and suggests that the lead committee considers whether further provision should be made on the face of the Bill.**

Section 14(1): Power to allow rent increases for specified properties that exceed the amount that is otherwise permitted

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

24. Section 14 of the Bill provides that the Scottish Ministers may make regulations which may allow a landlord of a “specified property” in a rent control area to increase the rent payable under the tenancy by more than would otherwise be permitted. Such regulations may provide that such an increase requires the approval of a specified person or that no approval is required. Again, what is a “specified property” may be defined by reference to matters the Scottish Ministers consider appropriate including: a description of the circumstances relating to the landlord of the property, a description of the circumstances relating to the tenant of the property and a description of the property according to its type.
25. Such regulations would be subject to the affirmative procedure. Scottish Ministers are required to consult with those who appear to represent the interests of tenants and landlords before making such regulations.

Committee consideration

26. The questions asked by the Committee and the response to those questions are the same as outlined above at paragraphs 19 and 20.
27. As above, this power enables the Scottish Government to make provision applying different measures to different types of properties. As such, the Committee considers that this could potentially have a significant impact on how the policy operates in practice, and on how the Parliament may envisage the policy operating

if it passes the Bill. There are no examples provided as to what might be a “specified property”.

28. **The Committee highlights this power to the lead committee, noting that it could be used to make a significant policy choice and suggests that the lead committee considers whether further provision should be made on the face of the Bill.**

Section 15(7): Power to change the information that may be requested by a local authority

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

29. Section 15 of the Bill creates a right for a local authority to request certain property and tenancy information from both landlords and tenants for the purpose of assisting the local authority and the Scottish Ministers in carrying out their functions under Chapter 1 of the Bill. Section 15(2) specifies the information which may be requested as:
- the address of the house,
 - the description of the type of tenancy or occupancy agreement to which the house is subject,
 - the amount of rent payable under any tenancy to which the house is subject,
 - the date on which the rent payable under such a tenancy was last increased and the amount by which the rent was last increased,
 - date on which the rent payable under such a tenancy was last increased and the amount by which the rent was last increased,
 - the size of the house including the number of bedrooms in the house, the number of storeys in the house and the floor area of the house,
 - the type of the house (such as whether it is a detached, semi-detached, terraced or flatted property).
30. Section 15(7) provides that the Scottish Ministers may by regulations modify the above list by adding or removing information that may be requested. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

31. In relation to this power, and the power in section 19(2), the Committee asked whether the Scottish Government considers it likely that the powers will be exercised, and what circumstances it envisages arising that would require such use

of those powers.

32. The Scottish Government responded that the power offers flexibility in order that the Scottish Ministers may respond to operational experience of the local authority assessment process. It stated that it is likely that the power will be exercised.
33. The Committee considers that although the information requested will play a significant part in the decision to implement rent control areas or not, on balance, it is appropriate that such a power is included. It is not clear what kind of information could be added to the list, but it considers that it may be sensible to have such a power available in order to ‘future-proof’ the Bill.

34. The Committee is content with the power in principle, and that it is subject to the affirmative procedure.

Section 18(1): Power to the modify law in connection with the expiry of rent control area designation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

35. Subsection 18(1) provides the Scottish Ministers with a regulation-making power which can be used on or in anticipation of the expiry of regulations designating a rent control area. Regulations may make provision in connection with the method by which a landlord may increase rent and any decision, review or appeal in connection with such increases. Section 18(3) provides that any regulations under section 18(1) will cease to have effect after 12 months unless they are revoked.
36. Such regulations would be subject to the affirmative procedure. Scottish Ministers are required to consult with those who appear to represent the interests of tenants and landlords before making such regulations.

Committee consideration

37. The questions asked by the Committee and the response to those questions are the same as outlined above at paragraphs 19 and 20.
38. The Committee agrees that it is sensible that there is a mechanism to provide for continuity and certainty in relation to the expiry of the designation of a rent control area, for a limited period. However, it wonders whether such provision could be made in the Bill itself. It considers that this power enables the Scottish Ministers to subject a landlord to further controls following the expiry of the rent control area, albeit only for 1 year, and therefore is a policy consideration to which the Parliament may wish to input on.

39. The Committee highlights this power to the lead committee, noting that it

could be used to make a significant policy choice and suggests that the lead committee considers whether further provision should be made on the face of the Bill.

Section 19(2): Inserted new section 43B(4) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to modify the meaning of expressions included in that new section

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

40. New section 43B of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) contains expressions which are defined and that are relevant to the provisions restricting the initial setting of rent of private residential tenancies of properties in a rent control area and increases in rent of those properties.
41. Those expressions are “previously let”, “excluded property” and “the immediately preceding tenancy”. A property that has been previously let is defined as a property that is the same or substantially the same as the property that was let under the immediately preceding tenancy and is not an excluded property. An excluded tenancy is a property that has been purchased by the landlord with vacant possession and the tenancy is the first private residential tenancy of the property granted by the landlord since the purchase. The immediately preceding tenancy is defined as a private residential tenancy or an assured tenancy that immediately preceded the current tenancy and ended no more than 12 months before the start of the current tenancy. New section 43B enables the Scottish Ministers to amend these definitions by regulations.
42. Such regulations would be subject to the affirmative procedure.

Committee consideration

43. The questions asked by the Committee are the same as those outlined above at paragraph 31. The Scottish Government responded that this power could be used to respond to changing circumstances. It stated that it is not considered likely that this power will be used but explained that it could be used if in operation it were 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.
44. The Committee’s view is that it is not usually appropriate to delegate a power where it is not clear and foreseeable that such power will be used. The Scottish Government’s response has confirmed the Committee’s doubt as to whether the power is necessary.

45. The Committee highlights the power to the lead committee. The Committee does not usually consider it appropriate to delegate a power where it is not

clear and foreseeable that such a power will be used. The Committee asks the lead committee to consider whether there are any policy reasons that mean it believes this power is necessary, and if not, the Committee recommends that the power is not delegated.

Section 19(2): Inserted new section 43G(1)(b)(i) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards property that was not previously let)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

46. New section 43G of the Private Housing (Tenancies) (Scotland) Act 2016 sets out provision in respect of the frequency with which rent may be increased in a rent control area. If a let property does not fall within the definition of “previously let”, the rent may not be increased during the first 12 months of the tenancy. Section 43G(1)(b)(i) enables the Scottish Ministers to specify in regulations circumstances in which the rent on a property which is not “previously let” can be increased in the first 12 months of the tenancy.
47. Such regulations would be subject to the affirmative procedure.

Committee consideration

48. The questions asked by the Committee and the response to those questions are the same as outlined above at paragraphs 19 and 20.
49. Similarly noted elsewhere in the report, this power enables the Scottish Ministers to provide for alternative measures to apply in certain situations. Although it may appear sensible to include a power which allows the Scottish Ministers to adapt such measures in respect of different situations, the Committee considers that this is another scenario whereby significant policy decisions may be implemented through regulations. The Committee considers that it would have been more appropriate to outline the circumstances that the Scottish Government considers may be excluded from the general rule on the face of the Bill.

50. **The Committee highlights this power to the lead committee, noting that it could be used to make a significant policy choice and suggests that the lead committee considers whether further provision should be made on the face of the Bill.**

Section 21(2)(a): Inserted new section 19(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards let property not in rent control area)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

51. Section 21 modifies section 19 of the 2016 Act so as to provide that rent increases cannot take place in the first 12 months of the tenancy. Section 21(2)(a) provides that the Scottish Ministers can, through regulations, prescribe circumstances where the prohibition on rent increases during the first 12 months of the tenancy will not apply.
52. Such regulations would be subject to the affirmative procedure.

Committee consideration

53. The questions asked by the Committee and the response to those questions are the same as outlined above at paragraphs 19 and 20.
54. As above, this power enables the Scottish Ministers to provide for alternative measures to apply in certain situations. Although it may appear sensible to include a power which allows the Scottish Ministers to adapt such measures in respect of different situations, this is another scenario whereby significant policy decisions may be implemented through regulations. The Committee therefore considers that it would have been more appropriate to outline the circumstances that the Scottish Government considers may be excluded from the general rule on the face of the Bill.

55. **The Committee highlights this power to the lead committee, noting that it could be used to make a significant policy choice and suggests that the lead committee considers whether further provision should be made on the face of the Bill.**

The following are all powers of a similar nature with regards to the keeping of pets and making changes to property and as such, all seven powers will be dealt with together below for the purposes of comment and suggested recommendation.

Section 29: Inserted new section 64E(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

56. Section 29 inserts 64E(1) into the 2016 Act which confers power on the Scottish Ministers to make provision about when it is reasonable for a landlord to refuse consent to the keeping of pets by tenants. Such regulations may specify

circumstances where it is, or is not reasonable to refuse consent or factors to show that the consent is or is not reasonable. Scottish Ministers are required to consult with stakeholders before making such regulations.

Section 29: Inserted new section 64F(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

57. Where tenants are permitted to keep pets, it may be subject to conditions applied by notice from the landlord. Section 64F(1) operates in very much the same way as section 64E(1) above but confers power on the Scottish Ministers to make provision about when a condition specified in a landlord's notice is reasonable. Such regulations may specify circumstances in which a condition is or is not reasonable or factors that tend to show that a condition is or is not reasonable. Scottish Ministers are required to consult with stakeholders before making such regulations.

Section 29(2): Inserted new section 64L(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to specify changes to let property and categorise changes as a category 1 or category 2 change

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

58. Section 29 inserts 64L(1) into the 2016 Act which confers power on Scottish Ministers to make provision to specify changes to a property let under a private residential tenancy as a category 1 change (not requiring landlord's consent) or a category 2 change (requiring landlord's consent). Such regulations may provide that each category of change applies, or does not apply, to a particular type or description of property. Scottish Ministers are required to consult with stakeholders before making such regulations.

Section 29: Inserted new section 64M(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when it is reasonable to refuse consent to make a category 2 change

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

59. Section 29 inserts 64M(1) into the 2016 Act which confers power on the Scottish Ministers to make provision about when it is reasonable for a landlord to refuse consent to making a category 2 change under the 2016 Act. Such regulations may specify circumstances where it is or is not reasonable to refuse consent or factors to show that the consent is or is not reasonable. Scottish Ministers are required to consult with stakeholders before making such regulations.

Section 29: Inserted new section 64N(1) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to make provision about when a consent condition to make a category 2 change to a let property is reasonable

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

60. Where tenants are permitted to make a category 2 change, it may be subject to conditions applied by notice from the landlord. Section 64N(1) operates in very much the same way as section 64M(1) above but confers power on Scottish Ministers to make provision about when a condition specified in a landlord's notice is reasonable. Such regulations may specify circumstances in which a condition is or is not reasonable or factors that tend to show that a condition is or is not reasonable. Scottish Ministers are required to consult with stakeholders before making such regulations.

Section 30(2): Inserted new section 31B(1) of the Housing (Scotland) Act 2001 - power to make provision about when a consent condition for keeping a pet is reasonable

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

61. Where tenants are permitted to keep pets in a 2001 Act tenancy, it may be subject to conditions applied by notice from the landlord. Section 31B(1) confers power on Scottish Ministers to make provision about when a condition specified in a landlord's notice is reasonable. Such regulations may specify circumstances in which a condition is or is not reasonable or factors that tend to show that a condition is or is not reasonable. Scottish Ministers are required to consult with stakeholders before making such regulations.

Section 30(2): Inserted new section 31C(1) of the Housing (Scotland) Act 2001 - power to make provision about when it is reasonable to refuse consent to keep a pet

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

62. Section 30 inserts 31C(1) into the 2001 Act which confers power on Scottish Ministers to make provision about when it is reasonable for a landlord to refuse consent to the keeping of pets by tenants. Such regulations may specify circumstances where it is or is not reasonable to refuse consent or factors to show that the consent is or is not reasonable. Scottish Ministers are required to consult with stakeholders before making such regulations.

Committee consideration

63. These powers are doing very similar things for different aspects of this part of the Bill. When the Committee first considered the Bill it was not clear on the basis of the information available what type of provision might be made. It was not obvious to what extent or how much autonomy landlords would have to make decisions on these matters over their let properties and no detail was provided on the face of the Bill on what provision the regulations would make despite the DPM describing these as providing “further detail”.
64. The Committee therefore asked the Scottish Government whether some provision should be made on the face of the Bill; what policy development and discussion had taken place to date with stakeholders on the regulations; how the powers would be exercised; how it would ensure compliance under Article 1 Protocol 1 of the European Convention of Human Rights (protection of property) (“A1P1 compliance”) and whether the powers should be further limited in scope.
65. The Scottish Government has stated in its response that the Bill intentionally sets out a legislative framework for keeping pets and making changes to let property. It stated that further provision is not made on the face of the Bill as consultation with landlords and tenants is required to take place first but that initial policy development and stakeholder engagement has started. It further stated that the initial discussions have led to a range of differing views being put forward which will require further consultation to avoid unintended consequences and support effective implementation.
66. The Scottish Government provided further detail in respect of the types of matters that it anticipates being considered in respect of the differing types of regulations by listing them in their correspondence. Regulations made under these provisions will have a significant impact on landlords and the operation of their rights to determine such requests. That ability will be limited by these regulations over their let properties. The lists in the correspondence are indicative lists only at this stage and the subsequent regulations may provide differing lists of reasonable conditions or when landlords may reasonably refuse requests. However, these lists do provide a helpful indication to the Committee as to how the powers may be exercised and what types of matters might be left to landlords to determine.
67. The Scottish Government’s response notes the importance of consultation in the development and exercise of these powers and states that a full public consultation will be carried out. There is a statutory requirement to consult before making such regulations and the Scottish Government states that an assessment of whether the provisions would be A1P1 compliant can only take place following that consultation

when it is known what the impact may be on landlords.

68. Finally, the Scottish Government has stated that it considers the scope of the power to be appropriate as it provides sufficient flexibility in the development of the detailed proposals following further consultation, however, it will consider further limiting the scope of these powers at Stage 2.

69. **The Committee draws these powers to the attention of the lead committee. The Committee considers that some of the powers should be further limited in their exercise. While the Committee accepts the need for some regulation making powers in this area, it considers that it is also essential to provide clarity to the end users of the law. The Committee therefore suggests that this may be achieved in some cases by providing illustrative lists on the face of the Bill.**

Section 31(3): Inserted new section 122C(4) of the Housing (Scotland) Act 2006

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

70. Section 122C(1) provides that the Scottish Ministers must use the unclaimed deposits that are transferred to them for specified purposes. Those purposes are specified in the Bill and include providing or securing the provision of advice, information or assistance to private tenants in relation to their rights as tenants and other services or facilities that promote or support the interests of them; preventing private tenants from becoming homeless; and paying or recovering administrative costs that are reasonably incurred by the recipient in the exercise of their functions.
71. Section 122C(4) confers power on the Scottish Ministers to modify the purposes for which unclaimed deposits that are transferred to the Scottish Ministers, or to a fund administrator, may be used.
72. Before regulations can be made under this provision the Scottish Ministers must consult with persons who appear to them to represent the interests of tenants and landlords, and any other person they consider appropriate and are subject to the affirmative procedure.

Committee consideration

73. The Bill outlines what unclaimed funds must be spent on, which is generally for the benefit of private tenants. This is a wide power to modify what those funds can be spent on that the DPM states is necessary to provide flexibility to amend the purposes that unclaimed funds can be used for, enabling the Scottish Ministers to respond to changing circumstances. Whilst there are reporting requirements on the Scottish Ministers on the use of any unclaimed tenancy deposits every three years, there is no detail in what information should be provided in such a report.

74. The Committee therefore asked the Scottish Government for further detail on the necessity of this power; whether the scope of the power could be further limited and whether there should be a requirement to consult before exercising it.
 75. The Scottish Government's response stated that it considers the affirmative procedure coupled with the consultation requirement strikes the appropriate balance to provide flexibility and to be able to make timely changes given the uncertainty around any future suitable primary legislative vehicle. It further states that it considers the scope of the power to be appropriate but will give consideration to further limiting the power at Stage 2 and give consideration to including a statutory requirement to lay consultation documents or reports given the importance of consultation.
 76. The Scottish Government's response provides little additional information for the Committee to consider this power. It does not address more fully than the DPM the need for this power and simply says that at Stage 2, the Scottish Government will consider whether to limit the scope of the power further or to require the consultation documents to be laid alongside any regulations.
77. **The Committee draws this power to the attention of the lead committee so it can more fully consider the necessity and scope of the power.**

Annexe

The Committee is content with the following powers and the parliamentary procedure applied to them:

- Section 9(1): Power to designate areas as a rent control area and impose rent controls for area;
- Section 19(2): Inserted new section 43J(3)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to specify requirements to be fulfilled by rent-increase notice;
- Section 19(2): Inserted new section 43L(3) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe form, fee and manner of intimation of referral to a rent officer;
- New section 43O(2)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe form of request under that section;
- New section 43Q(4)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe manner of intimation of application to First-tier Tribunal under that section;
- Section 29(2): Inserted new section 64B(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for request to keep a pet;
- Section 29(2): Inserted new section 64B(3)(d) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for landlord’s notice;
- Section 29(2): Inserted new section 64C(3) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for tenant’s notice;
- Section 29(2): Inserted new section 64I(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a tenant’s request to make a category 2 change to a let property;
- Section 29(2): Inserted new section 64I(3)(d) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a landlord’s notice;
- Section 29(2): Inserted new section 64J(3) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a tenant’s notice;
- Section 30(3): Inserted paragraph 8B of new Part 1A of schedule 5 of the Housing (Scotland) Act 2001 - power to prescribe requirements for a tenant’s application to keep a pet;
- Section 33(2)(b): Inserted new section 37(6)(b) of the Housing (Scotland) Act 2014 – power to specify information provided by virtue of section 30(2)(f) of the Act for purpose of new section;
- Section 38(3): Inserted new section 48A(1)(b)(ii) of the Private Housing (Tenancies) (Scotland) Act 2016 - power to require evidence to support statement that pre-notices given properly;

- Section 38(3): Inserted new section 48A(3)(c) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to prescribe requirements for a pre-notice (for ending of a joint tenancy);
- Section 41(4)(c): Inserted new section 32(2C) of the Housing (Scotland) Act 1987 – power to prescribe types of advice and assistance in relation to homelessness;
- Section 3(5): Power to direct the carrying out of interim assessment of rent controls;
- Section 5(2): Power to direct the carrying out of further assessment of rent conditions;
- Section 6(1): Power to issue guidance about carrying out of further assessments of rent conditions;
- Section 7(1): Power to issue guidance about reports;
- Section 31(3): Inserted new section 122B(1) of the Housing (Scotland) Act 2006 - power to direct the transfer of unclaimed deposits;
- Section 31(3): Inserted new section 122D(3) of the Housing (Scotland) Act 2006 – power to direct a fund administrator to provide a report to the Scottish Ministers;
- Section 1(3): Power to change the date for submission of first report on local authority assessment of rent conditions in local authority area;
- Section 20(2): Inserted new section 17A(5) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to change information required in advertisements referred to in the new section
- Section 24(2): Inserted new section 51A(6) of the Private Housing (Tenancies) (Scotland) Act 2016 – power to modify the matters to be considered by the First-tier Tribunal in considering whether to delay eviction;
- Section 25(2): Inserted new section 16A(6) of the Housing (Scotland) Act 2001 – power to modify the matters to be considered by the court in considering whether to delay eviction;
- Section 25(3): Inserted new section 36A(6) of the Housing (Scotland) Act 2001 – power to modify the matters to be considered by the court in considering whether to delay eviction;
- Section 26(2): Inserted new section 20A(6) of the Housing (Scotland) Act 1988 – power to modify the matters to be considered by the First-tier Tribunal in considering whether to delay eviction;
- Section 27(2): Inserted new section 12ZA(6) of the Rent (Scotland) Act 1984 – power to modify the matters to be considered by the First-tier Tribunal in considering whether to delay eviction;
- Section 41(8): Inserted new section 43A(1) of the Housing (Scotland) Act 1987 - power to modify the meaning of “relevant body” in Part 2 (homeless persons) of the 1987 Act;
- Section 40(2): Inserted new paragraph 6(1) of schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 - power to appoint day on which a relevant assured

tenancy converts to a private residential tenancy;

- Section 53(1): Power to make ancillary provision;
- Section 56(2): Power to appoint days on which provisions of the Bill come into force.

