



Scottish Property Federation
Scott House,
South St Andrew Street
Edinburgh
EH22AZ
01312206303
Spf@bpf.org.uk

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SPF Additional Comments to Landlord and Tenant Engagement Questionnaire on Rented Sector Reform

Introduction

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

Context

This document is intended to provide additional comments and greater context to our questionnaire response on the Landlord and Tenant Engagement Questionnaire on Rented Sector Reform (October 2023).

Comments

6. Do you think rent control should be introduced on a local basis, where assessment shows that there is a need, or should rent control be universally applied across Scotland?

Local Flexibility

There should be provisions for local flexibility as it supports the overall feedback we received from members as part of our rent control survey in early July. This approach would also follow the principle that there should only be market intervention where the local market PRS assessment

believes it is absolutely necessary. Provisions for local flexibility should only be granted if local authorities are informed by quality data and properly resourced.

7. Where restrictions on rent increases are being applied, do you think those restrictions should apply to:

Sitting tenants only

Allow for rent increases for in between tenancies.

The extension of the proposed rent controls to include new tenancies agreed following a vacant period is a major concern for investors and landlords. The property could have been vacant for several reasons including retrofit, refurbishment or repair. If a landlord cannot return the property to market rates, then they may struggle to recover the costs incurred to bring the property back to occupation. In addition, if there is a significant gap in time between the property being linked with the appropriate passing rent in a certain area, then it becomes harder to refinance and retain investor support. Ultimately, this could mean the property is neglected or is sold for property ownership, reducing the quality and supply of PRS stock.

9. Which of the following types of tenancy should be classed as “new to market” and therefore exempt from rent control when the first rent is set? You can select more than one answer.

All of the above

These are all substantive reasons why a property is in effect coming to the market as a new tenancy and therefore the rent should be set at the prevailing market rate.

10. It is proposed that any rent control area will be in place for a fixed time period. To what extent do you agree with the following statements?

- a. Rent control areas should only last for a fixed amount of time. They can only be extended if a new assessment shows they are still needed.**
 - Strongly agree

- b. The duration of rent control areas should be flexible, and able to be extended beyond the designated time period, permitting indefinite continuation where required.**
 - Strongly disagree

- c. There should not be a time limit on the duration of rent control areas and any decision to end rent control would be based upon a new assessment indicating they are no longer necessary.**
 - Strongly disagree

Only the first instance would offer certainty to investors. The option to extend or to have a limited period of rent control would lead political decision makers to take the easy option to simply renew and extend controls, possibly regardless of the assessment of the PRS. Either of these final two scenarios would be a serious disincentive to the investment community.

11. Where an area is designated as a rent control area, do you agree that if there are changes in local circumstances there should be a re-assessment before the fixed time period ends so that the designation could be brought to an end earlier than the fixed period?

Yes

We simply need to consider how events such as the collapse of the northeast oil industry and the great financial crash changed landlord and tenant circumstances overnight, leading to serious market failure. There must be a mechanism to release rent controls in such circumstances and where appropriate.

12. If rent control areas are put in place for fixed time periods, which time period would you consider to be most appropriate?

One year

A rent control period of one year is in line with responses to our survey. However, if not one year, then no greater than three years. There needs to be scope for assessment and evaluation of the mechanism's success to be balanced with the time required to allow the legislation to 'bed in' to give investors certainty and ability to forecast returns.

16. Do you think there should be a mechanism to allow landlords to raise the rent above the rent cap, on a case-by-case basis, in certain circumstances such as where there have been improvements to the let property?

Yes, there should be a mechanism to take these cases into account.

Yes – there will be many circumstances where this could be justified – for example to accommodate required energy efficiency improvements, or substantive repairs and refurbishment that require significant time to accomplish. There is of course a clear connection to the earlier question on tenancies that could be considered exempt from the rent control procedures. Allowing additional rent increases will mean direct capital is available to improve energy performance and improve or maintain the quality of PRS stock.

19. Do you consider that any of the categories of housing below should be considered for exemption from rent controls?

We should support exemption for both property offered for social good and build to rent.

There will be some PRS investors of large portfolios of modern homes that may have initially been intended to be sold for home ownership. So long as these descriptions fit with the definition of professional, large scale management and are modern energy efficient properties, we believe these should also be seen as eligible for exemption.

20. Given PRTs were introduced in Scotland more than five years ago, should consideration be given to setting a future date by which remaining assured and short assured tenancies should be phased out?

Yes, consideration should be given to setting a future date by which remaining assured and short assured tenancies should be phased out.

We agree that it is a concern that older tenancies remain in use to the degree that they currently are. It will be important however that the government review the scope and flexibility of the PRT in order to support certain employment practices.

21. Do you agree that the notice period which the departing joint tenant must give to the other joint tenants should be 2 months?

Yes, 2 months is an appropriate notice period

This would set a process for tenants ending a joint tenancy arrangement and also provide transparency to a landlord.

22. Do you agree that some small changes (for example putting up pictures and posters) should not require consent?

Yes

These arrangements are typically allowable under BTR tenancies.

24. How long should landlords have to respond to a request for a change that cannot be unreasonably refused?

30 working days

30 working days would appear reasonable - this should not be as a target date but for landlords of a number of properties the simple logistics of dealing with a number of properties suggests six weeks is about right.