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Common Weal Policy

# THE RENT CONTROLS SCOTLAND NEEDS

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**Living Rent** is Scotland's Tenants' union. We seek to unite and represent all tenants in Scotland whether they rent from the private or social sector. We are not affiliated to any political party and only answer to our members. We campaign for better rights for tenants, protections against rent increases, evictions and poor-quality housing, and we represent and defend our members when they're having housing problems.

## KEY POINTS

The Private Housing (Tenancies) (Scotland) Act 2016 granted the Scottish Government the power to introduce localised rent controls or *rent pressure zones* (RPZs) if local authorities could convince them that:

- Rents payable within the proposed rent pressure zone are rising by too much.
- The rent rises within the proposed zone are causing undue hardship to tenants.
- The local authority within whose area the proposed zone lies is coming under increasing pressure to provide housing or subsidise the cost of housing as a consequence of the rent rises within the proposed zone<sup>1</sup>.

Despite this legislation, or perhaps because of the limitations of it, rent controls are yet to be implemented anywhere in Scotland, and there are significant grounds to be sceptical that they ever will be. Most notably — as bodies such as Shelter Scotland<sup>2</sup>, Edinburgh City Council<sup>3</sup> and the Highland Council<sup>4</sup> have noted — because there is currently no comprehensive survey of rent level data available on which to make such an assessment.

This paper makes the case for an amended system of genuinely effective, national rent controls, outlines the problems with RPZs, and proposes an alternative model that represents the kind of rent controls Scotland needs. The key points it makes are as follows (with full detail in the main report):

### The case for rent controls

- Rents in Scotland are far too expensive, with increases continuing to outstrip both inflation and wage increases for many tenants.
- The quality of Scotland's private rented housing stock is woefully inadequate.

- There has been significant growth in the private rented sector (PRS) since it was deregulated in the 1980s—meaning that issues in the PRS now affect far more people than in previous decades.
- Lower-income groups are more likely to live in the PRS and are thus disproportionately affected by rising rental costs in the sector.
- Better regulation provides an opportunity for substantial savings to the public purse.

### The problems with RPZs

- The burden of proof on local authorities is unreasonable and creates unnecessary barriers in making successful applications.
- RPZs only create rental limits within tenancies and do not prevent rent hikes between tenancies—doing little to stabilise rents in the long term.
- RPZs only limit *increases* in rent, so do not address the fact that rents in much of Scotland are already too high.
- RPZs do nothing to improve the quality of Scotland's PRS housing stock. As detailed below, we believe this is a significant missed opportunity and that proper rent controls represent a powerful tool to improve the quality of Scotland's PRS stock.
- The 2016 Act sought to provide greater tenant security, but without workable controls on rent, landlords can easily force out tenants through rent increases.
- RPZs can only be applied to small, localised areas, so cannot address the scale and degree of the rent problem in Scotland.

### The rent controls Scotland needs

- A points-based system of rent controls linked to the quality and amenities of the property, not simply market rates.
- A points-based system which attaches limits to the property, not the lease.
- A new Scottish Rent Affordability Index to peg maximum rents at affordable levels for tenants.
- A Scottish Living Rent Commission to act as an umbrella body and a centre of expertise and regulation in the private rented sector.

## CONTENTS

- 3. Authors
- 3. Key Points
- 5. Contents
- 6. Introduction
- 7. Rent Pressure Zones - what's missing?
- 9. What rent controls need to do
- 11. The rent controls Scotland needs
- 13. Conclusion
- 13. References

## INTRODUCTION

In 2016, the Scottish Parliament approved the Private Housing (Tenancies) (Scotland) Act 2016. Part 4 (Chapter 3) made provision for local authorities to request Scottish Ministers to designate *all or part* of a local authority area as a ‘rent pressure zone’, thus potentially giving local authorities the power to introduce a form of localised rent controls for the first time since the 1980s. The Act did not introduce rent controls — instead, it gave local authorities powers to request that specific rent pressure zones (RPZs) be sanctioned by the Scottish Government. These powers, however, have yet to be used anywhere in the country due to difficulties in fulfilling the stipulations of the Act.

Since the bill was passed, evidence shows that rents have continued to climb steadily upwards and ever more private tenants in Scotland are falling into poverty<sup>5</sup>. There is widespread political and social consensus across Scotland that the free market has failed to deliver genuinely affordable housing. Public polls demonstrate overwhelming support for rent controls<sup>6</sup> and there is a clear majority in the Scottish Parliament in favour of some kind of controls on rent, with the SNP, Labour, and the Greens all having indicated support.

Tenants in Scotland deserve better. Living Rent is thus calling for the 2016 Act to be reopened and amended. The kind of rent controls we are proposing would go a long way towards giving Scotland the PRS housing system we need. We now outline why amendments are necessary and what changes we propose.

### Cost

In large parts of Scotland, rent levels are simply unaffordable for tenants, and the rates of increase are out of control. Scottish Government statistics show that average rents for all property types in both the Lothians and Greater Glasgow have increased far beyond the rate of inflation in the year 2016/17. In the seven years to 2017, average rents for two-bedroom properties in Lothian have increased by 33.7% — more than double the rate of inflation in that period (15.9%)<sup>7</sup>.

The impact of high rent on poverty levels is notable. Recent Scottish Government statistics show that the number of private rented sector tenants living in poverty has increased by 75% in the decade up to 2017<sup>8</sup>. Regulating high rent levels, therefore, represents a vital part of reducing poverty levels in Scotland.

### Quality

In much of the country, there are chronic issues in the quality of housing. The most recent Scottish House Conditions Survey shows that every second privately rented home has “some disrepair to critical elements”<sup>9</sup>. In 2018, Shelter Scotland also found that 54% of PRS homes fail their “Living Home Standard”, a set of criteria covering quality as well as affordability, stability, neighbourhood and space<sup>10</sup>.

The impact of acutely low-quality housing on the health of tenants is well documented. One Scottish Government report notes that “a wealth of studies have consistently evidenced statistically significant associations between poor housing conditions and poor health”<sup>11</sup>. Housing quality is, therefore, far from a simple issue of convenience or comfort — rather, it represents a major public health issue. It is clear that current measures are failing to incentivise the necessary improvements in the PRS stock. This report will later outline a better alternative.

### Equality

Since deregulation in the late-1980s, the number of people renting privately in Scotland has significantly expanded. The PRS has grown from 5% of housing stock in 1999 to 15% in 2017<sup>12</sup>. As wages continue to stagnate and house prices continue to increase beyond the reach of many people, this trend looks set to continue.

There are, however, some demographics far more likely to be living in the private rented sector. According to the 2017 Scottish Household Survey, 40% of households where the highest income householder is aged between 16–34 live in privately rented accommodation — more than any other type of accommodation, and a dramatic increase on the 1999 figure of 13%<sup>13</sup>.

The popular term ‘Generation Rent’ captures this trend of young people residing for longer in the PRS than their parent’s generation or being excluded from homeownership more permanently, because they simply cannot afford to buy into homeownership<sup>14</sup>. However, evidence shows that housing impacts on this generation are not homogenous and that lower-to-middle income young people are far more likely to be in the PRS than young people from wealthy families<sup>15</sup>.

Notably, 58% of PRS tenants record their ethnicity as White Scottish compared to 79% of adults as a whole in Scotland. This means that other ethnic groups are overrepresented in the PRS. Demographics that are already marginalised in other ways and are more likely to be lower-earners — such as BME people, migrants, and young people — are disproportionately more likely to live in the private rented sector compared to the population as a whole. Tackling high rents is crucial to ensuring these groups are not further disadvantaged in society.

Additionally, the gender pay gap means that women suffer the impacts of unaffordable rents disproportionately, and structural problems in the PRS have the added impact of making it more difficult to leave abusive relationships. The Domestic Abuse Housing Alliance, for instance, cites housing as the number one barrier to women leaving abusive situations<sup>16</sup>.

## Potential public savings

Our 2015 report detailed the enormous cost to the public purse of the current state of private rented housing<sup>17</sup>. The public incurs costs in several ways:

- Across the UK, the private rented sector benefits from an enormous amount of public subsidy. The biggest proportion of this comes in the form of more than £23 billion in housing benefit<sup>18</sup>, a figure which could be slashed by bringing rents under control. There are also a number of tax relief schemes, grants and subsidies (such as exemptions from capital gains tax) which funnel huge amounts of public money to private landlords every year.
- Homelessness applications from the PRS are disproportionately high<sup>19</sup>. This has both an inestimable human cost, and an enormous financial cost to already cash-strapped local authorities in Scotland. The Commission on

Housing and Wellbeing recognises that “[e]ven a short period of homelessness can have a significant impact on life outcomes and in all cases, homelessness can lead to a damaging loss of personal confidence and morale”<sup>20</sup>.

- As noted above, the impact of poor quality housing on the health of tenants is well documented<sup>21</sup>. It is difficult to put a concrete figure on this, but it is clear that the state of Scotland’s PRS creates a large additional burden on Scotland’s NHS.

These health-related costs are born by local authorities and both the Scottish and UK Governments. Rent controls offer a policy solution with potentially enormous savings to the public purse at all levels, as well as leading to significantly better social outcomes for tenants in Scotland.

## RENT PRESSURE ZONES — WHAT’S MISSING?

The 2016 Act potentially provides local authorities, by way of the Scottish Government, the ability to designate areas as RPZs and to regulate rent increases in those areas — but the policy is limited in a number of key respects.

### The burden of proof on local authorities

Perhaps the clearest difficulty regarding the regulations around RPZs is the burden of proof on local authorities in order to make a successful application. For an application to be successful, a council must prove three things:

- That rents in the area are rising too much.
- That rent rises are causing problems for the tenants.
- That the local council is coming under pressure to provide housing or subsidise the cost of housing as a result<sup>22</sup>.

The necessary information to prove these points — particularly the first point — simply does not exist. While some statistics around rent costs at certain levels exist, there is no body in Scotland charged with gathering the required data at the scale needed in order to make successful RPZ applications, and so to prove that they are rising ‘too much’ is unreasonable and unrealistic. This is a view shared by Shelter Scotland, which in June 2018 said that “we simply do not know enough about rent levels in Scotland to... make Rent Pressure Zone applications”<sup>23</sup>.

The Shelter report drew on the findings of David Goldie, Head of Housing and Building Maintenance for the Highland Council, who told councillors that “there is no local or national reporting or existing published data on the evidence required”<sup>24</sup>. Additionally, Edinburgh City Council found that the data required to make a successful application could take up to five years to gather<sup>25</sup>.

This lack of data creates an incredibly complicated and slow process, leaving us with a situation where it is possible that local authorities will never be able to implement RPZs in Scotland.

## Regulation is only applicable within tenancies

RPZ restrictions only apply within tenancies and do not restrict rent hikes when a new tenant takes over a property. This model is sometimes referred to as “third-generation” rent controls<sup>26</sup>. This is an important distinction as it means that, for example, a tenant in a RPZ area who stays in their property for five years would have annual increases capped at the figure agreed between the council and the Scottish Government, but that their landlord would be able to increase rents without any limit if ever that tenant moves out and another moves in. This limitation creates three challenges:

- It disincentivises tenants from moving. This creates problems for tenants if and when their circumstances change, as well as creating potential barriers for new tenants to find accommodation. Additionally, it

can create incentives for landlords and letting agents to find ways to seek out ways to evict their tenants. Within-tenancy controls are a heavily criticised feature of the rent control models in New York and San Francisco<sup>27</sup>. Far from constituting an argument against rent controls, however, this evidence, as discussed below, is an argument for stronger regulation, not weaker.

- It creates a situation where RPZs offer no protection to more precarious tenants who, for whatever reason, cannot or do not want to stay in properties for longer periods of time than 12 months. There is even a danger that limits on increases within RPZ tenancies could lead to landlords artificially increasing rents in between leases to compensate for limits to increases within tenancies. That would mean that while the regulations may protect tenants who stay for the maximum period of five years of an RPZ, tenants who move regularly could end up paying more. This point is noted by the Cambridge Centre for Housing Policy & Research in an extensive comparative study of rent regulations across Europe, concluding that tenants who stay longer than the average may benefit, while “those who stay for a shorter-than-average period will pay ‘too much’”<sup>28</sup>.
- There is little evidence that this model of rent controls will do anything to limit rent increases in the long term. This point is also noted by Shelter Scotland, which notes that “with above inflation rent increases still possible during tenancies, and with no controls on initial rents, upward pressure on housing costs could continue under this model”<sup>29</sup>.

## ‘Limited’ increases are still increases

The Scottish Government’s guidance on RPZs is clear that any cap would be “at least consumer price index (CPI) plus 1%”<sup>30</sup>. This explicitly allows for above inflation rent increases and therefore does not go far enough if the goal is to ensure affordable rents.

Crucially, for many people across Scotland, the burden of rent is already too high. If we are to bring rents under control and guarantee affordability for tenants, our model of rent controls must begin by reducing rents — not just limiting increases.

### A missed opportunity on quality improvement

The model of RPZs introduced by the Scottish Government only deals with the cost of rent, but in many other places rent controls are used as an effective lever to improve the quality of private rented housing<sup>31</sup>. As outlined above, there are chronic issues regarding housing quality in Scotland, and any model of rent controls that failed to tackle this would be a missed opportunity.

In our 2015 report *A Living Rent for Scotland's Private Tenants* we called for a points-based system of rent controls, in which “points could be deducted for properties in a state of disrepair, or failing the Scottish Housing Quality Standard”<sup>32</sup>. Linking rents chargeable to quality in this way creates an important financial incentive for landlords to improve the quality of their housing stock”<sup>33</sup>.

### The first increase loophole

There appears to be a loophole in the legislation around the earliest possible increase. While the legislation is intended to limit increases to once a year, it does not stipulate when the first increase can be made. That means landlords and letting agents are able to serve notice of dramatic rent increases within just a few months of tenants moving in, as long as they provide three months’ notice. This outcome that is clearly not in keeping with the Act’s aim to limit rent increases to once every twelve months.

### Protection from eviction undermined by rent increases

The 2016 Act removed one of the key grounds for eviction — the so-called ‘no fault’ ground. This was a welcome move but if landlords

and letting agents continue to be allowed to increase rents at rates far outstripping inflation (because effective rent controls have not been implemented), then the possibility of evicting people through punitive rent increases undermines the increased security afforded by this positive step.

### Limit to geographical scale

Lastly, while the 2016 Act states that “that all or part of the authority’s area” may be designated as a Rent Pressure Zone<sup>34</sup>, subsequent Scottish Government Guidance has made clear that Rent Pressure Zones can only be applied to relatively small local areas<sup>35</sup>. However, we do not believe that the issues around affordability and quality in the Scottish PRS stock is limited to distinct areas in this way.

### Conclusions on what’s missing

In conclusion, given the above, it seems worryingly likely both that no local authority will ever successfully implement a rent pressure zone and that, even if they were to be able to, that it would go nowhere near far enough in addressing the issues tenants face.

It is hard, therefore, to see the 2016 Act as anything other than a missed opportunity to tackle the very serious challenges facing the Scottish PRS. In light of this, the following sections outline an alternative model for the effective rent controls Scotland needs.

## WHAT RENT CONTROLS MUST DO

As outlined above, the powers the 2016 Act grants to local authorities are insufficient to tackle the problem of unaffordable rents and poor quality housing that too many tenants in Scotland face. But rent controls *are* the answer, provided they are introduced in the right way. We have outlined below what we believe an effective model of rent controls could achieve.

## Rent controls should bring rents down, not just limit increases

Rent levels in Scotland are already too high, and any model of rent controls needs to start from the point of acknowledging this situation. The model we propose involves not just limiting the rate of future increases, but aims to bring rents down from the point at which they currently stand.

## Rent controls should make housing affordable for tenants

Some proposals around rental regulation suggest linking rent increases to a pre-existing measure, such as CPI<sup>36</sup>. Others have suggested linking it to average wages<sup>37</sup>. We believe, however, that these measures are insufficient. For instance wage growth frequently does not keep up with inflation and, as noted above, PRS tenants are disproportionately lower earners. We believe there is a need for a specific metric of what is affordable for tenants.

## Rent controls should apply across Scotland

Rent controls should apply to the entire country by default and not rely on local authorities making applications to the Scottish Government and those applications being successful. There is nowhere in Scotland where there are not either issues around affordability or quality in housing, and the regulation to tackle these issues should apply everywhere. This does not, however, mean that rents should be set at the same levels across Scotland and there should be space for different metrics in different areas to reflect unique local conditions.

## Rent controls should be linked to the property, not the tenancy

The issues around linking controls to the tenancy are detailed above. The current legislation creates a disincentive for tenants to move and an incentive for landlords to evict them, offers little protection to more precarious and mobile

tenants and has little effect on long term rents. We therefore propose that controls be linked to the property, as opposed to the tenancy, and that limits on the amount a landlord can charge would be unaffected by how frequently the tenancy changes.

## Rent controls should aim to improve quality

As detailed above, Scotland has a chronic issue with housing quality, but we believe that rent controls based on a points rating system that includes the quality and standard of the property, could be a powerful way of creating a financial incentive for landlords and letting agents to make improvements to the properties, and penalising those who refuse to do so.

## Regulation should not be limited to conventional private lets

It is beyond the scope of this paper to examine fully issues relating to student accommodation and short-term lets, but the Scottish Government must urgently strengthen regulation in these areas. As regulation continues to strengthen in private rented housing, we risk creating a situation in which developers would rather build student housing or landlords would rather rent their homes out through short-term lets, such as Airbnb. We have seen some anecdotal evidence, for instance, of landlords converting their properties to 'holiday lets' — including for several-month long leases — in order to avoid the regulation they would face if renting through a standard tenancy. However, as outlined above, we believe that this represents the need for better, wider-reaching regulation, rather than pointing to the weakness of rent control legislation per se.

In the following section, we outline a model of rent controls that we believe provides the kind of rent control that Scotland badly needs.

# THE RENT CONTROLS SCOTLAND NEEDS

In 2015, Living Rent proposed a model of rent controls built on three pillars:

- A points-based system of rent controls
- Rent increases pegged to a new Scottish Rent Affordability Index
- The creation of a new Scottish Living Rent Commission to monitor and regulate the sector

We continue to believe that this is the best model for Scotland and have further developed our recommendations below.

## A points-based system

A points-based system of rent controls would see properties awarded points based on the size, quality (including energy efficiency and environmental standards) and location of the property, not simply market levels. The maximum rent a landlord could charge for any given property would depend on the amount of points a property is assessed as having.

This model would be similar to that which currently exists in other comparable European countries. For instance, the Netherlands, where initial rents are measured against a well-established points system, and properties are assigned a maximum rent level based on how many points they are awarded<sup>38</sup>. This approach has already been adopted through European policy models such as the German ‘rent mirror’<sup>39</sup> and Swedish ‘utility value’<sup>40</sup>.

Points could be added to properties based on criteria such as the following:

- The size of the property
- Energy efficiency rating
- Access to a garden, patio or balcony, with points increasing based on size relative

to the number of properties sharing the garden

- The property including a parking space
- The extent and quality of kitchen and bathroom amenities
- Access to local transport links and other local services

Additionally, points should be deducted for properties in a state of disrepair or which fail the Scottish Housing Quality Standard. Linking rents chargeable to quality in this way creates an important financial incentive for landlords to improve the quality of the housing stock since financial punishments will accrue to those properties which fall below standard guidelines.

Tenants who believe their rent levels are higher than they should be, would be entitled to appeal, free-of-charge, to the Commission for the property to be re-assessed, as is the case in the Netherlands<sup>41</sup>. This will build on the current model by which a tenant can refer, free-of-charge, rent increases to local rent officers if they believe they are unreasonable<sup>42</sup>.

Crucially, the goal of this system would be to set rents at affordable levels, rather than simply to prevent individual properties being far outwith the market level. However, the definition of ‘affordable housing’ set by the Scottish Government is currently poorly defined and not fit for purpose. ‘Affordable rent’, in our view, should be judged as rent that is no more than 25% of a tenants’ income, and the goal of the Scottish Rental Affordability Index, as outlined below, would be to keep rents below that level.

This system would act as both a carrot and a stick for landlords; creating meaningful incentives to carry out improvement works and maintain the property to a high standard, while also penalising those who refuse to do so or who allow their properties to deteriorate. The intention of such a model would not be to create tiers of low-quality housing for low-income tenants, but to ensure that it was not financially viable for owners to rent out properties that failed to meet tolerable standards.

Landlords who charged rents in excess of the point-value indicated would face financial penalties in order to avoid a situation in which there existed a temptation to overcharge in the hope that tenants would not appeal rents.

Finally, as under the current system, rent increases on the base level would be limited to once a year and tenants would be entitled to three months' notice of any increase, with the first increase taking place no sooner than one year after the beginning of the lease. However, if the tenant and landlord came to an explicit agreement — for instance, if the tenant request an improvement that would increase the amount of rent chargeable and the landlord agrees to make it — such increases would be allowed without a limit on frequency.

## Scottish Rent Affordability Index

The most common feature of rent regulation across Europe is a limit on the amount by which rents can increase within tenancies, but this is done in a variety of ways. At its simplest, increases are capped with reference to a pre-existing measure — such as inflation. This model has a key problem; the rate of inflation can be much higher than the rate of increases in tenants' wages. While this type of limit may provide a sense of predictability, it does not necessarily guarantee affordability.

We believe that rent increases should be assessed against a more sophisticated index, such as the Scottish Rental Affordability Index we propose. This index would be calculated by the Commission and would be designed to ensure that increases reflected genuine costs incurred by landlords, as well as reflecting the array of financial pressures on tenants.

Factors in the Scottish Rental Affordability Index could include:

- Increases (or decreases) in average wages, a measure supported, for instance, by the Joseph Rowntree Foundation<sup>43</sup>, while considering the income distribution of private renters.

- The amount of other support that tenants may need to rely on, such as housing benefit or student support.
- The need for tenants to be able to save money for a deposit.
- Changes in other aspects of living costs — such as electricity bills, travel costs, food costs.
- Local conditions — it is not envisioned that the Index would set rents at the same levels across the country, and the Commission outlined below would factor in local dynamics in setting rates.

As a means of incentivising improvements to the property, landlords would be entitled to increase rents above the index rate by applying for a reassessment of initial rent. This would mean that substantial improvements to, for example, a property's energy efficiency would allow landlords to increase rents beyond the increases stipulated by the index.

Similarly, tenants would also be entitled to have the initial rent re-assessed if they believed that the circumstances had changed such that the property could have points deducted. As with initial rent levels, tenants would be entitled to appeal to the Commission if they believed rent increases were higher than reasonable.

## A Scottish Living Rent Commission

To enforce rent controls and calculate the Scottish Rent Affordability Index, as well as serving as a centre for expertise on the PRS, we further propose the creation of a new public body, a Scottish Living Rent Commission. The Commission would be charged with compiling and maintaining a publicly-searchable database of rent levels across Scotland in a way that, as outlined in the discussion around the burden of proof required for RPZ applications, no organisation is doing currently. This would produce the much-needed statistics we need to inform policy and debate in the sector as well as providing the information required to assess whether RPZs are necessary.

Much necessary data already exists in the form of landlord register, tenancy deposit, dispute, and online property advertisement data<sup>44</sup>. Utilising such data would expand a Scottish Living Rent Commission's ability to apply RPZs and provide public information beyond that which is currently available from the Scottish Household Survey and Census.

The body would also act as a go-between for the various existing bodies — such as local authorities' landlord registration schemes, tenancy deposit schemes and the First-Tier Housing Tribunal. The Living Rent Commission would be the body tenants could appeal to if they judged that either the initial rent set on a property, or any subsequent increases, were unreasonable.

The Commission's decisions would be accountable to a board of housing and poverty experts, including at least 25% tenant representation. We believe that the functions and remit of the existing Rent Service Scotland could be expanded to fulfil this purpose, and that any costs incurred by this expansion would be more than met by the public savings outlined in the first chapter of this report.

## CONCLUSION

In this paper we have outlined the extent of problems in Scotland's Private Rental Sector – in terms of affordability, but also in terms of quality and the social impact these issues create and exacerbate.

We have also spelled out how the measures introduced in the 2016 Act are insufficient to do this. There is reason to suspect that Rent Pressure Zones will never be introduced in Scotland or, that if they are, that it will be many years before a successful RPZ application is made. We have however also demonstrated that, even were they to be brought into effect, their scope is too limited to have the desired effect of helping tenants who are struggling.

Finally, we have proposed an alternative. The model of rent controls proposed in this paper is built on the learnings of decades of experience of rent controls across Europe. We believe that the model we have proposed here will reduce rents for Scotland's struggling private tenants, prevent unaffordable rent increases, lead to dramatic improvements in Scotland's PRS stock and generate substantial savings for the public purse. Public polling also suggests that it would be an extremely popular move.

Tenants cannot wait for action, and we urge the Scottish Government to move quickly to implement these recommendations.

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