



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Shirley-Anne Somerville MSP
Cabinet Secretary for Social Justice
Via email

T1.01
Chamber Office
EDINBURGH
EH99 1SP
Direct Tel: 0131-348-6282

DPLR.Committee@parliament.scot

6 June 2024

Dear Cabinet Secretary

Housing (Scotland) Bill

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on Tuesday, 4 June, and agreed to write to you to ask the following questions in relation to delegated powers contained in the Bill.

- 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

The Committee noted that the Scottish Government's [Delegated Powers Memorandum](#) ("the DPM") states that the reason for taking the above power is to build in flexibility to allow for an adjustment to time periods or dates on which local authorities are required to submit reports, should this be required. It does not give any further examples or reasoning as to why this might be required.

The DPM also states that the negative procedure is appropriate given the limited scope of the power and describes any changes which may be made under the power as administrative.

The Committee asks the Scottish Government:

- a) what circumstances the Scottish Government envisages arising which could require the amending of the reporting period; and**
- b) 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?**

- 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 (“the 2016 Act”) – power to modify the meaning of expressions included in that new section
- Section 19(2): Inserted new section 43G(1)(b)(i) of the 2016 Act – 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 2016 Act – power to prescribe circumstances in which restriction on frequency of rent increase does not apply (as regards let property not in rent control area)

In relation to the above powers, the Committee noted that the DPM states that secondary legislation will allow a tailored and flexible approach in order to deliver a proportionate system of rent control, by taking into account the individual circumstances of landlords and tenants.

However, it may be considered that these are important policy matters which are central to the Bill, and that detailed provision on the face of the Bill is required in order that Members are aware of how the policy of the Bill will be delivered in practice.

The Committee asks the Scottish Government:

a) where there is currently no policy specified on the face of the Bill (sections 13(1), 14(1), 18(1), and new sections 43G(1)(b)(i) and 19(1)(a) of the 2016 Act):

i) if it considered making some provision on the face of the Bill in order that the Parliament could assess itself whether the measures are likely to strike a fair balance between landlords’ and tenants’ rights, and

ii) what policy development and discussion with stakeholders has taken place to date on what these provisions may include, and

b) where there is policy on the face of the Bill, with a power to amend that policy (sections 15(7) and section 19(2)):

i) whether it considers it likely that the power to amend will be exercised, and

ii) what circumstances it envisages arising that would require such use of those powers?

- Section 29(2): Inserted new section 64E(1) of the 2016 Act – power to make provision about when it is reasonable to refuse consent to keep a pet

- Section 29(2): Inserted new section 64F(1) of the 2016 Act – power to make provision when a consent condition to keep a pet is reasonable
- Section 29(2): Inserted new section 64L(1) of the 2016 Act – power to specify changes to let property and categorise changes as a category 1 or category 2 change
- Section 29(2): Inserted new section 64M(1) of the 2016 Act – power to make provision about when it is reasonable to refuse consent to make a category 2 change
- Section 29(2): Inserted new section 64N(1) of the 2016 Act – 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

In relation to the above powers, the Committee noted that the DPM states that the powers are being taken in order to set out further detail to support the operation of the new rights for tenants to keep pets and make changes to their let property. It is said to be appropriate that these details should be set out in subordinate legislation as the nature of the information and the level of detail that will likely be included would be disproportionate to include on the face of the primary legislation which the Bill is amending.

These powers are doing the same thing for different types of tenancies. The DPM describes them as being used to provide “further detail”. However, the Bill provides no detail on how changes to the property will be categorised, what circumstances may or may not be reasonable for a landlord to refuse consent to pets or tenancy changes or what are reasonable conditions that are to be applied to consent. Instead, all the detail is to be set out in subordinate legislation.

The Committee asks the Scottish Government:

- a) if it considered making some provision on the face of the Bill in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision being made by these powers on landlords and tenants;**
- b) what policy development and discussion with stakeholders has taken place to date on what these provisions may include;**
- c) how it is anticipated that these powers be exercised and how it intends to assess its Protocol 1 of Article 1 of the Human Rights Act 1998 right to peaceful enjoyment of property (A1P1) compliance; and**
- d) whether the scope of the powers are appropriate and whether they are capable of being further limited in their exercise to allow the Parliament to anticipate how these powers are likely to be exercised?**

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

The DPM states that this power 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. No further detail is provided in what may be anticipated or if any changes would still be housing related.

This appears to be a significant and wide power as it is currently drafted. The Bill clearly outlines what the unclaimed funds must be spent on, which is generally for the benefit of private tenants. There are reporting requirements on the Scottish Ministers on the use of any unclaimed tenancy deposits every three years, however, there is no detail in what information should be provided in such a report so what could be provided to Parliament might be very limited. The report is to be published and, as soon as reasonably practicable after publishing, be laid before the Parliament.

The Committee asks the Scottish Government:

- a) for further detail on why it is considered necessary to be able to amend the use of the unclaimed funds by way of subordinate legislation and not via primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the potential significance of the policy provision that could be made by this power.**
- b) whether the scope of the power is considered appropriate and whether it is capable of being further limited in its exercise, e.g. to be subject to specific criteria or the use must be housing related; and**
- c) whether consideration has been given to applying a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power?**

I would be grateful if you could please email your response to dplr.committee@parliament.scot by **Friday, 14 June**. The Committee will then consider your response at a future meeting.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee