

MAY 2024

SPF VOICE



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Maria Francké
SPF Chair
Director Maria Francké Planning

The last few days have shown us all (again) how unpredictable politics can be, with a rain soaked Prime Minister catching out pundits, supporters and opposition alike in going to the country on 4 July. How this will impact on decisions for our industry remains unclear. The business of the Scottish Parliament will continue, but there may be some impact on announcements that may otherwise have been made before the Scottish summer recess.

The key decision that many of you are seeking is a way forward on the Housing (Scotland) Bill. As it is written, it is positively uninvestable; this is now abundantly clear in evidence from many countries, including Scotland. For that reason and after years of warning the government about the consequence that rent controls will (and have) deterred investment, we have alongside other groups, called for a pragmatic approach to the policy which is based on CPI + 1% with an annual rent cap of 6%. This closely resembles the former rent pressure zones (RPZ) policy with the addition of the Cap which is itself in line with the current Cost of Living transitional provisions and acts as a buffer for tenants against inflation surges as we witnessed in 2022-23. Accordingly, we have submitted this idea to the Local Government, Housing and Planning Committee

of the Parliament as part of the Bill's Stage 1 consideration.

Our main focus with this proposal is to seek certainty for investors which has been sorely lacking since 6 September 2022. This key point of certainty is seeking to restore investor confidence in Scotland for the sector. This concern was reinforced to the Housing Minister in our recent meeting with him on 15 May, and it is a point we have made clear with other political parties.

It has been a busy month for key engagements with government. In addition to the housing submission, we have submitted on the process for making amendments to NPF4 and local development plans, as well as on Masterplan Consent Areas where we anticipate regulations before the end of the year.

As I sign off with this final column as your chair, I would like to thank you for your support this past year and to thank Stuart Oag for his support as my vice chair. I wish Stuart and Jonathan Guthrie, our incoming vice chair every best wish for their tenures.

Best wishes,

WE WELCOME THE INCOMING LEADERSHIP



INCOMING SPF CHAIR

Stuart Oag
Finance Director,
Drum Property Group



INCOMING SPF VICE CHAIR

Jonathan Guthrie
Director Strategic Partnership,
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INDUSTRY INSIGHT



Scotland and United Kingdom at a Crossroads as Business Takes Centre Stage

DONALD ANDERSON

Director

Playfair Scotland Ltd

It is the election that took everyone by surprise, including it would appear, the Conservative Party. Rishi Sunak looked at new inflation figures and decided that this was as good as it was likely to get and called the election. On the 4th of July both Scotland and the UK will be at a crossroads in the most significant election in more than a decade.

At UK level the country faces a choice between a Conservative Party that looks exhausted and a Labour Party that looks untested. Keir Starmer has gone from someone who just three years ago 'couldn't win,' to now being seen now as a leader that 'can't lose.' He can lose of course, and his party has lots of practice at losing. This time Labour will almost certainly win but it is here in Scotland that the most interesting dynamic is playing out.

The SNP has had an extraordinary run of success in Scotland. Since winning the 2007 Holyrood election the SNP has dominated Scottish politics in a way that is not often seen in democracies. Whatever your view of Alex Salmond and Nicola Sturgeon may be, and they are polarising figures, they looked competent against a succession of weak Conservative Prime Ministers. That 'competence' was shattered by a criminal investigation into the SNP's finances and by performance issues in public services.

Polls show the Labour Party pulling ahead in Scotland, and Labour will hope to create momentum to try and overtake the SNP and its new leader, John Swinney. Labour will want to echo Socialist Pedro Sanchez's achievements in Spain of both running a successful economy and overtaking a formerly unbeatable nationalist movement.

So, what does it mean for business? After 15 years in which populist movements have succeeded by exploiting identity politics, the focus is back on how to turn around the sluggish post Brexit UK economy. Politics is returning to the realm of 'It's the economy, stupid.' That is good news for business.

In Scotland that means that the huge damage to the housing market caused by proposed rent controls may well be about to be unpicked by what is now a minority SNP administration in Holyrood.

At the same time, Labour at UK level is emphasising economic security and revisiting Private Finance Initiatives. It clearly sees private investment as central to delivering the growth that will enable future investment in our troubled public services. Labour is also proposing to ramp up housebuilding, though proposed New Towns are unlikely to deliver many new homes very quickly, for that planning consents near existing communities will be needed.

Investors are now being actively sought out by all the main parties. That is a fantastic opportunity for business and engagement with all the major parties will pay dividends, quite literally. Scotland and the UK are at a crossroads. Politics is taking a turn back towards partnership with business, and the election result will simply seal the deal on the change in direction.

The business community can look forward to more cooperation and support from government at all levels. We are now light years away – in terms of both time and political context - from 2018, when the then Foreign Secretary Boris Johnson responded to business concerns about the consequences of Brexit with the less than business friendly reply of "F*** business!"

WOULD YOU LIKE TO RAISE AN ISSUE?

We are keen to showcase a variety of industry topics. If you would like to write for our next Voice, please get in touch with spf@bpf.org.uk.



Ending The Lease: Retail, Hospitality, and Beauty Premises

DAVID BARTOS

Law Commissioner
Scottish Law Commission

Thousands of retail businesses, cafes, pubs, takeaways, hairdressers, wholesale, and distribution centres lease their premises. What happens as the lease comes to an end? Can it be renewed? If not, how much time should the tenant have to find suitable alternative premises? On 30 April 2024, the Scottish Law Commission published its Discussion Paper on Aspects of Leases: Tenancy of Shops (Scotland) Act 1949, discussing these questions.

Current situation

If unable to obtain renewal on satisfactory terms from their landlord, the Tenancy of Shops Act allows these tenants (and possibly also restaurants) to apply to the sheriff court for a renewal for up to one year. The test for the court is whether, “in all the circumstances”, renewing or refusing to do so would be “reasonable”. The Act does not set out criteria for renewal.

Originally a temporary measure intended to assist small tenant shopkeepers during commercial property scarcity after the Second World War, the Act was made permanent in the 1960s amidst concern over the effects of urban redevelopment and the short 40-day notice period. Renewal was intended to allow small business tenants time to relocate and avoid business closure.

Nowadays market conditions are very different. Court applications are costly and time-consuming. Only some national retailers seem prepared to invoke the Act: to extract favourable concessions from their landlords during renewal negotiations. Landlords have seen this as disruptive of ordinary practice in negotiation.

Many lawyers support repeal of the Act. However, tenant representative bodies think some form of tenant protection should remain, especially for small businesses dependent on local goodwill.

Options for change

The Discussion Paper presents three alternative options for the Act:

1. repeal of the 1949 Act giving a single law for all commercial leases: 3 month notice-to-quit before expiry date, failing which automatic continuation for up to a year – with ability to exclude notice altogether;
2. replacement of the Act with a mandatory 6 month notice-to-quit from landlords, failing which automatic continuation of the lease but with a tenant’s break option. This option would be restricted to leases of premises for retail, hospitality or takeaway food and drink activities and including beauty and tattoo services;
3. reform of the Act. Again this option would be restricted to leases of premises used for those types of business. A “statutory statement of objects” together with “statutory disregards” could clarify the court’s criteria for renewal. A “gateway test” restricting use to “small tenants” could keep renewal restricted to the less economically powerful tenants who need it. Compulsory mediation before any court proceedings could assist in resolving renewal disputes without expensive, time-consuming, and uncertain litigation.

The Commission’s consultation runs until 31 July 2024. It invites responses from all stakeholders whether on the business tenant or landlord investor side of the lease relationship.

David Bartos, the lead Commissioner is happy to answer any questions arising out of the proposals. The Paper itself and a response form can be found on the Commission’s [website](#).

SPF REGIONAL ROUND UP

Aberdeen

On 27 May an SPF delegation led by then vice chair Stuart Oag of Drum Property met the co-leaders of Aberdeen City Council to discuss the impact of the withdrawal of all empty property relief on development and investment in the city. The meeting highlighted the fiscal impact of seeking to bring buildings back to life while being taxed significant sums. The meeting noted the move to demolish buildings due to these costs and the wider impact on commercial property values.

Edinburgh

This month, we held a dinner in Edinburgh with the Minister for Housing and a representative from the City of Edinburgh Council. This was a timely meeting considering the Scottish Government had declared a national housing emergency on the same day (15 May). The Minister acknowledged the industry's concerns over the rent control proposals and the need to incentivise development through attractive policies.

SPF Policy Bites

An overview of notable changes to Ministerial and Cabinet positions



Following the collapse of the Bute House Agreement on 25 April, John Swinney MSP was appointed leader of the SNP on 6 May and then officially sworn into office as the First Minister for Scotland at the Court of Session in Edinburgh on 8 May. His appointment brings new Cabinet and Ministerial posts amid a broader government reshuffle. Notably Kate Forbes MSP has become Deputy First Minister and incorporates the economy brief. Forbes replaces Shona Robinson MSP as DFM, who is now the Cabinet Secretary for Finance and Local Government. Tom Arthur MSP now holds a new post as Minister for Employment and Investment, with Ivan McKee MSP taking over the non-domestic rates and planning brief as Minister for Public Finance. The departure of Patrick Harvie MSP resulted in a new position, Minister for Climate Action to be performed by Gillian Martin MSP, while Paul McLennan MSP retains his Minister for Housing brief and now assumes full responsibility for the Housing Bill. Following the recent changes, we have already met with Paul McLennan MSP and Ivan McKee MSP and look forward to continuing engagements with them and expanding this with other key decision makers in the upcoming months. For a full list of positions see [here](#).

Housing Bill



The Housing (Scotland) Bill is now in its parliamentary consultation stage. It is now of course under the sole Ministerial lead of Paul McLennan and is due to complete its critical Stage 1 process by 29 November 2024. By this date, the principles of the Bill will either have been agreed or not agreed. If agreed the Bill will then proceed to its amendment stages in Committee (Stage 2) and then finally the Chamber at Stage 3. This month was a critical month because it saw the closing dates for comments to be submitted to the lead Committee which will be responsible for considering amendments to the Bill. The acknowledgement, at long last, of the existence of a housing emergency in Scotland has also added further political temperature to the Bill.

The government remain committed to a form of rent control proposals, despite the evidence of the impact on investment SPF and others have provided publicly and privately. Therefore and after consultation with members and like-minded organisations and campaign groups across the UK, such as More Homes More Quickly, we have submitted an alternative to the current Housing Bill proposals to suggest that CPI + 1% with a rental cap of 6% is a better option than the uncertain range of rent control proposals in the Bill currently. Another key concern we have continued to raise is that ‘in-between tenancies’ will also deter investment and indeed drive landlords out of the market if they cannot revert to market rents following a tenancy ending.

The reality is that the government will need to work with other parties to get their legislation through. The majority of those parties represented in the Scottish Parliament have had some form of commitment to rent controls for some time. However, we are beginning to see greater realisation of the negative impact on rental housing supply of uncertain and extensive forms of rent control across the Chamber. This is clearly a key policy for the Scottish Greens and indeed was a feature of the Scottish Labour backbench Fair Rents Bill which preceded the Scottish Government's current proposals. As many members have stated, we need certainty sooner rather than later, and in weeks rather than months if we are not to lose the £4.5bn or so of economic value we could see over the next decade led by BTR investment.

Planning update

With the ministerial changes, the planning portfolio falls with Ivan Mckee MSP, Minister for Public Finance. This month we submitted our response to two major planning consultations:

Development plan amendment regulations consultation

The consultation focused on how both the NPF (National Planning Framework) and LDP (Local Development Plan) can be amended between full review cycles of 10 years which is intended to enable the planning system to be more responsive to emerging market demands. We supported the broad aim of this consultation but highlighted concerns regarding what would 'trigger' these reviews, and the procedures involved. The procedures seemed too prescriptive and lengthy and as industry demands certainty and timely decisions, these processes are a concern. There should be effective flexibility for local authorities to amend their LDPs in light of local requirements. You can read our full response [here](#).

Masterplan Consent Areas consultation

This consultation seeks views on proposed procedures on creating Masterplan Consent Areas (MCAs) schemes by local authorities, that can cover either specific sites or developments in a defined area benefiting the community. MCAs will look at simplifying getting consents granted up-front for these projects to provide greater project certainty. Again, we agree with the overarching policy but there are concerns over the practicality of the processes involved. Given the pressure on planning resourcing, we question how will this be carried out as it is a very front-loaded procedure of granting consents. In addition to this concern, the 10-year timeline might not be sufficient for some major development projects, and it is uncertain what will happen after that timeline. We have detailed our concerns over fees, land assembly and how will MCA fits with wider development plans, you can read in full [here](#).

Both these consultations are interlinked with the key issue of planning resourcing, the consultation on that will close tomorrow (31 May). We will outline our response in Monday's membership update.



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Programme duration: September 2024 - April 2025

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SAVE THE DATE
SPF Annual Dinner
Thursday

10
October
2024

EICC - Edinburgh

6pm-late