

GREATER LONDON AUTHORITY

[REDACTED]
(By email)

Our Ref: MGLA290519-6424

8 August 2019

Dear [REDACTED]

Thank you for your request for information which the GLA received on 2 July 2019. Your request has been dealt with under the Freedom of Information Act (FOI) 2000.

1. *A copy of all policy advice or briefing received by the Mayor, or his deputy mayors or advisers, regarding rent control policy, from September 2018 to present; and*
2. *A list of the attendees for each of the meetings specified in our response to you on 26 June.*

Our response to your request is as follows:

1. *A copy of all policy advice or briefing received by the Mayor, or his deputy mayors or advisers, regarding rent control policy, from September 2018 to present*

Please see separate attachment that provides policy advice and briefings on rent control policy received by the Mayor, his senior advisers and his deputy Mayors, between 1 September 2018 and the date of your request (2 July 2019). In responding to this request, the GLA has used guidance provided by the Information Commissioner's Office (ICO)¹ to define "advice".

In some cases, emails or briefings contain information that is not relevant to this request. In these cases, the attachment provides extracts from these emails and briefings. Please note that some names of members of staff are exempt from disclosure under s.40 (Personal information) of the Freedom of Information Act.

This information could potentially identify specific employees and as such constitutes as personal data which is defined by Article 4(1) of the General Data Protection Regulation (GDPR) to mean any information relating to an identified or identifiable living individual. It is considered that disclosure of this information would contravene the first data protection principle under Article 5(1) of GDPR which states that Personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject.

¹ ICO, Prejudice to the effective conduct of public affairs (section 36), Freedom of Information Act. Available at <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

The Mayor's *Reforming Private Renting* blueprint has now been published and is available at: www.london.gov.uk/sites/default/files/reforming_private_renting_-_the_mayor_of_londons_blueprint.pdf.

New Economics Foundation's report, *Getting Rents Under Control*, which informed the Mayor's blueprint, has also been published and is available at: www.neweconomics.org/uploads/files/NEF_RENT-CONTROL_WIP3.pdf.

2. *A list of the attendees for each of the meetings specified in our response to you on 26 June.*

A list of the meetings held within City Hall on the topic of rent control policies, as set out in our response to your previous request, is re-provided below, and attendees to these meetings have been identified:

Date	Time	Attendees
21.11.2018	14:30–14:45	<ul style="list-style-type: none"> James Clark (Head of Housing Strategy) (GLA) James Murray (Deputy Mayor, Housing and Residential Development) Private Rented Sector Manager (GLA) Advisor to Deputy Mayor (Housing & Residential Development) (GLA)
30.11.2018	14:00–15:00	<ul style="list-style-type: none"> David Lunts (Executive Director Housing & Land) (GLA) Debra Levison, (Head of Housing Programmes and Services) (GLA) James Murray (Deputy Mayor, Housing and Residential Development) Private Rented Sector Manager (GLA) Advisor to Deputy Mayor (Housing & Residential Development) (GLA)
19.03.2019	09:30–10:30	<ul style="list-style-type: none"> Debra Levison, (Head of Housing Programmes and Services) (GLA) Giles Peaker (in personal capacity) Researcher, (New Economics Foundation) James Murray (Deputy Mayor, Housing and Residential Development) Joe Beswick, (Head of Housing and Land) (New Economics Foundation) Justin Bates (in personal capacity) Karen Buck MP Miatta Fahnbulleh, (Chief Executive), (New Economics Foundation) Senior Policy Officer - Housing and Land (GLA) Private Rented Sector Manager (GLA) Senior Economist (New Economics Foundation)
27.03.2019	10.00–11.00	<ul style="list-style-type: none"> Debra Levison, (Head of Housing Programmes and Services) (GLA) Joe Beswick, (Head of Housing and Land) (New Economics Foundation) Private Rented Sector Manager (GLA) Senior Economist (New Economics Foundation)
09.04.2019	12:30–13:00	<ul style="list-style-type: none"> Debra Levison, (Head of Housing Programmes and Services) (GLA) Mayor's Senior Adviser, Stakeholder Engagement (GLA) Senior Adviser to the Mayor (GLA) James Murray (Deputy Mayor, Housing and Residential Development) Senior Adviser to Deputy Mayor (Housing & Residential Development) (GLA) Housing & Land Apprentice (GLA) Senior Policy Officer - Housing and Land (GLA) Private Rented Sector Manager (GLA)

16.04.2019	09:00-10:30	<ul style="list-style-type: none"> • Debra Levison, (Head of Housing Programmes and Services) (GLA) • Giles Peaker (in personal capacity) • James Murray (Deputy Mayor, Housing and Residential Development) • Senior Adviser to Deputy Mayor (Housing & Residential Development) (GLA) • Joe Beswick, (Head of Housing and Land) (New Economics Foundation) • Justin Bates (in personal capacity) • Karen Buck MP • Senior Policy Officer - Housing and Land (GLA) • Private Rented Sector Manager (GLA)
18.04.2019	16:45-17:45	<ul style="list-style-type: none"> • Debra Levison, (Head of Housing Programmes and Services) (GLA) • James Murray (Deputy Mayor, Housing and Residential Development) • John Dickie, (Director of Strategy and Policy), (London First) • Jonathan Seager, (Executive Director, Policy) (London First) • Senior Policy Officer - Housing and Land (GLA)
08.05.2019	14:00-15:00	<ul style="list-style-type: none"> • Debra Levison, (Head of Housing Programmes and Services) (GLA) • James Murray (Deputy Mayor, Housing and Residential Development) • Senior Adviser to Deputy Mayor (Housing & Residential Development) (GLA) • Senior Policy Officer - Housing and Land (GLA) • Private Rented Sector Manager (GLA)
15.05.2019	13:30 -14:00	<ul style="list-style-type: none"> • James Murray (Deputy Mayor, Housing and Residential Development) • Nick Bowes (Mayoral Director, Policy) (GLA) • Patrick Hennessy (Mayoral Director, Communications) (GLA)
11.06.2019	10:00-11:00	<ul style="list-style-type: none"> • Debra Levison, (Head of Housing Programmes and Services) (GLA) • Giles Peaker (in personal capacity) • Researcher, (New Economics Foundation) • James Murray (Deputy Mayor, Housing and Residential Development) • Joe Beswick, (Head of Housing and Land) (New Economics Foundation) • Karen Buck MP • Miatta Fahnbulleh, (Chief Executive), (New Economics Foundation) • Senior Policy Officer - Housing and Land (GLA) • Private Rented Sector Manager (GLA)
14.06.2019	11:30-12:00	<ul style="list-style-type: none"> • James Murray (Deputy Mayor, Housing and Residential Development) • Mary Robertson (Head of Economic Policy, Leader of the Opposition's Office)

If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

Yours sincerely

[Redacted Signature]

If you are unhappy with the way the GLA has handled your request, you may complain using the GLA's FOI complaints and internal review procedure, available at:
<https://www.london.gov.uk/about-us/governance-and-spending/sharing-our-information/freedom-information>

Rent stabilisation:

Principles and international experience

A report for the London Borough of Camden



Kath Scanlon
Christine Whitehead

LSE London

September 2014



London faces a housing crisis. For a long time, people on low incomes have been struggling with the cost and quality of housing. But it's now so acute that, in my role as Leader of Camden Council, even senior people in multinationals raise with me regularly the issue of housing for their staff.



There is no single solution and tackling this crisis needs a diverse set of interventions. We're a local authority and don't control all the levers. However, we can stimulate debate. This is why I commissioned the London School of Economics, led by Professor Christine Whitehead OBE, to advise on what can be done in London to influence quality and price in the private rented sector without adversely affecting the supply.

A third of our residents in Camden live in privately rented homes, and it's not just young professionals and students, more and more families are moving into the sector. This means more people have no long-term security – something that becomes more important as their children settle in at local schools and they become part of the community. But the sums just don't add up. The average house price is £700,000, which would require a household income of £175,000 to get a mortgage. The average weekly rent for a two bedroom property is £440. The average family needs an annual income of £70,000 to afford a modest lifestyle and the high rents in the borough. The median income is £33,000.

We are acting to improve quality where we can. We want to enable landlords to run a successful business. We administer the London Landlord Accreditation Scheme on behalf of all 33 London boroughs and help landlords provide a quality service through training and support. We think the scheme could have even more benefits for Londoners by introducing rent certainty.

While rent stabilisation could never be the solution by itself, we hope this will spark debate and lead to action to prevent many areas of our city becoming unaffordable for a whole section of society.

Councillor Sarah Hayward
Leader of Camden Council

Executive summary



Background: the aims of the project

This research was carried out on behalf of the London Borough of Camden. The council is concerned that local residents are increasingly being priced out of local accommodation and wishes to contribute to the national debate on how to organise a better private rented sector for both tenants and landlords.

Camden is atypical even for London, as roughly one third of its households rent privately, one third are in social rental and one third are owner-occupiers. Rents in the borough are very high and rising faster than in most of the rest of London. Security of tenure is very limited and standards often poor. Only 14% of private tenants receive housing benefit (compared to around 25% in the country as a whole), suggesting that the borough's lower-income tenants are concentrated in social housing.

It was in this context that Camden asked us to examine principles and international evidence around the benefits and costs of rent stabilisation for both landlords and tenants, and to recommend possible models.

Our methodology included a detailed literature review of theory and evidence; an analysis of rent stabilisation models used in several countries, looking particularly at the impact on tenants and landlords; a review of some current practice in London; interviews; and a roundtable discussion, bringing together stakeholder experience and views on our recommendations. The research team would like to thank those who so generously shared their time and knowledge with us throughout the project and especially at the roundtable.



Findings: the literature

Economic principles suggest that traditional rent freezes (often called first generation rent controls) work badly, especially over the longer-term. They lead to immobility, poor quality housing in the sector and incentives for landlords to transfer to other tenures if possible. Almost all countries that have had such controls have either liberalised their systems completely (the UK) or limited their purview to rent increases within tenancies (often called rent stabilisation).

Rent stabilisation schemes vary in their detail but generally aim to provide greater certainty to both landlords and tenants within the period of the lease while taking account of market pressures at the beginning of the tenancy. The objective is not therefore to hold down returns but rather to reflect longer-term trends.

There are good reasons why landlords as well as tenants (and indeed in some cases rather more than tenants) might be happy to agree to a form of rent stabilisation linked with longer-term tenancies. Institutional investors in particular could benefit from a system where initial rents are set by the

market but increases within tenancies are index-linked, as this would provide low risk income that matches their liabilities. Tenant turnover, with its many associated costs, would also be reduced. On the tenants' side, those who want longer-term tenancies and predictable rents would find this type of contract attractive.

Incentives for other types of landlord can be very different. In the UK in particular, many smaller landlords aim to secure capital gains and therefore require certainty of vacant possession. They cannot spread risk across a portfolio of properties, making it harder for them to accept a long-term commitment. Finally, those dependent on mortgage finance must obey their lenders' terms and conditions, and most currently rule out longer-term lets.

The most obvious lesson from the literature is that regulatory systems must address a range of other factors in addition to rents. These include security of tenure and procedures for eviction and sale, as well as standards and transactions costs. What works in one country with one set of institutional arrangements may well make things worse in another.

Findings from other countries

We examined the evidence from six other countries with widely differing regulatory frameworks, as well as more general European evidence. Three main messages emerged: most countries have stronger regulations about rent rises within tenancies than the UK; in many countries there have been increasing pressures on private renting especially since the financial crisis; and in these countries, whatever the basic level of regulation, there has often been political pressure to increase controls in the face of rising demand.

Germany: the example of good practice?

Germany is currently seen, especially by foreign commentators, as the best exemplar of rent stabilisation. Nearly 50% of households rent privately. Most have to make significant investment in the dwelling through bathroom and kitchen furniture and equipment, making it more obviously their home but also increasing the costs of moving. Rent increases within the tenancy are linked to specified indices. Initial rents can be set up to 20% above comparable rents in the area (in some cases

up to 50%), giving comfort to the landlord in case of unexpected changes in costs not covered by the index. Security is indefinite but eviction procedures are relatively well defined. Importantly, general inflation has been very low and real house prices had been falling since the 1980s in many areas.

However, since 2008, and indeed earlier in some cities (notably Munich), the situation has changed. Landlords have faced unexpected costs, particularly because of stricter energy efficiency requirements. House prices have been rising rapidly with commensurate increases in owner-occupation. The atmosphere in terms of eviction has become more toxic. Most importantly it is becoming increasingly difficult to access private rented accommodation in cities with buoyant markets. As a result, political pressure is growing for stronger rent controls in major cities (an important factor in the latest elections). Concerns are also growing about how any increase in controls might make it harder for working households to find accommodation and could constrain investment.

Denmark, France, the Netherlands, Ireland, USA

Denmark provides an example of one extreme with tenure specific properties and complex regulation, both national and local. Deregulation with respect to new investment has brought little response except from owner-occupiers letting for short periods.

There have been pressures to increase controls in a number of European countries – notably the Netherlands, where there will be no increases in regulated rents for at least the next two years, and France, where legislation has been passed (although not yet implemented) that would control both initial rents and rent increases in some cities.

In Ireland, where the sector remains small and deregulation had been almost complete, the introduction of some element of rent stabilisation at approximately market levels, together with longer-term tenancies and stronger controls on standards, appears to have produced a more stable market. Since its introduction, however, investment in the sector has come mainly from those unable to sell their owner-occupied homes.

Evidence from New York and San Francisco, two high-demand US cities, shows that those living in rent stabilised apartments generally remain for

considerably longer than those living in units whose rents are not controlled. Nonetheless, it tends to be well off households who benefit from the system, while those trying to enter the market face worse conditions than they otherwise would.

Overall, the international evidence suggests that while both tenants and landlords can benefit from rent stabilisation under particular conditions, the impact depends upon broader housing market conditions. These systems also tend to become less flexible over time and to favour established tenants over new entrants.

Conclusions and recommendations

The benefits of a mandatory rent stabilisation scheme are that all tenants would in principle be treated equally; tenants would have greater security; and there would be greater predictability for both landlords and tenants. Where both sides are comfortable with these arrangements, transaction costs and risks should fall. However mandatory systems also impose costs and these could well outweigh these benefits. These include:

- tenants and landlords have diverse requirements, so a one-size-fits-all system would not benefit everyone and would be difficult to implement;
- in order to provide adequately for landlords, rent stabilisation will often result in higher initial rents and more regular rent increases for tenants;

- potential tenants may find it more difficult to find accommodation as landlords look for 'good' tenants;
- landlords state that they look for a stable regulatory environment. Many would perceive the discussion of rent stabilisation as the first step towards further regulation. Especially in high demand and pressured areas, anything that reduces supply is highly undesirable – as is now becoming strongly evidenced in Germany.

Our **recommendation** is therefore that Camden should positively enable longer-term tenancies with index-linked rent increases, voluntarily agreed by landlord and tenant, while at the same time improving transparency and contractual enforcement for both landlords and tenants across the sector. The German example as well as experience in other countries suggests that there are two main indices that could be used: either some measure of general inflation (such as CPI) or an index of local rents. The scheme would not necessarily have to specify which should be used, as long as landlord and tenant agreed. This voluntary approach could be an attractive part of the voluntary accreditation scheme for a sub-set of accredited landlords.



1. Background

Reasons for the research

This research has been carried out on behalf of the London Borough of Camden. The council is concerned that local residents are increasingly being priced out of local accommodation and forced to leave the area — a process that will change the borough's demographic profile. They also wish to contribute to the national debate on how to provide suitable private rented housing to a wider range of tenants, how to ensure tenants get a better deal, and how to give good landlords the incentive to remain in the sector.

In this context, Camden has asked us to look at possible mechanisms for rent stabilisation and associated tenure arrangements, looking specifically at the principles behind stabilisation and evidence on how stabilisation approaches work in practice in other countries. This research was completed with a view to recommending a model that might protect tenants from extreme rent rises without disadvantaging landlords.

Private renting in Camden: problems and issues

Camden is a central London borough and thus encompasses some of the most expensive residential property in the country; the median house price in the borough was £575,000 in 2013, and the lower-quartile figure was £387,500 (GLA 2014). It is also an area with a significant population of low income and vulnerable people. According to the 2011 Census, some 17% of households nationally live in private rented housing, and 25% in London — but the figure for Camden is 32%, an increase of 10% since 2001 and one of the highest in the country. Equally, Camden has over twice the national average proportion of households living in the social sector while slightly fewer than a third of Camden households are now owner-occupiers.

The borough has very high rents. Accurate data on private rents are notoriously hard to find, but the best information, collected by the Valuation Office to help determine Local Housing Allowance (LHA) caps, shows that median Camden rent in the year to 3Q2013 was £1,733 — up more than 8% in two years. The lower-quartile figure (£1,343) was not much less. Only Westminster and Kensington & Chelsea had higher rents. For comparison, the median rent for all of London was £1,300, and for England as a whole £595 (Valuation Office rent data).

About a quarter of Camden households receive housing benefit¹. The great majority of these were in social housing; only 16% of all housing benefit claimant households (4,433) lived in the private rented sector, and of all private tenants only about 14% claimed housing benefit. This is much lower than the national figure, where more than 25% of households in private rentals claim housing benefit (English Housing Survey Table FT3231). Given the high rents in the area this low claimant rate reflects the relatively very high incomes of those renting in the Camden market.

In April 2011 housing benefit was replaced for new claimants by LHA. This is currently capped at £258 per week for a one-bed apartment and £413 per week for a four-bed unit. The cap on LHA has made it more difficult for Camden households in housing need to find accommodation in the private rented sector. Council figures show that in 2009/10, 84% of Housing Options and Advice (HOAS) placements were in the borough; since April 2011 this has fallen by over half to 35% (LB Camden 2013b).

¹According to Council figures there were a total of 23,793 households claiming housing benefit in Camden, or 24% of the total of 97,534 households enumerated in the 2011 Census.

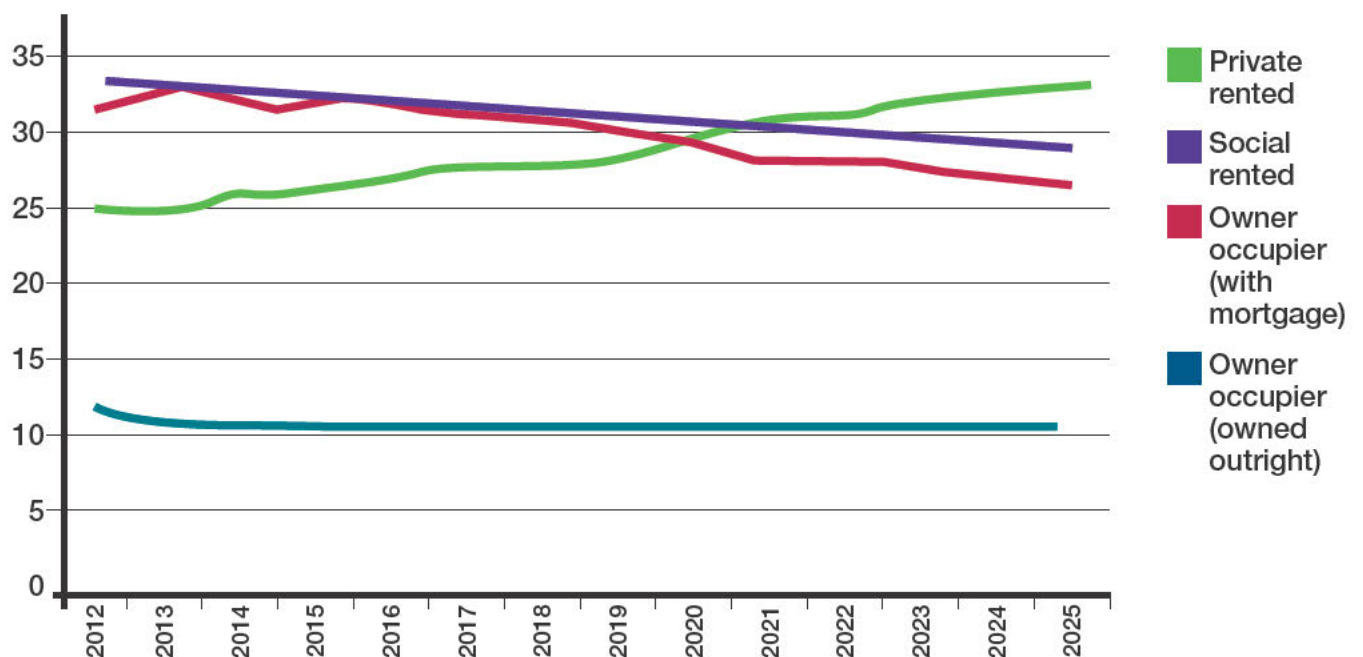
Evidently Camden is atypical of the country and indeed London in terms of the size of the social sector where many poorer households are housed; in terms of the size of the private rented sector which is comparable to both social renting and owner-occupation; and also in terms of the relatively small proportion of lower income tenants accommodated in the private rented sector.

Camden manages the increasingly important voluntary London Landlord Accreditation Scheme on behalf of the 33 London boroughs. The scheme complies with the London Rental Standard and some 12,000 landlords and 1,000 agents are now members. This group aims to provide good quality homes to their tenants while at the same time achieving an adequate risk-adjusted rate of return on their investment.

The political context

Camden is one of the country's most unequal boroughs, housing both the very wealthy in the market sector and the very poor mainly in the social sector. The local authority is Labour-controlled. 'Maintaining the social mix of Camden is an explicit aim of the Council,' according to the Camden Equality Taskforce (2013). The council's private rented sector strategy, entitled *A private rented sector that works for everyone*. Year one: A call for change (LB Camden 2013), reinforces this. In it Councillor Sarah Hayward, leader of the council, says 'we have to take action to preserve what we all love so much about the borough — its unique social mix'. This report points out that 'increasingly working families are using private renting as a long-term solution due to a lack of affordable housing in London, raising their children in private rented homes' (p. 2). The strategy identifies three major areas for improvement: property standards, strengthening the voice of tenants, and increasing supply. Two of its eight specific goals are 'more security and better rights and conditions for private tenants' and 'a greater number of affordable private rentals'.

Figure 1: Household projections by tenure: London families with dependent children



Source: Whitehead et al (2012)

The private rented sector is also gaining political importance because of its increasing role in meeting long-term housing need for a growing number of families with children. In this context, figure 1 gives a graphic projection of how the private rented sector might, if past trends continue, become the most important provider of housing for Londoners with children over the next few years.

2. Research question and methodology

Our research question was:

What does international evidence show about how it might be possible to ensure predictable rents, rent increases and security of tenure for Camden private tenants without disadvantaging landlords?

Our sub-questions were:

- What do economic principles say about rent control and rent stabilisation?
- What models of rent control and rent stabilisation have been employed internationally, and what effects (positive and negative) have they had for landlords and tenants?
- What risks do rent stabilisation models entail?

Driving these questions are three distinct objectives which, in many cases, may be at odds with one another: providing adequate secure accommodation for lower income households already living in the private rented sector; enabling similar households not already living in the borough to find suitable accommodation in Camden; and not disadvantaging landlords to the point where supply to lower income households is reduced.

In this context it should be recognised that at the moment only about 4,500 private tenants in the borough receive housing benefit. The level of the rent cap, which ranges from £258 to £413 per week, implies that households on well above average incomes are eligible and included in this number. Thus, even now, relatively few households on limited incomes are able to live in the private rented sector in Camden.

Methods

We used a mixed-methods approach for this research:

- First, we conducted a literature review of theory and evidence on the effects of different forms of rent stabilisation;
- Second, we analysed some of the models used in other countries, showing how various forms of rent stabilisation affect tenants and potential tenants as well as landlord returns and risks in different circumstances;
- Third, we researched rental contracts currently available in London and carried out interviews with major landlords, the Greater London Authority and the Homes and Communities Agency;
- Fourth, we hosted a roundtable discussion at the London School of Economics with stakeholders from Camden, elsewhere in London, and central government.



3. The economics of rent regulation



Economic principles

The main economic reason for introducing regulation is that the market in question is operating badly – i.e., there is market failure arising from market power; lack of information and asymmetry in that information; external costs or benefits from the provision of the good; dynamic problems in ensuring adequate investment; and/or issues around risk and uncertainty. The housing market is susceptible to many of these problems, particularly because of the contractual relationship between landlord and tenant and because it is difficult to adjust supply rapidly in the face of changing demand.

Regulation may also be introduced for reasons of equity and distribution. In particular because housing is both costly and a necessity of life, regulation may be introduced to make housing more secure and affordable. In these circumstances there will often be a tension between helping tenants and protecting returns to landlords, and an emphasis on the former can result in lower investment and increasing pressure on rents. In this environment it is often necessary to introduce other subsidies or forms of provision such as social housing where market returns are not required.

In some circumstances – e.g., if information to both landlord and tenant is improved, contracts are made more transparent and easy to enforce, risks are reduced and/or constraints on investment overcome – both landlord and tenant may gain from the intervention. In such cases supply will increase and rents may be lower (or there may be additional demand for the better product). In other circumstances, the effect of regulation is to

control rents below market levels and/or to provide greater security of tenure or other benefits to tenants, which reduce returns or increase risks to landlords. In this case the results will be a reduction in supply; pressure to avoid or evade the regulation; immobility and under-occupation of poor quality, ill-maintained properties; and higher rents and worse housing for those excluded from the market.

Clearly, good regulation should benefit both landlords and tenants, providing a more secure investment for landlords and investors and offering greater security and better quality housing to tenants. This is the ideal. Bad regulation, on the other hand – even if it is imposed with good intentions and may provide short term benefits – results in disincentives to supply rented accommodation, insider/outsider issues for tenants, and ultimately worse conditions for everyone.

The main rationale for regulating rents, tenure security and evictions in the private rented sector has usually been the failure of supply to adjust as rapidly as demand. When for one reason or another demand increases, rents rise often well above the longer-term costs of provision. In these circumstances landlords make excess profits and there is political pressure to even the playing field so that tenants are not being disadvantaged. In addition, there are usually major issues of asymmetry and power inherent in a contract where neither side has full information. These problems become more extreme in times of scarcity or when the distribution of income is uneven. The argument then tends to be that since landlords are making excess profits, limiting rents will not adversely affect supply.

The literature is full of very strongly held opinions about how and why private renting works or does not work in different housing markets – and especially about the extent to which this is determined by regulation in general and rent control in particular. Many commentators, especially market-oriented economists, citing evidence of post-war decline in private renting and of poor conditions in what remains, argue that regulation has been almost wholly bad, not only for landlords but for tenants. Others, usually more governance-oriented, point to countries where large, well operating private rented sectors provide for the full range of housing requirements – and suggest that they work better as a result of strong and stable regulation.

Forms of rent regulation

Rent regulations are specific rules governing the rent that a landlord is allowed to charge for the disposition of a property. There are two main forms, which may be used together or separately. The first is to control rent levels across the board – for both new and existing tenancies – by imposing a legal maximum (rent ceiling) on the rent in a particular housing market, which is below the market's equilibrium rent. The second is the control of rent increases.

In this context Arnott (1995, 2003) identifies 'three generations of rent control'. The first generation is the control of rent levels; the second controls rents after initial lettings and the third controls rent increases within each letting.

'First generation' rent control – control of rent levels

Arnott's 'first generation' or 'hard' rent control restricts the level of rents across either the whole of the private rented sector or a separable and defined element of it. 'Rent freezes' lead to a significant fall in real rents if rents cannot be adjusted upward to offset inflation and increasing housing costs (Arnott, 1995, 2003). They also generate incentives for landlords to leave the sector, especially if there are related but uncontrolled sectors such as owner-occupation and lodgings to which the properties can be transferred. Further they reduce the incentive to invest in repair and improvement. On the other hand, they give tenants an incentive to stay even when their housing needs change, and give both landlords and potential tenants an incentive to avoid and evade the law.

From the 1960s onwards, particularly after the energy crisis of 1973, the ensuing rapid inflation and the introduction of housing allowances, more flexible second generation rent control – or 'soft' rent control – was introduced across much of Europe. Even so, whenever rent control or stabilisation is discussed much of the debate assumes that it would be 'hard' controls that would be introduced (see for instance much of the commentary on Ed Miliband's recent proposals).

'Second generation' rent control – control of rent increases both within and between tenancies

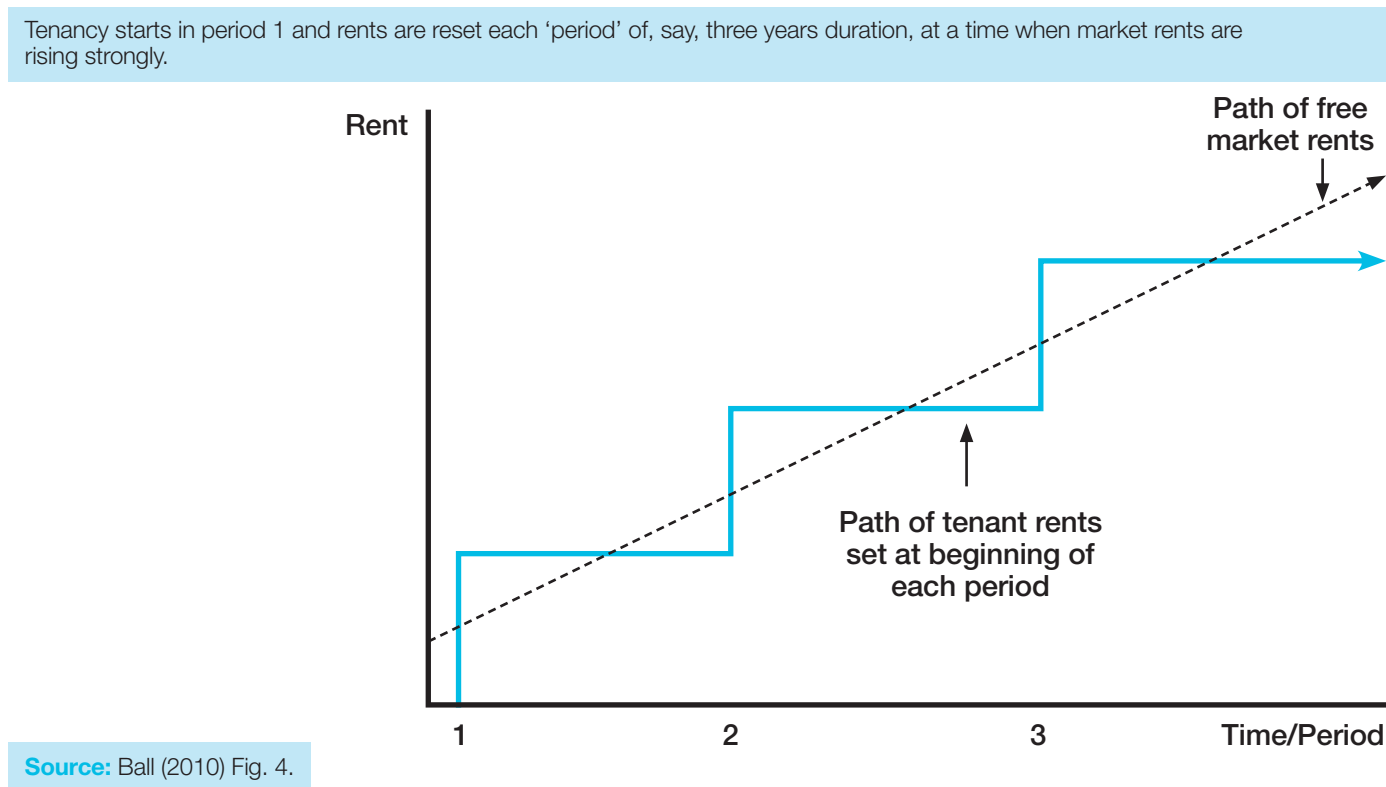
The objective of second generation rent control is to allow some mitigation of cost increases for landlords and thus reduce their incentives to under-maintain their properties, while retaining some limits on the size of rent increases. These limits apply both to rent increases within a tenancy and to increases applied when renting to a new tenant. There have been many variants of second generation controls in terms of their restrictiveness. Some countries have allowed landlords to cover some or all increases in costs, which might include taxes, operating expenses and financing charges. Others have indexed rents more or less to inflation. Even in the most restrictive systems, landlords have usually been allowed to amortise the costs of substantial improvements to the dwelling (Turner and Malpezzi, 2003). While this form of rent control limits the extent to which real rents fall over time, it may still generate significant incentives for landlords to disinvest, especially in an inflationary environment.

'Third generation' rent control – control of rent increases within tenancies

Third generation rent control is seen as the most market friendly. Rent increases are regulated within an individual tenancy but are either unlimited between tenancies or regulated under a more generous regime. In its pure form, third generation rent control implies market rent on a new lease but controls over increases within the tenancy; Arnott (2003) calls this 'tenancy rent control'. In principle this allows adjustment to market returns while protecting the tenant from unexpected rent increases and giving the landlord some security that cost increases are offset. It can be seen as a way of smoothing rent changes while maintaining a long-term rate of return which is competitive with other investments.

Figure 2 describes one form of third generation rent control which is consistent with full adjustment of supply to underlying market conditions. Here the path of market rents reflects long-run costs of provision. Because rents within the tenancy are determined administratively, initial rents will be set above long-run market levels and fall over the time of administrative determination. If predictions are correct about underlying market pressures and the administrative rules are transparent, this form of regulation can ensure the long-run equilibrium level of supply and the required rate of return over time – even for open-ended tenancies.

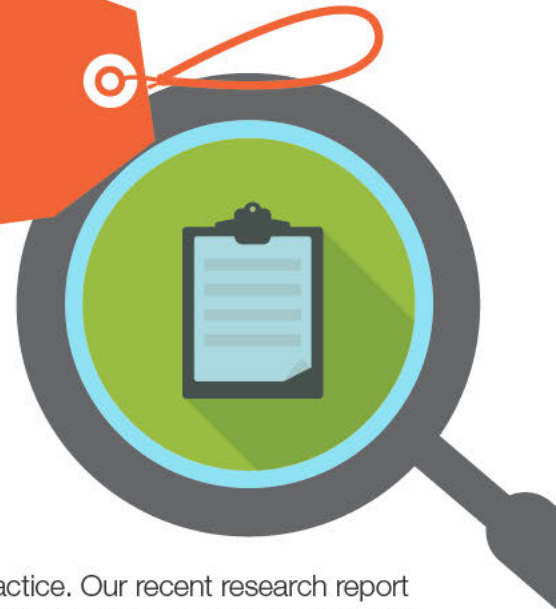
Figure 2: The growth of rents under third generation rent controls



The impact of higher initial rents varies according to how long a tenant actually remains in a tenancy. Assuming market rents are rising faster than the index, tenants who stay longer than the average will end up paying 'too little' in rent and those who stay for a shorter period than average will pay 'too much'. A major benefit for many landlords is that controlled rents and rent increases reduce turnover and thus their transaction costs because of a reduced maintenance requirement and fewer vacancies. This 'turnover minimising' can bring not only consistent returns to landlords (Turner and Malpezzi, 2003) but also greater rent stability to tenants. There are however costs for landlords who want the option of selling with vacant possession.



4. Evidence from the literature



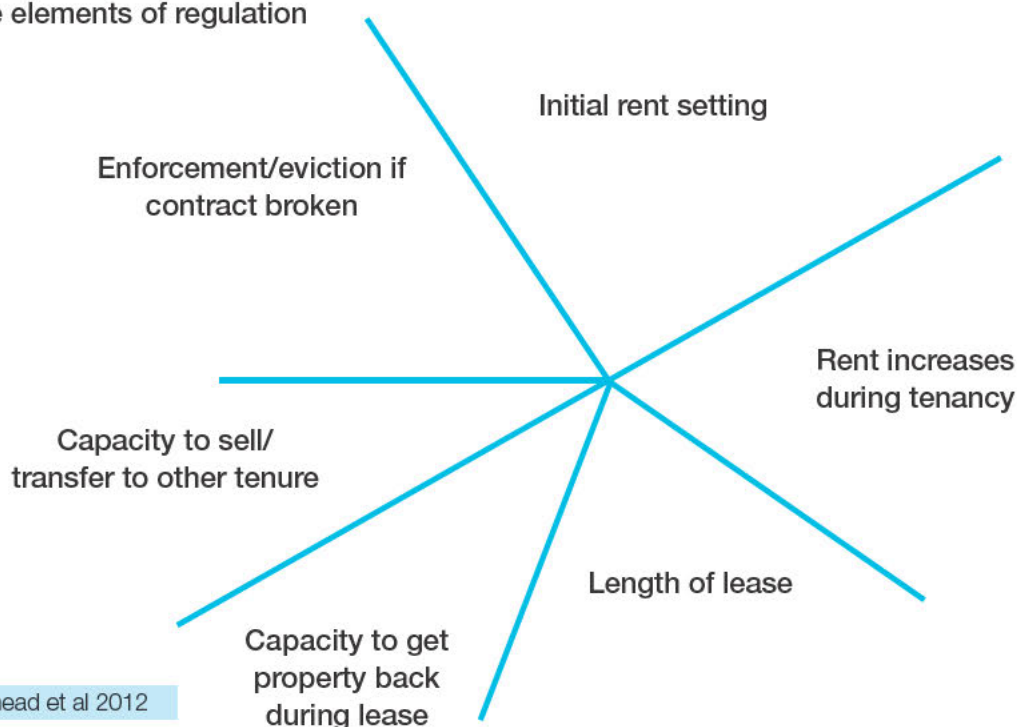
On regulation

Historically there is a vast literature on rent regulation in both theory and practice. Our recent research report (Whitehead et al 2012) reviewed much of that literature on regulation and its impact on landlords and tenants. It also compared 11 European countries with respect to the forms of regulation in place and their apparent impact on the scale of private rental provision.

One of the most important findings from the research was that the complexity of regulatory systems makes it inappropriate simply to look at the nature of controls over rents. Figure 3 clarifies the most important elements which interact with one another to help determine outcomes. These can be summarised as:

- i. the way in which initial rents and rent changes during the tenancy are determined (which is the core element addressed in the literature on regulatory constraint);
- ii. the extent of security of tenure available to tenants and the impact this has on landlords' property rights. Security relates not just to length of lease, but also encompasses how easily tenants can extend their tenure, how easily landlords can gain vacant possession, and the right of the landlord to sell the property, whether tenanted or vacant; and
- iii. the mechanisms by which these regulations are enforced and their effectiveness.

Figure 3: The elements of regulation



Source: Whitehead et al 2012

The second major finding was that the proportion of private renting had declined in most of the 11 case study countries. Only in England has there been a really significant increase in proportional terms – starting not at the time of deregulation but from the mid-1990s when Buy to Let was introduced and particularly after the turn of the century when affordability and access to owner-occupation worsened. In a small number of countries the size of the sector has remained fairly stable – slightly increasing in Germany, Sweden and somewhat declining in Switzerland and France.

Third, looking to the current position on regulation, three countries – England, Finland and Norway – now have low levels of regulation while seven have medium regulation (Table 1). Within the latter group, three countries (Germany, Sweden and Switzerland) have regimes that have remained relatively stable over the period 1980 to 2010. France and the Republic of Ireland have seen increases in regulation, while Spain and Denmark have introduced less regulated systems. Only the Netherlands still has a strong regulatory regime, and even there rents on more expensive properties are now deregulated. Traditional rent control – nominal caps on rent levels – is hardly found today. Those countries that do combine strong rent regulation with sizable private rented sectors usually have systems that permit rents to adjust to near-market levels even though they are formally ‘controlled’. They also tend to have small social sectors and constraints on entry into owner-occupation.

Table 1: Overview of regulation in the 2000s (latest available information)

Country	Initial rent	Rent increases	Length of lease	Termination of lease	Selling property	Enforcement problems	General perception of regulatory framework
Denmark	Low	Medium	High	Medium	High	Medium	Significant
England	Low	Low	Low	Medium	Medium	Medium	Limited
Finland	Low	Low	High	Low	Low	Medium	Limited
France	Low	Medium	Medium	Medium	Low	High	Significant
Germany	Medium	Medium	High	Medium	Medium	Medium	Significant
Netherlands	High	High	High	Medium	Medium	Medium	Strong
Norway	Low	Medium	Medium	Low	Medium	High	Limited
Republic of Ireland	Low	Low	Medium	Medium	Low	Medium	Significant
Spain	Low	Medium	Medium	Medium	Medium	High	Significant
Sweden	Medium	Medium	High	Medium	Medium	Medium	Significant
Switzerland	Low	Medium	High	Medium	Low	Low	Significant

Source: Whitehead et al 2012

Another of our reports (Scanlon & Kochan [eds] 2011) looked at the broader lessons that the UK could learn from abroad, including the USA as well as Europe. This demonstrated that there is a wide range of approaches to regulation of the private rented sector; that regulation can be associated with well operating private rental markets (although there are also plenty of examples of bad regulation which worsened conditions for many households accommodated in the sector or excluded from it by regulation); that the majority of investors in all countries are individuals – but how long they remain in the sector varies greatly — with some investing for generations; and that the size of the sector depends fundamentally on other opportunities for both investors and households as much as on conditions in the sector itself.

On institutional investors

Another important possible impact of rent stabilisation is how institutions might respond to its introduction. In our report for ‘Homes for Scotland’ (Whitehead & Scanlon 2013), we reviewed the literature and looked at the barriers to investment in private renting, and in particular, explored what institutional investors are looking for when they decide whether or not to invest.

Four main messages relevant to the rent stabilisation issue came out of the interviews:

- **first**, institutional investors are looking for ‘utility’-type, long-term investments – i.e., ones with near-certain, index-linked, low-risk returns (which implicitly must remove the risks of unexpected inflation or additional costs) that match their liabilities. This is why some representatives of the finance industry have said that in principle rent stabilisation could be a positive inducement to investment;
- **second**, their boards need to be convinced that the private rented sector will not generate reputational risks – they do not wish to be associated with bad landlords and bad management. This is one reason why accreditation schemes and professional management are seen as so important;
- **third**, they hate uncertainty – and any proposals for change in the regulatory regime create uncertainty (which is one reason why so many have expressed concern that the Miliband proposals will have negative effects);
- **fourth**, the other investors looking to be involved in private renting are housing associations, who might draw on money from sovereign wealth funds or institutional investors as well as debt finance. These landlords already have experience with longer-term leases with index-linked rent increases.

Other landlords

It is important to remember that the vast majority of the private rented sector is owned by individuals and that therefore any regulatory system must take their interests into account. Some small landlords are hardly or not at all motivated by financial considerations, whereas others operate on a wholly commercial basis as small businesses. In general the evidence in the UK is that individual landlords are less interested in long-term income returns than in capital gains. This group is generally thought to be antipathetic to regulation, although it is clear that there are large numbers still prepared to let to housing benefit receiving tenants where rents are implicitly controlled through the caps on benefits.

Summary

Thus the literature suggests:

- (i) the general trend internationally has been towards deregulation, particularly with respect to initial rent determination. Equally, while there are examples of control of rent increases when tenants change, in the majority of countries it is only within-tenancy rent increases that are now regulated;
- (ii) the determination of rents is only part of any regulatory regime. In particular where there is any type of rent control or stabilisation there also tends to be long or indefinite leases or mandatory lease renewal, regulations to limit evictions to circumstances where the tenant has broken the agreement, and often restrictions on the ways in which landlords can dispose of their property;
- (iii) in most countries security of tenure is indefinite (in part because short-term arrangements are not seen as part of the sector);
- (iv) countries with large private rented sectors tend to have quite stable regulatory regimes - but they also often have constraints on transfer to other tenures;
- (v) only in the highly deregulated UK and Irish markets has there been rapid growth in the private rented sector. In both cases there are many other factors – especially in terms of what is happening in other sectors of the housing market – that have helped generate the expansion;

(vi) the vast majority of landlords in all countries are individuals rather than institutional investors. The former are more likely to value capital gains, while the latter generally seek predictable rental income streams;

(vii) the biggest concerns about regulation are that:

- controls over rents at the start of a lease may not allow landlords to make a business return;
- rigid rent adjustment systems may not accommodate unexpected changes in the value of the rental stream or in costs;
- tenure security and enforcement procedures may make it difficult and costly for landlords to obtain vacant possession when the tenant does not keep to the contract; and
- governments may continue to make changes in the regime as a result of political pressures.

All of these would apply to the introduction of rent stabilisation and would need to be addressed if any approach were to work effectively.



5. International evidence from specific regulatory regimes

This section sets out current regulations around rent levels, increases, and security of tenure in five European countries and two US cities. Table 2 provides summary statistics about the size of the private rented sector in each.

Table 2: The proportion of households who rent privately

Country/city	% of households in PRS (latest)
England	18
Camden	32
Germany	49
Netherlands	10
Ireland	9
Denmark	14
France	21
San Francisco	59*
New York	64*

*rented dwellings as percentage of all dwellings

Sources:

England: English Housing Survey, 2012;

Camden: 2011 Census;

European countries: Whitehead et al 2012 Figure 11;

US cities: 2010 US Census

Germany

Germany stands out for the size of its rental sector — nearly 50% of households rent their homes, rising to almost 90% in Berlin. The bulk of rented housing is in private ownership, and most ‘social’ housing is actually privately owned but rented to low income households for a limited period as a condition of subsidy. Many middle income families in Germany consider their rented housing to be a permanent home, as the strong security of tenure and opportunities to customise accommodation

provide many of the features of owner-occupation in other countries.

Rent regulations

In Germany rents on private rented housing can be freely set on initial letting, although charging rents ‘substantially higher’ than the average for similar properties (in practice more than 20% in most areas [Kemp & Kofner 2010]) is a criminal offence.

Rent rises within a tenancy are controlled. There are various ways of determining the permitted increase. The lease contract may specify an annual rent increase (Staffelmiete) or state that rents rise in line with a cost of living index, but these options are little used. In practice most rents go up by the average in the local area. There are three ways of determining this: first, by the mirror-rent tables (Mietspiegel); second, by consulting a local expert; or third, by referring to rents for three comparable units in the same area.

The Mietspiegel system was set up in 1982 as a way to provide objective empirical data about local rent levels. Mietspiegel tables are produced in some 300 municipalities, and are updated every two years. They are based on data provided by tenants’ and landlords’ associations or, in bigger cities, on specially commissioned surveys. Data are gathered about dwelling characteristics and rent levels for rents agreed in the preceding four years. Some cities provide relatively simple tables relating rents to dwelling size and date of construction (see for example Cologne’s Mietspiegel at <http://www.koeln.de/immobilien/mietspiegel.html>). Others produce what are known as ‘qualified Mietspiegel’; these are based on hedonic regression analysis and include a much greater range of variables².

²See for example information about the most recent Mietspiegel survey in Munich here: <http://www.muenchen.de/rathaus/Stadtverwaltung/Sozialreferat/Wohnungsamt/Mietspiegel.html>

Rents can be raised at most once every 15 months, and by a maximum of 20% over three years unless the dwelling has been modernised or benefited from energy efficiency investment. In this case the landlord can charge 11% of the investment cost every year. Because this is one of the few ways landlords can achieve significant rent increases, it has led to a high level of energy efficiency investment in the German rented stock.

Security of tenure

German leases are indefinite - the tenant generally has the right to remain in the dwelling until he or she dies. Fixed term contracts are only permissible in certain limited circumstances. On the death of a tenant the contract passes to the tenant's heir(s); the landlord is permitted to give notice and cancel the lease if the heir did not already live in the dwelling. On sale of dwellings the lease also binds the new landlord.

There are a few specific reasons for which the landlord is permitted to evict a tenant: if the tenant has rent arrears of three months or more; if they are causing a nuisance; or if the landlord wants to use the property for themselves or a relative to live in. The landlord's notice period in such cases depends on the duration of the tenancy, and is up to nine months. The tenant on the other hand can leave with three months' notice. Tenancies can be transferred to another tenant with the landlord's permission.

How does it work?

German tenants and landlords expect properties to be rented for the long-term, and to be in every sense the tenant's home. They are rented 'bare' - that is, they are unfurnished and usually do not even contain kitchens; the tenant is expected to purchase and install their own. This clearly affects the tenant's incentives to remain in the same property.

German households move relatively infrequently. A 2007 survey showed that only about 10% of German households had moved in the preceding two years, compared to about 15% of Britons and 22% of Americans (Andre 2010). 'Because rent increases during a tenancy are more strictly regulated than rents for new contracts, rents for tenants who have occupied the property for a long period of time tend to be significantly below market rents' (Whitehead et al 2012, p. 143). (It should be

noted that this is also the case in markets with no indexation – rents for existing tenancies in England have on average been rising by less than 1% in England and under 2% in London).

One reason why the regulatory system has worked so well in Germany has been that house prices have been falling in real terms and often in monetary terms for the last two decades. The general pressure has thus been more on reducing rents. However since 2007 in particular this position has changed in some major cities. Prices and owner-occupation rates have been rising, and rental markets are beginning to silt up in areas of housing pressure, with queues for rented properties resulting in people having to bid for dozens of units (including providing significant documentation). There is considerable evidence that new investment is not keeping pace with demand.

Lately, there has been strong political pressure for tightened rent regulation in some cities where rents have been rising rapidly (Fitzsimons 2014). As already noted, rises are already capped at 20% over three years, but in April 2013 the law was changed to permit cities to implement a local cap of 15% over three years. This was implemented in Bavaria in May 2013 and was an important element in coalition discussions prior to the 2013 election. It is expected to be implemented in Berlin, Hamburg and other cities where rents have been rising rapidly.

A study of the German property market by the IW Institute in Cologne, published in the autumn of 2013, warned that caps may end up aggravating the supply and demand imbalance by curbing investor appetite for real estate, and slowing the construction of new apartment buildings. The message echoed that of the German Central Bank, which cautioned against trying to contain this development with rent controls.

The Netherlands

The Netherlands has the largest proportion of social housing in Europe, making up about one third of the housing stock, and many middle income families live in the sector. Private rental, by contrast, now accounts for only 10%, and its share has been falling steadily. Much of this stock is owned by long standing privately owned companies that are looking for regular income. More recently, some of these owners are aiming to realise value for their 'pension fund' by selling into owner-occupation.

Rent regulation

Social and private rental housing are subject to the same regulations with respect to rents and tenure security. In the bulk of the market, rents are set not by the market but on the basis of a 'points' system. Points are allocated for characteristics such as the size, condition and facilities of the home³, as well as the characteristics of the local environment (transport, shops, schools etc.) - but not for the desirability and price of the location. The number of points determines the maximum rent that can be charged. After signing a lease, the tenant has six months in which they can challenge the rent level before the Rent Commission.

At the top end of the market (in both social and private rented housing) - that is, for dwellings with over 142 points, which in 2014 gives a maximum rent of over €700/month regardless of size - rents are decontrolled. The cut-off point for decontrol is revised annually in January. This regime was put in place in 1990 for new construction and in 1994 for existing dwellings, with the goal of gradually freeing rents as the proportion of decontrolled properties grew. The 'free' rented sector reached 5% by 2004, and the aim was that 25% would be deregulated in the following five years, but the target was dropped by the new government in 2007. Currently about 30% of private rented dwellings have decontrolled rents (Whitehead et al 2012).

Regulated rents can only be increased by a percentage announced annually in a government decree. Since 2008 this has been in line with inflation. Rents on properties with points equal to a maximum rent above that level (over €700/month) can be set at market levels (Fitzsimons 2013). Interestingly, in many parts of the country, rents that could be raised above the controlled limit are not actually increased because the market rent is actually lower than the amount indicated by the points.

³The main determinant is size — one point is given for each square metre of internal space. Other factors include for example having its own boiler (3 points, or 5 for a condensing boiler), floor insulation 2 points, bath 6 points, etc. See Fitzsimons 2013 pp 23-26.



Security of tenure

Leases are generally indefinite and binding on the new landlord if the property is sold. Tenants can be evicted only if the tenant has not fulfilled his or her obligations, or if the landlord wants to use the property themselves. The period of notice is between three and six months, depending on how long the tenant has lived in the property.

How does it work?

There are a great many rented dwellings with more than 142 points, for which the landlords charge less than the €700/month – even though they could charge as much as they like. It is the actual rent charged, rather than the number of points, which determines whether the letting remains in the regulated sector. This anomaly comes about for two reasons: first, because some local markets in the Netherlands simply will not support higher rents; second, because housing associations are the dominant landlords. Their stock of 'social' housing competes directly with private rented housing. Much of it is of high quality and there is little or no stigma associated with living in social housing in the Netherlands. These housing associations see it as part of their social mission to keep rents low; they are also wealthy and do not need to maximise returns. This means that for the sorts of properties renting at or somewhat above the cut-off point, private landlords find it difficult to compete with housing associations as the latter charge much

lower rents⁴. This is one reason that institutional landlords in particular have been divesting from the sector.

On the other hand there are other areas where market rents are much higher and there are still shortages. In this context, it has long been recognised that the outcomes of the points system do not necessarily correspond with market outcomes. Particularly in high demand, high cost areas, this system produces large gaps between the regulated rents for units with 142 points or less and free, market rents. This has led to the emergence of black markets in some areas, where side payments are made and tenants paying the regulated rent may be able to sub-let the dwellings for large profits.

To address these issues, in 2011 the system was modified in order to give extra points to dwellings in 10 high cost areas, allowing landlords to charge higher rents on new lettings. In these areas, dwellings worth less than €2,900/m² (according to the national property valuation system) are allocated 15 extra points, while those worth more than €2,900/m² were allocated an additional 25 points. This has taken significant numbers of units out of regulation when a vacancy occurs.

Another recent change has been to allow landlords to impose higher rent increases in 2013 and 2014 on households with higher incomes – for those earning more than €43,000 per annum rents may be increased by 6.5%. These higher rent increases were initially coupled with a temporary tax on all landlords owning more than 10 dwellings with regulated rents, but the two policies have now been separated.

Finally, the Dutch government has now agreed that the €700 limit will be maintained for three years with the intention of incentivising the transfer of properties to the deregulated sector.

⁴In 2010 housing associations owned 1.06m dwellings with over 142 points, but on only 87,600 was the rent more than the cut-off (Fitzsimons 2013 p. 96).

Ireland

Ireland has been identified (maybe erroneously) as the source for the Miliband proposals on rent regulation and security of tenure. In reality Ireland

is regarded as a country that has deregulated but organised the market with the aim of generating higher quality rental housing rather than lower rents.

Rent regulation

Rent controls were abolished in 1982 in Ireland, and since then rents have remained largely unregulated. The 2004 Residential Tenancies Act however did stipulate that rents within a tenancy could only be changed once a year, and could not be greater than the open market rate (Department of the Environment, Heritage and Local Government, undated). Rents may be reviewed either up or down only once a year unless there has been a substantial change to the property. Tenants must be given 28 days' notice of new rents, and may ask for a review if they feel they exceed the market rate for the property. Disputes can be referred to the Private Residential Tenancies Board (PRTB).

Some 30% of private rented sector tenants receive rent supplement (the equivalent of housing benefit). There are caps on this benefit, which depend on area and household size (the maximum is €1,000/month in Dublin for a family with three children). As in the UK these caps act as an informal version of rent control at the lower end of the market.

Security of tenure

Security of tenure was strengthened by the Residential Tenancies Act 2004. Landlords are permitted to terminate a tenancy without giving a reason during a six-month probationary period, but after that (and up to four years), the landlord can only end the tenancy for certain specified reasons (non-payment of rent, overcrowding, intended sale etc.). After four years a new tenancy commences and the process starts again. Notice periods for both landlords and tenants increase in line with the tenancy's duration (Norris 2011).

There have also been significant moves in recent years to improve the minimum standards of private rented housing. Regulations introduced in 2009 aim to improve cooking, heating and laundry provisions, set minimum space and storage provisions to facilitate family living, require landlords to maintain the exteriors of dwellings and will completely phase out the traditional 'bedsit' (with shared facilities) by 2013 (Hayden et al. 2010).

How does it work?

The introduction of higher standards and increased security were generally welcomed and are thought to have improved conditions. However it remains a relatively small part of the housing system, generally accommodating more mobile households but also a significant proportion of lower income households who cannot obtain social housing.

Ireland is now experiencing a housing crisis that affects all tenures. Rents have been increasing rapidly, especially in Dublin, and there is political discussion about the reintroduction of some form of rent stabilisation (or what Threshold, the Irish housing charity, calls 'rent certainty').

Denmark

In Denmark about 14% of dwellings are rented privately, down from 35% in 1970. Rent regulation applies in one form or another to nearly 90% of the sector. The only units that are exempt are those built after 1991 and penthouses on top of existing buildings.

Rent regulation

Regulations limit both the initial level of rents on new leases and rent rises. There are two main systems: the running-cost system, or omkostningsbestemt husleje, applies in most areas; this is known in Denmark as 'strong' rent control (Andersen 2014). Under the running-cost system, permitted rents are based on the cost of operating the property, an allowance for exterior maintenance, plus a fixed yield. This yield varies with the age of the building and is based on its 1973 value. Each municipality can decide whether the running-cost system should apply to multi-unit properties in its area; if not, then the second system (the 'value of the rented property', or det lejedes værdi) will apply (Whitehead et al 2012).

The 'value of the rented property' rules apply to small buildings everywhere and to all buildings in municipalities that do not use the 'running-cost system'. The 'value of the rented property' rules are a type of mirror-rent system. Under this system, rents must reflect the average rents for similar dwellings in the same area. The two systems produce different rent levels, with the latter producing higher rents than the former, but both are well below notional market rents - according to the Danish Property Federation, in 2008 controlled

rents in central Copenhagen were about 28% below freely agreed rents on post-1991 properties (Whitehead et al 2012 p. 106). The gap between controlled and notional free-market rents is greatest in Copenhagen and other large cities.

Rent increases are controlled under both systems, and are also regulated for post-1991 dwellings whose initial rents are freely set. Leases may specify either periodic rent increases or state that rents will rise with an inflation index; rents can also be raised if landlords can prove that their costs have risen, or if they have carried out improvements to the property.

Landlords can bring their properties out of the purview of cost-based (stronger) rent regulations into the mirror-rent system by investing in improvements to vacant dwellings. Skifter Andersen calculated that as of 2008, about 28% of properties under strict rent control had been transferred this way to the less stringent regime (Skifter Andersen 2014).

Tenure security

The standard lease is an open-ended contract that can only be terminated if there are rent arrears or the landlord wants to live in the property. The tenure of dwellings in Denmark is fixed when they are built. Rental dwellings cannot generally be sold to owner-occupiers⁵ and only limited term rental contracts are permitted for dwellings that were originally built for owner-occupation. Tenants are permitted to sub-let and to trade tenancies.

How does it work?

The regulation of private rents keeps them below market levels and results in excess demand. This allows landlords to select among potential tenants, and they tend to prefer stable households with good employment rather than vulnerable low income tenants, who then must be housed in the social sector. Because units cannot be transferred out of the sector, the landlord has no other legal means of obtaining income from the property other than to sell to another landlord (or to the tenants as a cooperative). Incentives to maintain the properties are limited while tenants have little reason to move even if they are under-occupying.

⁵Multi-unit rental buildings must be sold in their entirety rather than broken up and sold as individual units. Landlords who intend to sell are required to offer sitting tenants the option to buy the entire building as a cooperative, and this has been popular especially in Copenhagen.

France

The relative size of the private rented sector has remained fairly constant since the early 1980s when it accounted for 23% of the stock. In 2006 the latest statistics show private renting at 21% - somewhat larger than the social rented sector at 17%. Housing in both rented tenures is concentrated in Paris and major metropolitan areas.

Rent regulation

The Mermaz-Malandain law passed in 1989 remains the primary arbiter of rent control in France. It fundamentally regulates rent increases during the period of the lease, but leaves the landlord free to set the rental level when signing a new lease. However, about 5% of the privately rented stock is subject to strict rent control under the terms of the rental law of 1948.

When a contract is renewed for a sitting tenant, the rent is based on the old rent or rents for similar properties in the same area. The annual adjustment of rents is regulated. From 2006, this adjustment was governed by the National Institute for Statistics and Economic Studies (Institut National de la Statistique et des Études Économiques, INSEE) Rent Reference Index (Indice de Référence des Loyers, IRL), which was calculated on the basis of the index of the cost of daily living, the index of maintenance and renovation costs and the index of construction costs. Since 2008, annual rent adjustments have however been based on the cost of living index alone.

Tenure security

The standard length of a contract in the 'free' market sector is three years for furnished dwellings and one year for unfurnished dwellings. Security of tenure is strong within a tenancy. Landlords are allowed to terminate a tenancy agreement at the end of the lease if they wish to occupy the property themselves or house a close relative or a family member, sell the property, carry out major refurbishment of the property, or if the tenant has consistently failed to meet their obligations in the past. If the landlord wishes to sell the property, the sitting tenant has the first right of refusal. Absolute

security of tenure applies only for the duration of the tenancy agreement (DCLG 2010).

How does it work?

The relative size of the private rented sector in France has stayed fairly stable since the 1980s. This may partly be a consequence of the various tax incentives that have been available for individual rental landlords. Except for those still governed by the 1948 regulations, the average quality of private rental properties has greatly improved over time because of the availability of loans, subsidies and tax incentives that have encouraged private sector landlords to refurbish and renovate their rental properties.

Rents in the private sector are significantly higher than social rented sector rents. In 2009, the average annual rent for a free market dwelling was €6,300, while that within the social sector was €4,000 (Dol and Haffner 2010). There has been increasing concern at the rapid increases in rents in Paris and a number of other major French cities, which led to calls for the reintroduction of some form of rent control.

In 2012 the government limited rent increases on new lets in 38 high pressure areas to the rise in the legal benchmark (IRL), unless substantial work had been performed (in which case the increase was unrestricted). In 2013 this was followed by the *Accès au Logement et à un Urbanisme Rénové* (ALUR) law. Its major innovation was to regulate the level of rent in a few high pressure areas, whereas previous decrees focused on changes in rents. Under ALUR, a range of permissible rent levels will be set by law, and maximum permitted rent increases will be governed by decree. In the designated high pressure areas, rents on new leases are limited to 20% per square metre above the median rent in the neighbourhood, which will be assessed annually by a 'local rent observatory.' Existing rental contracts that overstep that limit will be brought down when they are renewed. The law also caps agents' fees, bans limiting access to lists of rentals to those who pay fees, and cuts the number of documents prospective tenants are required to produce.

The other main element of the ALUR law is a rent guarantee, paid for by both landlords and tenants, which will recompense landlords for unpaid rent. If a tenant defaults, landlords will no longer have to chase them through the courts, but simply apply to

the fund for reimbursement. This fund will pay the landlord up front; then investigate the claim. If the tenant defaulted due to unemployment, illness or low income, they will receive rent relief; if they were negligent or taking advantage, they will be sued.

There are many criticisms, particularly of the open-ended nature of the guarantee system and the costs of implementation (Vorms, 2013). The change in government and minister has put the introduction of both elements of the ALUR law in doubt.

The USA

The USA has a highly decentralised housing policy system in which the federal government has a relatively small role (James, 2014). States and individual municipalities can establish their own policies, and take widely divergent approaches. In 35 states rent control is explicitly prohibited, and in several others it is permitted but not found in practice. But in four states (California, Maryland, New Jersey and New York) some local governments do regulate rents - and these include some of the country's biggest cities. The nature and degree of rent regulation varies by city.

In general in the USA dwellings can be transferred between tenures (from private rental to owner-occupation, for example) with little restriction. However in cities that have regulated rents there are often laws governing procedures for changing rental apartment buildings to condominiums (so-called 'condo conversions').

New York City

New York City operates two rent regulation programmes: rent control (older and more restrictive) and rent stabilisation. Rent control affects pre-1947 buildings. Under New York State law, rent control can only be applied in municipalities that continue to have a 'rental housing emergency'; local governments must abolish it if the overall city vacancy rate rises above 5%. Importantly, rent control only applies if the tenant (or in some cases their spouse) has been living in the unit continuously since 1971. The number of rent controlled apartments is therefore declining as these tenants die or move out; as of 2011 there were only 38,374 rent controlled units in New York City (out of a total of 2.2 million), and the number will have fallen further since then.

Rent stabilisation applies to apartments in buildings with six or more units that were built between February 1, 1947 and January 1, 1974, and to tenants living in pre-1947 buildings but who moved in after 1971. Receipt of certain fiscal incentives for the construction or renovation of rental apartments is also conditional on the application of rent stabilisation for a limited period, so there is a small inflow of new rent-stabilised buildings. Tenants in rent-stabilised apartments have the right to renew their leases for a term of either one or two years. Permissible annual rent rises are set by the Rent Guidelines Board, taking into account both landlord costs and overall housing supply. For the year ending 30 September 2014, rents on one-year lease renewals can be raised by a maximum of 4%, and by 7.75% for two-year renewals.

Landlords can raise the rent by up to 20% when renting a rent-stabilised apartment to a new tenant on a two-year lease; higher rent increases are possible if the landlord carries out improvement works, as they can add 1/60 of the cost of improvement to the monthly rent (in larger buildings; a more generous 1/40 in smaller ones).

Since 1993 it has been possible for landlords to take higher priced units out of the rent regulation system under so-called 'luxury decontrol'. There are two ways: first, any apartment that becomes vacant for which the market rent is more than \$2,500/month, and which can legally be rented for that amount (that is, previous rent of at least \$2,083/month plus 20% vacancy increase) can be removed from the rent regulation system. Second, landlords can petition to remove occupied units from the system if they rent for over \$2,500/month and the tenants have a household income of \$200,000 or more for two consecutive years. Using these two provisions about 13,500 units leave the rent regulation system per year - a total of more than 100,000 since 1994 (New York City Rent Guidelines Board 2013). New tenants of units that have come out of rent stabilisation have little security of tenure, as the protections against eviction under rent stabilisation do not apply to them and they are not entitled to mandatory lease renewal. These vacancy decontrol provisions are controversial, with regular attempts to repeal them.

Most New York rental units are in multi-unit buildings in single ownership. Landlords are not permitted to sell these buildings into owner-occupation (as either cooperatives or condominiums) without permission from the state

attorney general with existing tenants who do not wish to purchase as owner-occupiers remaining on their existing terms.

How does it work?

Table 3 shows that in 2011, some 47% of New York rental housing was subject to either rent control or rent stabilisation. This represents a decline from 1981, when 63% of rented dwellings had regulated rents (Furman Center 2011).

Table 3: Regulation of New York City rental housing stock, 2011

Regulatory regime	Number	% of rental units
Rent-stabilised	986,840	45.4
Market rate	849,800	39.1
Rent-controlled	38,374	1.8
Other*	297,620	13.7
Total	2,172,634	100

*Mostly what would be termed 'social housing' in the UK, including public housing, Mitchell-Lama, HUD-regulated, Article 4, etc.

Source: Furman Center 2011

Table 4 compares market and stabilised rents in New York's five boroughs in 2011. City-wide, the median rent for stabilised apartments was 75% of the market rent, but there was wide variation among the boroughs. In Queens and Staten Island, lower priced areas of the city, the difference between market and stabilised rents was 15% or less, while on Manhattan median stabilised rents were less than half of market rents. It should be borne in mind, however, that apartments with stabilised rents are generally smaller and older than those with market rents.

New York boroughs are, of course, much larger in area and population than London boroughs. A comparable neighbourhood would be the Upper East Side of Manhattan, which has a population of 217,020 - about the same size as Camden's (2011 Census 220,338). Like Camden, this is one of the most expensive parts of the metropolitan area. The median rent-stabilised rent on the Upper East Side is 56% of the market rent (Table 4). Compared to those elsewhere in the country, New York City tenants must pay a higher proportion of their incomes in rent. The general rule of thumb in the USA is that rent payments should not exceed 30% of household income, although most New York City renters (57%) pay more

than this. Data from 2011 for the Upper East Side show that 47% of tenants in market-rent apartments were 'rent burdened' (pay more than 30% of their income in rent); interestingly, the figure for those in rent-stabilised apartments was even higher, at 59% (Furman Center 2011).

There are no income criteria for tenancies in rent-stabilised apartments. An analysis by the Furman Center at New York University looked at the incomes of households living in market-rate and rent-stabilised apartments. In most areas, households living in rent-stabilised units on average had much lower incomes than those in market-rate units - but they were not low in an absolute sense. 'Indeed, the median income of stabilized rental households in Manhattan below 96th Street (Core Manhattan) is higher than the median income of market-rate tenants in all but eight neighbourhoods outside of the core of Manhattan' (Furman Center 2011 p. 3).

Table 4: Market and stabilised rents in New York boroughs, 2011

Borough	Median rent per month		Rent stabilised as % of market
	Market	Rent-stabilised	
Bronx	\$1340	\$1066	80
Brooklyn	\$1350	\$1121	83
Manhattan	\$2625	\$1295	49
Upper East Side	\$2850	\$1585	56
Queens	\$1410	\$1230	87
Staten Island	\$1300	\$1110	85
Core Manhattan	\$2725	\$1480	54
New York City outside core Manhattan	\$1385	\$1132	82
NYC overall	\$1550	\$1160	75

Source: Furman Center 2011

Tenants in rent-stabilised units tended to stay much longer than those paying market rent (on average 12 years versus six years). The difference was most marked in the highest cost area; in Core Manhattan some 35% of households in rent-stabilised units had lived there more than 20 years (Furman Center 2011).

Rent stabilisation is a long standing source of political controversy in New York, with small landlords opposing it (a recent case challenging its constitutionality [Harmon v Kimmel] made it as far as the Supreme Court) and tenants' associations vociferously defending the principle. However the profile of those living in rent-stabilised apartments suggests that a significant proportion do not fall into the category of 'low income' household. Many who were on low incomes when their tenancies began would subsequently have seen their incomes rise, and the issue of who benefits from rent regulation is a live one in New York.

San Francisco

San Francisco introduced rent control in 1979. Most rented dwellings are subject to the law, which applies to dwellings in multi-unit properties that were built before the 1979 law was passed. It also applies to tenancies that began before 1996 in single-family homes; those that began later are not covered. The exception for 'single-family homes' applies not only to houses but also to condominiums (apartments in individual ownership) - if a multi-unit building is in single ownership then the apartments are rent-controlled, but if the units are individually owned (as is typical in the UK) then rent control does not apply.

There is no restriction on the initial rent on a new lease, but landlords can only raise the rent by a set amount each year, as determined by the San Francisco Rent Board; this amount is meant to be 60% of CPI inflation in the local area. Permitted rent increases have been consistently low; for the year to 28 February 2015 the allowed increase is 1%, and in the preceding 20 years the permitted increase exceeded 2.5% only three times.

Landlords can also request permission to increase rents to reflect increased costs or capital improvements. In the case of capital improvements, the rent increase applies only until the investment is paid off (San Francisco Tenants Union 2014). Rent control can also be used as a punitive measure to enforce house standards: if an otherwise non-rent-controlled unit has housing code violations that are uncorrected for 60 days or more, the unit becomes subject to rent control.

Under the Ellis Act, a California state law passed in 1986, landlords are permitted to evict all the tenants from a building in order to remove it from the rental market. Under state law landlords must pay each evicted tenant compensation ranging from \$5,000 to

\$16,000; the San Francisco Board of Supervisors (city government) in April 2014 increased this for Ellis Act evictions in San Francisco, requiring landlords to pay evicted tenants the difference between their existing rents and market rents for similar units for a two-year period.

The resulting vacant properties are normally sold into owner-occupation; if the units are re-rented then for the first five years the rent cannot exceed the rent that the evicted tenant was paying, and the evicted tenant must be given first refusal.

How does it work?

There are many parallels between the situation of San Francisco and that of Camden - both are relatively small, highly desirable and tightly constrained parts of prosperous metropolitan areas. Most San Francisco households rent, and rent levels and the rights and responsibilities of tenants and landlords are long-running local political issues, with vocal and well-funded advocacy groups on both sides. It is simply not possible for San Francisco to accommodate all those who want to live there, especially since it has now become the location of choice for well educated, well paid Silicon Valley employees who reverse commute. This has generated strong pressures to incentivise low-income/low-rent tenants to leave, and there have recently been protests against the 'Google bus' as a force resulting in gentrification.

At the same time, prices for owner-occupied housing are high, and landlords who do sell can potentially make large profits. The post-crisis upturn in the San Francisco housing market has seen a parallel rise in Ellis Act evictions, as landlords sell to developers.





6. Analysis

The problem

Almost one third of all households living in Camden are private tenants – a comparable figure to those in social housing. Within this total only 14% of private tenants claim housing benefit, which is available to households with incomes well above the national average. Even allowing for non-claimants this suggests that poorer working households living in the borough are mainly accommodated in the social sector.

Private rents have been rising more rapidly in Camden than in London as a whole and far more rapidly than in the rest of the country. The Assured Shorthold Tenancy system enables landlords both to increase rents and to terminate the tenancy at the end of the lease (which is normally for between six months and a year). This contrasts with many other European countries where tenancies are longer-term or even indefinite, and rents within tenancies (and sometimes between tenancies) are regulated in one way or another.

In a number of countries there has also been pressure over the last few years – as demand for private renting has grown faster than supply with consequent shortages and rises in rents – to introduce or strengthen rent regulation. Legislation to this end has been proposed or passed in some parts of Germany and in France concentrating on major metropolitan areas where pressures are particularly strong. In the Netherlands there are proposals for a rent freeze on controlled rents.

It is in this context that we were asked to examine international experience as a basis for evaluating the potential for some form of rent stabilisation – i.e. relating rent increases or even initial rent levels to some defined ‘index’ rather than leaving rents entirely to market pressures.

Economic principles suggest that traditional rent freezes work badly, especially into the longer-term – generating immobility, poor quality housing in the sector and incentives to landlords to transfer to

other tenures if possible. Almost all countries that introduced this type of control have either liberalised their systems completely (the UK) or limited controls to within-tenancy rent increases (often called rent stabilisation).

There are good reasons why landlords as well as tenants (and indeed in some cases rather than tenants) might be happy to agree to a form of rent stabilisation linked with longer-term tenancies. Institutional investors are looking for returns to match their liabilities which themselves are often explicitly or implicitly linked to inflation or wage rises. Rents set by the market which are certain to rise in line with a defined index would provide low risk matching income. Further, tenant turnover is expensive both in terms of lost rent and the repairs, maintenance and replacement of equipment that have to be undertaken before re-letting. What such investors do look for are well behaved tenants and very clear, cheap procedures for eviction when a tenant breaks the contract. Many tenants do want longer-term tenancies and predictable rents and therefore would find this type of contract desirable. However, based on the evidence from the few examples available so far in London, many instead want the freedom to move if their circumstances change, and may therefore not be prepared to opt for additional security if any costs are involved.

Incentives for other types of landlord can be very different. In the UK, many Buy to Let investors enter the market not just for rental income but also for potential capital gains – they consequently put more emphasis on being able to sell with vacant possession. Equally, smaller landlords cannot spread risk across a portfolio of properties and other investments, making it harder for them to accept a long-term commitment. Finally, those dependent on mortgage finance must obey their lenders’ terms and conditions, which currently rule out longer-term lets.

In other countries those who invest in privately rented properties may face strong constraints on their capacity to leave the market – not only because of longer-term tenancies but also because properties cannot be transferred out of the sector. This is true in Denmark for units built before 1991; in New York for lower rented properties built before 1974 and in San Francisco before 1979. In these circumstances the incentive may well be to run down the properties if they cannot be transferred into the market rented or owner-occupied sectors.

What is very clear from the overview is that any regulatory system requires many other elements be addressed in addition to rents - notably the extent of security of tenure and the procedures for eviction and sale, as well as control on standards and means of accessing rental housing (e.g., agents' fees; limitation on side payments; rights to sub-let).

Table 5 summarises rent regulation, tenure security and restrictions on disposal of the dwelling for the seven locations studied, together with the position in England. It shows that there are very few cases where rents on initial lettings are controlled. In all cases these are instances where the units cannot be transferred to owner-occupation (except under certain conditions). The building also usually has to be sold as a single unit. In addition, there are instances where 'mirror' rents are required or tenants can appeal against the rent set so that rents cannot be completely out of line with rents of comparable properties in the area.

Controls on rents between lettings only exist where there are also controls on the rent at the beginning of the lease, and normally take the same form. In many cases there are also exemptions based either on the date of construction (aimed at bringing additional investment into the sector) or on the rent level – excluding properties with higher rents on the basis that these are let to those on higher incomes (although there are obvious issues with respect to larger units and therefore larger families).

Leases across our sample, and indeed across regulated sectors elsewhere in Europe, tend to be indefinite - that is, tenants can stay as long as they like unless they break the rules. In some cases where leases are fixed-term the tenant has a right to first refusal of a new lease.

Table 5: Current rent and tenure regulations – a summary

Location	Rents				Lease form	Restrictions on evictions	Restrictions on sale / disposal to another tenure
	Rents on first letting of property controlled	Rents for new letting controlled	Exceptions	Increases controlled within tenancy			
Denmark	Yes	Yes	Post-1991 construction	Yes	Indefinite	Strong	Yes for multi-unit buildings
England	No	No	Existing pre-1971 tenancies	No	AST	None at end of term	No
France	No	No	Law may introduce rent caps in some areas	Yes	One to three years	Strong within tenancy	No
Germany	No ⁶	No	But must not charge significantly above market (20% or more in some localities)	Yes	Indefinite	Strong	No
Ireland	No	No		No	Four years	None in first six months, then strong	No
Netherlands	Yes	Yes	Units renting for over €700/month (25% of sector)	Yes	Indefinite	Strong	
USA: New York City	Yes	Yes	Post-1974 buildings and smaller properties; 'luxury' dwellings (rent over \$2500/month)	Yes	One or two years with right to renew	Strong	Yes
USA: San Francisco	No	No	Post-1979 buildings, single-family homes and condos	Yes	One or two years; with right to renew	Strong	Yes

⁶Some perceive this as yes rather than no because of the mirror aspect – but this is consciously to allow rents higher than market to allow for future risks. However the issue has only become really important in high pressure areas.

Finally, there is the issue of enforcement of contracts. There are many instances of avoidance and evasion especially in areas of housing pressure. On the other hand there are instances, notably in some areas of the Netherlands, where it is clear that control does not bite because of low demand. In all countries landlords complain of the costs associated with legal eviction – but these clearly are factored into their preparedness to remain in the sector.

In most countries the size of the sector has declined in the face of restrictions as well as changes in opportunities in other tenures for both potential tenants and landlords. The major exceptions until recently have been Germany and Switzerland, both with very limited social sectors – although this is also changing.

Germany: the example of good practice?

The German system has over the last few decades until at least 2008 matched this set of conditions fairly closely. Security is indefinite. Initial rents can be set up to 20% above comparable rents in the area (in some cases up to 50%) giving comfort to the landlord in case of unexpected changes in costs not covered by the index. Rent increases are defined within the tenancy. Nearly 50% of households rent privately - so most are mainstream households. Most also have to make significant investment in the dwelling, making it more obviously their home but also increasing the cost of moving out. Equipment is normally provided by the tenants. Eviction procedures are well defined – although landlords complain about the difficulties of achieving eviction. Probably most importantly, real house prices had been falling since the 1980s and inflation had been very low so there have been few surprises in terms of costs. It should however be noted that the majority of landlords in Germany are not institutions but individuals who usually keep their properties for long periods, even generations – in part because of the lack of capital gains.

Since around 2008, and even earlier in some cities (notably Munich), the situation has changed considerably. Landlords have faced unexpected costs, particularly because of requirements to improve energy efficiency. House prices have been rising rapidly in some cities with commensurate increases in owner-occupation. The atmosphere in terms of eviction etc. has become more toxic. Most importantly it has become extremely difficult to find privately rented accommodation, resulting in potential tenants having to submit many applications at considerable cost – particularly in Munich but also in Hamburg and latterly Berlin where up to 90% of households have traditionally rented. Landlords are increasingly choosy. Most fundamentally Germany has relatively lower levels of new building than even the UK. This has resulted, on the one hand, in calls for stronger rent controls in major cities, which have been endorsed in the latest elections, and, on the other, in increasing concerns about the difficulties faced by middle income working households seeking accommodation and of ensuring investment in pressure areas.

7. Conclusion and recommendation



Most countries have stronger regulatory frameworks than in the UK - but it is also the case that only in the UK has there been large-scale growth in the private rented sector, although liberalisation has mainly enabled rather than been the direct reason for expansion.

Equally in most countries, controls on rents on initial lettings and new tenancies have generally been associated with a declining sector and lower investment. Some form of 'mirror' rent system works better in areas where demand is relatively stable, but requires very considerable flexibility in areas of housing pressure. In those areas where supply is inadequate, queues, avoidance, evasion and the exclusion of more vulnerable households becomes the norm.

Rent stabilisation within the lease appears to work better, but can be upset by unexpected changes in costs that do not trigger increases. How well it works depends on the length of lease and the stability of the economic environment. There are certainly groups of landlords, especially among institutional landlords and housing associations, which provide market-rent housing, for whom a carefully designed rent stabilisation scheme would be acceptable and indeed desirable, for financiers, landlords and tenants alike. However it is far easier to operate such a system in a stable environment where housing market pressure is limited and where tenants have a significant stake in maintaining their tenancy and property standards.

In more pressured areas, the outcome of controls that generate below-market rents (whether only for existing tenants or for new tenancies) inherently generates insider/outsider issues. New York

provides perhaps the best example of what is likely to occur. Those who live in rent-stabilised properties (where rents are held below market rents) do indeed stay for much longer than those in market rented properties. But they also tend to have higher than average incomes, so the profile of those benefiting from the system is quite different from that which perhaps the policy makers wished to achieve.

More generally, already established tenants who pay their own rent can undoubtedly benefit from a well operated/well enforced stabilisation scheme. Under the current system, those whose rents are covered in full by housing benefit would receive no benefit from restrictions on rents, as long as the market rent is below the LHA for the area. However those households who themselves make up the difference between the LHA cap and the rent for their dwelling would benefit from a greater degree of certainty. Those who cannot readily find accommodation are however likely to be forced to live in other areas or in more expensive/more crowded/poorer conditions. Rent stabilisation is thus no substitute for an affordable rents policy.

The only way that this can be avoided is to ensure either that in the longer-term landlords receive their required expected return – implying either subsidies or above-market rents at the time the contract is agreed in pressure areas (as in Germany) to offset the risks of future changes either in the regulatory framework or in costs/returns. The more uncertain the environment, the higher that return needs to be.

The benefits of a mandatory rent stabilisation scheme are that all tenants would in principle be treated equally; it would be associated with greater

security and would provide greater predictability for both landlords and tenants. Where both are comfortable with the arrangements transactions costs and risks should fall.

However there are also very considerable costs which we suggest would outweigh these benefits. These include:

- First, both tenants and landlords have diverse needs and this suggests that a one-size-fits-all system would not work;
- Rent stabilisation, if it is to provide adequately for the landlord, will often result in higher initial rents for the tenant – because the landlord builds in the costs of fixing the rent and its increase for some period during which economic circumstances are uncertain;
- Equally those who are potential rather than established tenants may find it more difficult to find accommodation as landlords look for ‘good’ tenants, identified by accepted signals;
- Landlords consistently repeat that what they want is a stable regulatory environment, and their behaviour confirms it. This is why the same advisors who support the German system (although this is now changing) say it cannot be introduced in the UK. The evidence in this context is that, overall, Berliners have faced considerably higher rent increases than Londoners, in part because established tenants all face annual rent rises in Berlin while many landlords in Britain do not raise rents on a regular basis – as is evidenced by the rent index being developed by the Office for National Statistics (2014);
- This is also seen in the immediate response to any discussion of rent stabilisation because it tends to be seen as a first step towards further regulation. Especially in high demand and pressured areas anything that reduces supply is highly undesirable – as is now strongly evidenced in Germany.

For all the difficulties discussed above, there is growing public and political pressure for increased controls in many European countries, particularly in high demand urban areas. The benefits to established tenants (and therefore voters) of such controls can be high (and can be extended to some new tenants if the landlord has few options

but to rent). But the disincentives for landlords to enter or remain in the sector in the face of rents held increasingly below market levels also increase. Thus the costs to ‘outsiders’ – i.e., those looking for accommodation – also increase – and the longer the system is in place, more problems result for potential new entrants.

In the UK context any mandatory system of rent stabilisation would be a matter for national government. The current coalition has repeatedly stated that it will not introduce a change in legislation, and Ed Miliband’s recent announcement that he favoured the introduction of some form of rent control attracted widespread criticism. However primary legislation is not the only way to tackle the problem. Local authorities do have the power to devise and promote voluntary schemes in their own local areas, which can be tailored to local circumstances.

A single authority working alone is likely to face very real difficulties because of the possibility that landlords would go elsewhere. A voluntary scheme that operates across London or even more broadly has a far better chance of success than a strictly local initiative. Camden is in a particularly good position to take the lead because of its role in the voluntary accreditation scheme.

Finally, we should point out that in discussing rent stabilisation, this report addresses only one aspect of what is a complex and interdependent system. A genuine reform of the private rented sector would need to examine the roles played by market actors other than landlords and tenants. Two in particular – estate agents and mortgage lenders – seem to operate in ways that mitigate against more stable, long-term tenancies. The commission and fee system employed by most residential letting agents creates an incentive for them to let dwellings on sequential short-term leases, as this generates higher fees. And most Buy to Let mortgage lenders require borrowers, as part of their mortgage contract, to let the property on Assured Shorthold Tenancies of no more than 12 months’ duration. This is beginning to change, with Nationwide for example now allowing longer leases.

Rent stabilisation systems are attractive to tenants not only because they provide certain constraints on the amount of rent that can be charged, but also – and perhaps more importantly – because

they provide a degree of certainty and transparency about future rent increases that is lacking in the UK system at the moment. Even those tenants who are entirely happy with their accommodation and their landlord cannot be sure what rent they will pay in five, two, or even one year's time. A lease system that set out clearly when and how rents would rise would increase transparency and certainty.

Many landlords are anyway happy to provide good quality service and most do not actually increase rents to anything like comparable new letting levels while the tenant remains in place. The central issues here are around enforcing minimum standards across the board and rewarding good landlords and good tenants.

Any non-voluntary system would involve trade-offs. The beneficiaries would mainly be existing tenants. If the introduction of regulation were seen to limit returns to landlords - and to increase the risk of further regulatory changes - there would be a tendency to reduce the supply of private rented housing and an incentive for landlords to let to 'easier' tenants.

Our **recommendation** is therefore that Camden should positively enable longer-term tenancies with index-linked rent increases, voluntarily agreed by landlord and tenant, while at the same time improving transparency and contractual enforcement for both landlords and tenants across the sector.

The German example as well as experience in other countries suggests that there are two main indices that could be used: either some measure of general inflation (such as CPI) or an index of local rents. The scheme would not necessarily have to specify which should be used, as long as landlord and tenant agreed.

This voluntary approach could be an attractive part of the voluntary accreditation scheme for a sub-set of accredited landlords.

Its attraction to institutional funders and others looking to remain in the sector into the longer-term means that the benefits of rent certainty and longer-term tenancies are not restricted to Camden or even London.

Camden is in a good position to influence the national debate on these and other matters that seek to improve the sector for all stakeholders.

Bibliography

Andre, C (2010) "A Bird's Eye View of OECD Housing Markets", OECD Economics Department Working Papers, No. 746

ANIL (2014) Loi pour l'accès au logement et urbanisme renoué (ALUR) http://www.anil.org/fileadmin/ANIL/Habitat_Actualite/habitat_actualite_alur.pdf

Arnott, Richard (1995) "Time for revisionism on rent control?" Journal of Economic Perspectives, 9(1): 99-120.

Arnott, Richard (2003) "Tenancy rent control," Swedish Economic Policy Review, 10: 89-121.

Ball, Michael (2010) The UK Private Rented Sector as a Source of Affordable Accommodation. JRF programme paper: Housing Market Taskforce. York: Joseph Rowntree Foundation. <http://www.jrf.org.uk/sites/files/jrf/rented-accommodation-private-sector-full.pdf>

Camden Equality Taskforce (2013) Final Report http://www.camden.gov.uk/ccm/cms-service/download/asset?asset_id=3055643

Collins, T (2014) An Introduction to the New York City Rent Guidelines Board and the Rent Stabilization System http://www.nycrgb.org/html/about/intro%20PDF/full%20pdf/intro_2014.pdf

Crook, T and Kemp, P (2014) Private rental housing: Comparative perspectives Cheltenham: Edward Elgar

Department of the Environment, Heritage and Local Government [Ireland] (undated) Residential Tenancies Act 2004: A Quick Guide

Fitzsimons, Jonathan (2013) the Dutch Private Rental Sector: A Holistic Review Realdania working paper Copenhagen: Realdania http://www.bvc.dk/SiteCollectionDocuments/Analyser/The%20Dutch%20Private%20Rental%20Sector%20Review_3.pdf

Fitzsimons, Jonathan (2014) The German Private Rental Sector: A Holistic Approach Realdania working paper Copenhagen: Realdania http://www.bvc.dk/SiteCollectionDocuments/Analyser/The_German_Private_Rented_Sector_web.pdf

Furman Center for Real Estate and Urban Policy (2011) 'Rent Stabilization in New York City' http://furmancenter.org/files/publications/HVS_Rent_Stabilization_fact_sheet_FINAL.pdf

GLA (2014) Average London house prices by borough <http://data.london.gov.uk/datafiles/housing/average-house-prices-borough.xls>

Haffner, Marietta, Menno van der Veen & Hafida Bounjouh (2014) National Report for the Netherlands, Delft, Tenancy Law and Housing Policy in Multi-level Europe http://www.tenlaw.uni-bremen.de/reports/NetherlandsReport_09052014.pdf

Hayden, A, Gray, P, McAnulty, U, O'Malley, C and Jordan, B (2010) 'The private rented sectors in Northern Ireland and the Republic of Ireland: a case study in convergence analysis' International Journal of Housing Policy 10(4), 421-441

James, R III (2014) 'USA' in Crook, T and Kemp, P (2014) Private rental housing: Comparative perspectives Cheltenham: Edward Elgar

Kemp P & Kofner S (2010) Contrasting Varieties of Private Renting: England and Germany, International Journal of Housing Policy, 10:4, 379-398

Kochan, Ben and Scanlon, Kath [eds.](2011). Towards a Sustainable Private Rented Sector in the UK: the lessons from abroad, London: LSE London

London Borough of Camden (2013a) A private rented sector that works for everyone: Year one—a call for change https://consultations.wearecamden.org/housing-adult-social-care/private_rent/supporting_documents/Item%2004%20Appendix%201%20A%20private%20rented%20sector%20that%20works%20for%20everyone.pdf

London Borough of Camden (2013b) 'Impacts of welfare changes in Camden' Cabinet policy briefing 18 November 2013 unpublished.

Munich (2013) Mietspiegel für München: Informationen zur ortsüblichen Miete [Mirror rent for Munich: Information about local rent] http://www.muenchen.de/rathaus/dms/Home/Stadtverwaltung/Sozialreferat/wohnungsamt/Mietspiegel/pdf_mietspiegel/mietspiegel2013/Brosch%C3%BCre%20Mietspiegel%202013.pdf

New York City Rent Guidelines Board (2013) Explanatory Statement: Apartment Order 45 <http://www.nycrgb.org/downloads/guidelines/orders/aptES45.pdf>

Norris, M (2011) 'The Private Rented Sector in Ireland' in Scanlon, K and Kochan, B [eds] Towards a sustainable private rented sector: The lessons from other countries London: LSE London

ONS (2014) 'Index of private rental housing prices April to June 2014' <http://www.ons.gov.uk/ons/rel/hpi/index-of-private-housing-rental-prices/april-to-june-2014-results/index.html>

San Francisco Tenants Union (2014) 'Rent Control Coverage and Rent Increases' <http://www.sftu.org/rentcontrol.html>

Scanlon, K and Kochan, B (2011) Towards a sustainable private rented sector: The lessons from other countries London: LSE London

Skifter Andersen, Hans (2014) 'Denmark' chapter in Crook, T and Kemp, P (eds) Private rental housing: Comparative perspectives Cheltenham: Edward Elgar

Turner, Bengt and Malpezzi, Stephen (2003) 'A review of empirical evidence on the costs and benefits of rent control,' Swedish Economic Policy Review, 10: 11-56.

Vorms B (2013) ' Pour réussir la garantie des risques locatifs, il faut la cibler' http://www.anil.org/fileadmin/ANIL/Etudes/2013/garantie_risques_locatifs.pdf

Whitehead, C, Monk, S, Markkanen, S and Scanlon, K (2012) The Private Rented Sector in the New Century: A Comparative Approach Copenhagen: Realdania

Whitehead, C and Scanlon, K [with CCHPR] (2013) Building the Rented Sector in Scotland, Edinburgh: Homes for Scotland



Christine Whitehead

Professor of Housing Economics, London School of Economics.

Christine is an internationally respected applied economist working mainly in the fields of housing economics, finance and policy.

She has worked with a wide range of international agencies as well as regularly for the UK government and Parliament. She was Director of the Cambridge Centre for Housing and Planning research at the University of Cambridge from 1990 to 2010 as well as Professor at LSE.

Major themes in her recent research have included analysis of the relationship between planning and housing; the role of private renting in European housing systems; financing social housing in the UK and Europe; and more broadly the application of economic concepts and techniques to questions of public resource allocation with respect to housing, education, policing and urban regeneration.

She was latterly adviser to the House of Commons Work and Pensions committee on their inquiry into welfare support for housing costs and before that for the Communities and Local Government Select Committee on private renting. She was awarded the OBE for services to housing in 1991.

Christine and Kathleen's latest book (with Melissa Fernandez) *Social Housing in Europe* was published by Wiley Blackwell in July.



Kathleen Scanlon

Research Fellow, London School of Economics.

Kathleen is a social science researcher specialising in housing, urban affairs and governance, with a particular interest in market housing, including private renting.

She has written extensively about the housing systems, regulation and financing of both private and social housing in the UK and across Europe. Her publications cover a range of subjects related to housing, planning and the role of government, including the impact of archaeology on the planning process, the economics of listed buildings, and the effect of the Olympics on London.

A thank you

[Thank you to everyone who attended our roundtable event in June 2014, to discuss different rent models.](#)

They are: Tom Copley, London Assembly Member; Jamie Ratcliffe, Greater London Authority; Andy Belton, Chief Operating Officer, Notting Hill Housing; Sandra Skeete, Executive Director Housing, Peabody; Dave Princep, Chair, London Landlord Accreditation Scheme; Richard Lambert, CEO, National Landlords Association; Alex Hilton, Director, Generation Rent; Sarah Mitchell, Chair, Camden Federation of Private Tenants; Nigel Minto, Head of Housing Strategy and Policy, Hackney; John Bibby, Policy Officer, Shelter; Ian Fletcher, Director of Policy, British Property Federation; Mark Malvisi, Private Sector Property Division, Department for Communities and Local Government.

From: [REDACTED]
Sent: 06 December 2018 16:37
To: [REDACTED]
Subject: Rent control / stabilisation
Attachments: SN06760.pdf; Shelter_RentReport_May18_screen3_1.pdf

Aaaaahh I just found this in my phone outbox because of stupidstupid O2 network! So sorry.

Bullets redrafted & then signed off by JM below, along with attachments for journo's info.

[REDACTED] | Adviser to James Murray, Deputy Mayor for Housing & Residential Development
GREATERLONDONAUTHORITY, 169 Union Street, London, SE1 0LL
T: 0207 084 [REDACTED] M: 07864 966 747

Renters' rights and rent control:

- The Mayor has no statutory powers over renters' rights, tenancies, or rents themselves in the private rented sector – it is all governed by national legislation.
- Rent controls in some form existed in the UK for most of the 20th century, but were deregulated by Housing Act 1988. Whilst rent controls have been modified in many countries in recent decades, the UK stands out for having seen rent controls dismantled entirely – though, with housing a devolved matter, Scotland has recently taken steps to introduce some new regulation.
- The Mayor believes we need fundamental change – both to tenancies, to give renters far stronger rights to security of tenure, and to rents or their increases, to take action on overinflated rents that are so prevalent in London. Laws over tenancies and laws over rent levels are clearly linked – the right approach to regulating rent levels will depend on how tenancies operate in a jurisdiction.
- The Mayor's team has therefore been working on a blueprint for a radical overhaul of private sector tenancies (his '[London Model](#)'). This involves:
 - Ending Section 21 'no fault' evictions (in line, for instance, with Generation Rent campaign);
 - Replacing existing Assured Shorthold Tenancies (ASTs – the standard rental agreement for almost all renters in England) with open-ended tenancies; and
 - Ensuring landlords can regain possession where they have a legitimate reason.
- The Mayor believes greater security of tenure, as set out through the London Model, is important in and of itself. He also believes that, once we have stronger tenancy rights for renters, London needs a new strategic approach to rent stabilisation and control. In 2013, he suggested reforms could give renters the right to longer-term tenancies and predictable rents, and he now believes arguments in favour of rent stabilisation and control are becoming overwhelming.
- Once his London Model work is complete in Spring 2019, he will therefore consider what measures to campaign and lobby for to help address affordability in London's private rented sector.

Further information on achievements by the Mayor so far to help private renters:

- The Mayor has worked with businesses to ensure 100,000 Londoners now have access to interest-free tenancy deposit loans from their employers;
- He has launched a publicly-accessible Rogue Landlord and Agent Checker, which every borough in London has voluntarily signed up to and is now contributing to with any records of relevant prosecutions they have carried out. The Checker so far contains details of 1,183 offences issued to 729 landlord or agents, and members of the public have checked this public database more than 60,000 times; and

- He has played a leading role in lobbying and campaigning for a ban on tenant fees – and although Ministers have now agreed to this in principle, he wants to ensure potential loopholes in the Bill are closed so it will be effective in helping renters with costs.

An Evaluation of Rent Regulation Measures within Scotland's Private Rented Sector

**A report to Shelter Scotland
March 2018**

Douglas Robertson and Gillian Young

Contents

Executive Summary	5
1 Reforming the Private Rented Sector	7
Study aims and approach	7
Background	7
About this report	9
2 Rent Control and Rent Stabilisation	10
Brief History of the Evolution of Rent Control and Rent Stabilisation	10
Rent Control and Rent Stabilisation in Europe	11
3 Scottish Government's Policy Ambitions for Private Renting	16
Private Housing (Tenancies) (Scotland) Act 2016	16
Political Compromise and the Emergence of Rent Stabilisation	18
Rent Pressure Zones	18
Tenant's Right to Challenge a Proposed Rent Rise	20
Monitoring PRS Rents	23
Tenant's Perspectives on Rent Stabilisation	29
Procedures, Practices and Supporting Information	33
Concluding Remarks	34
4 Conclusions and Recommendations	36
References	40
Appendix 1: Official Datasets on PRS Rents in Scotland	43
Appendix 2: Individuals and Organisations, either Interviewed, or Consulted	45
Appendix 3: Individuals Contributing to the Tenant Focus Groups	46

We would both like to record our heartfelt thanks to James Battye, of Shelter Scotland who not only managed this project, but allowed us the time and space to think through and fully engaged in the various debates and discussions that emerged. Scotland's 'rent regulation' measures demanded a critical eye, and James also played a core role in delivering just that.

Douglas Robertson and Gillian Young

23 March 2018

Executive Summary

Scotland's approach to rent regulation

Throughout Europe there is widespread concern about private rents, both from tenants and governments, especially in Europe's larger cities and their 'hot spot' neighbourhoods. This report examines how the Scottish Government has responded to this issue as part of the development of the new Private Residential Tenancy which came into effect in December 2017, thus setting this analysis within a broader review of European 'rent regulation' measures.

The term 'rent regulation' is commonly applied across Europe to refer to measures which seek to limit 'in-tenancy' rent increases, whilst leaving the rents for new tenancies free to find their place within the market. In looking to balance the interests of tenants and landlords, the Scottish Government rejected rent control across the rental market, favouring instead measures to ensure that 'in-tenancy' rent increases are not excessive and do not exceed market rates.

The Act which emerged in 2015 set out a new open-ended tenancy to replace the short-assured tenancy along with its typical fixed terms of six months. This led to concerns that unscrupulous landlords might use excessive rent rises as a means to repossess their property. The Act therefore sought to protect tenants from excessive rent increases in two ways: firstly, by allowing tenants who believe their proposed rent increase is out of step with the market to seek a formal review by the Rent Officer, and secondly through area-wide inflation-linked restrictions on rent increases through Rent Pressure Zones.

High and rapidly rising rents in Aberdeen, at the time of the Bill's passage, helped to garner political support for Rent Pressure Zones. Whilst Aberdeen's rents have now fallen back in the wake of the sharp decline in oil related activity, rents in both Edinburgh and Glasgow continue to cause concerns. The Rent Pressure Zone measures emerged relatively late in the policy-making process and therefore were not considered in much detail when the Bill was debated in Parliament. This may have contributed to the challenges now faced by local authorities seeking to utilise this measure. After scoping out and discussing these challenges, the report offers some suggestions as to how these might be best overcome.

We need much better data on private rents

The single biggest barrier to the effective operation of both 'rent regulation' provisions is the lack of robust data on the stock of private rented dwellings and the rents being charged. In particular, the ability of existing tenants to challenge a rent rise is compromised by a lack of robust evidence on actual rental market rates.

Official statistics on private rents are derived from Rent Service Scotland (RSS) Rental Market Database. According to the Scottish Government (2017), 97 percent of the 2016 data records came solely from landlord adverts. As advertised rents do not necessarily reflect the actual rents charged to tenants, the database may not fully mirror actual market conditions. The current size of the annual sample is also too small to permit private rental statistics to be produced at local authority level or, in the case of Scotland's four main cities, below local authority level.

Other than the RSS Rental Market Database, officials working in Local Government, RSS, The First-Tier Tribunal and the Scottish Government have access to few, if any, other sources of evidence on the private rental market that could be used to inform any review of rent rise appeals brought by individual tenants, or to help prepare Rent Pressure Zone applications.

The process that Rent Officers and the First-Tier Tribunal currently employ to make adjudication decisions about market rent levels, in appeal cases, is opaque. Decisions appear to rely on a mix of professional judgement and intuition, informed by selections from RSS data and/or evidence drawn from newspapers and on-line advertising. This mode of practice, which is long-standing and legally sanctioned, constitutes the framework for deciding what is a market rent in future adjudication decisions. Access to better data would assist greatly in improving procedural transparency.

The lack of robust evidence could only be overcome if there was the political will to make sufficient resources available to produce a comprehensive and regularly updated private rental database that could inform national and local government policy processes, as well as the work of Rent Officers and the Tribunal. Better data would also enhance the ability of private tenants to make an informed decision about whether they should proceed with a rent increase appeal. In addition, it would improve the quality of 'official' statistics on private rents and ensure they are 'fit for purpose'.

Ideally, a modern private rental database would capture data on rents set at the start of each tenancy and any subsequent uplifts. One step towards establishing such a database would be to secure secondary legislation that required all three Rent Deposit Schemes to register the rent paid for each property, along with defined property attributes (such as dwelling type, size, quality and location) on a common database managed by Scottish Government statisticians.

European experience of rent regulation

Private rental databases are core to the day-to-day operation of 'rent regulation' arrangements in European countries. There are competing interpretations as to why Scotland and the other UK nations have not developed a similar policy tool over the last 30 years. Whatever the reasons, the rapid growth of private renting in the last 20 years, the renewed policy interest in the sector and the new 'rent regulation' measures act to reinforce the requirement for much better information.

The largely free market approach to private rents in Scotland is in contrast to many European countries where 'rent regulation' has been employed to limit 'in tenancy' rent increases to a specified percentage. A few countries have also brought in measures to control the rent set for new tenancies in urban 'hot spots'. The effectiveness of these rent control measures is, at best, mixed. In areas where there is considerable excess demand for private tenancies, there is a tendency for landlords to circumvent or ignore these measures, especially if tenants are unwilling to exercise their rights in order to secure a tenancy. Lack of effective policing also encourages such an outcome. Lower income renters are thus the major losers within these localities as they cannot pay to stay.

Outside of highly pressured urban housing markets, 'rent regulation' appears to function reasonably well at keeping rent increases within defined limits. This may be partly because all European countries have concerns about the level of spend on housing allowances, and unlike the UK, have kept in place policy frameworks which have supported past interventions in the rental market. However, a more critical factor is having an adequate housing supply, across the market at the local level, which then reduces the incentives to circumvent 'rent regulation'. This needs to be acknowledged in policy discussions seeking to find a solution to address high private rents, including the possibility of any further 'rent regulation' or 'rent control'. 'Rent restrictions' primarily offer a useful stop gap, a breathing space, but not a long-term solution to rapidly rising private rents.

Rent regulation in Scotland: what next?

Whilst Scotland now has a private tenancy arrangement that is in line with the norm in many European countries, it has yet to fully embrace European style 'rent regulation'. The evolution of the two measures included in the 2016 Act suggests that the Scottish Government's approach to 'rent regulation' remains somewhat tentative. This may help to explain why current arrangements to support these two measures are inadequate for the task. At this early stage, it is already clear that some adjustments will be required if these measures are to prove workable and effective. These adjustments must tackle the challenges around rental data head-on, and recognise the importance of responding to pressurised housing markets through building an adequate supply of affordable housing.

Overall, the information offered in this report seeks to encourage wider debate about private rent levels and the merits, challenges and implications of the new rent regulation measures that are now in place.

1 Reforming the Private Rented Sector

Study aims and approach

This study was commissioned by Shelter Scotland to investigate the evolution of the two 'rent regulation' measures set out in the Private Housing (Tenancies) (Scotland) Act, 2016 which came into effect in December 2017. In particular, the study seeks to:

- Tease out the factors that shaped the evolution of the two 'rent regulation' measures and their incorporation into the 2016 Act
- Build up an understanding of current thinking about what the 'rent regulation' measures are intended to achieve and what successful policy implementation might look like
- Examine how the new 'rent regulation' safeguards are planned to work in practice, including the role of the Rent Service Scotland and the First-Tier Tribunal (Housing and Property Chamber), in facilitating the right of individual tenants to challenge what they consider to be an unfair rent increase
- Review the development of 'rent control' and 'rent regulation' elsewhere in Europe as well as the arrangements and information in place to support their operation, and consider the Scottish developments within that light
- Offer comment on the extent to which the 'rent regulation' mechanisms are likely to prove workable, both in terms of being feasible to implement and effective in practice

The study involved undertaking a review of research literature on recent developments in private renting and more specifically policy developments in respect of 'rent control' and 'rent regulation', as well as considering recent legislation and associated procedures and guidance.

This work also sets the Scottish experience within the wider European context, which has seen the re-emergence of 'rent regulation' and 'rent control' policies in most jurisdictions. The review of private rent policy covering six European nations, namely, France, Germany, Ireland, the Netherlands, Sweden and Denmark. This element was complemented through participation at the European Network of Housing Researchers (ENHR) Private Rented Markets Workshop, held in Lyon between the 14th and 16th of June 2017 which was considering the theme of rent controls. The report draws on a number of the papers presented at this event, which offered insight into the current PRS policies being pursued in these countries. Further, a number of the workshop participants were later contacted to provide a means of validating the information offered for their particular country in the case studies.

To better understand the specific Scottish legislative changes a series of interviews were undertaken. These included interviews with civil servants, politicians and advisory group members actively involved in the preceding policy discussions which helped frame these reforms. It also included discussions with those charged with implementing the legislation and preparing guidance. A full list of interviewees is provided in [Appendix 2](#).

In addition, current understandings and views of individual tenants in relation to their new right to challenge rent rises were explored, as well as their views on the purpose and value of RPZs. This involved:

- An on-line Shelter survey that tested basic tenants' knowledge of the 'rent regulation' measures, following on from Shelter Scotland's general awareness raising campaign about the 2016 Act
- Focus group discussions with a Shelter Scotland PRS tenants' advisory group. In particular, these discussions centred on how they envisaged the 'rent regulation' measures would work in practice, from their perspective

A list of the participants at the focus group sessions is provided in Appendix 3. We would like to take the opportunity to thank everyone who contributed to the various interviews, for without their assistance this report would not have been possible.

Background

Throughout most of the post-war period the private rented sector (PRS) in Scotland steadily declined. By the 1980s it had almost become something of a niche market, with market orientated private rents mainly catering for students and young professionals, while marginalised groups made do with poor quality low-demand accommodation.

In contrast, over the last three decades the private rental market first stabilised and then began to grow at an increasingly rapid pace, especially in the period since the 2008 global financial crash. Between 1988 and 2016 the share of households renting from a private landlord in Scotland increased by a factor of just over three, from 5 to 16 percent. This, in turn, impacted on the tenant profile and, in particular, the marked growth of younger households renting from private landlords.

This upturn has been driven by a complex mix of factors that boosted both supply and demand. On the supply side the Housing (Scotland) Act 1988, which deregulated private rents, and the short-lived Business Expansion Scheme initiative, encouraged some new investment into the sector. However, the single most significant development boosting supply was the advent of the Buy-to-Let mortgage, which eased access to capital and allowed aspiring landlords to borrow against existing property assets and/or accrued pension pots. This product has proved especially popular to individuals seeking to invest in property, encouraged by the perceived long-term poor performance of alternative pension investment products.

On the demand side, the increasing unaffordability of homeownership, the tightening of access to social rented sector homes, increasing labour market flexibility, which made incomes more uncertain and the significant growth in student debt, all encouraged households to turn to private renting and defer house purchase. Since the 2008 downturn, tougher mortgage lending criteria, and declining incomes of low-to-middle earning households have helped further fuel such demand.

The rapid growth of private renting and its re-emergence into the housing mainstream reignited policy interest in the sector.¹ Over the last six years, after a thirty-year gap, there have been three Acts of Parliament in rapid succession, each of which has had a direct bearing on the PRS. The first two, the Private Rented Housing (Scotland) Act 2011 and Housing (Scotland) Act 2014, sought to put in place a more robust regulatory regime, while also encouraging improvements in the management practices of those renting out property (whether landlords or their agents). The latest legislation, the Private Housing (Tenancies) (Scotland) Act 2016 broke new ground by introducing an entirely new tenancy regime.

The Private Residential Tenancy came into being in December 2017 and will replace both the Assured and Short Assured tenancy arrangements, the tenancy regime introduced in 1988 which brought rent regulation to an end. The new tenancy arrangements have been accompanied by what has been carefully termed ‘rent regulation’, the prime focus of this report.

The Scottish Government’s policy ambition for private renting that underpinned the 2016 Act has been to achieve a ‘balanced reform’ that seeks to enhance tenant rights and security while, at the same time, provide appropriate safeguards for landlords, lenders and investors. This aspiration is to the fore in the Scottish Government’s PRS strategy:

“A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment” (Scottish Government, 2013, 2).

Improving the position of private tenants was an important aspect of the first two Acts, insofar as they sought to improve property management and maintenance standards as well as improve on what had been a basic landlord registration system. The 2016 Act went one stage further by introducing an open-ended, secure tenancy regime. Its key measures include:

- Improved tenant security, in respect of the tenancy period, with the abolition of both Assured and Short Assured Tenancies, the latter of which was almost universally employed given its typical six-months duration and ‘no fault’ ground for landlords gaining repossession
- Introduction of statutory repossession grounds, allowing landlords only to regain possession, via prescribed ‘reasonable circumstances’, as opposed to the previous ‘no fault’ arrangement
- Introduction of a more streamlined modern tenancy system, with no confusing pre-tenancy notices, supported by an easy-to-understand ‘clear English’ model tenancy agreement detailing all statutory rights
- A right to challenge a subsequent rent rise by requesting an independent assessment by Rent Officers
- The potential for local authorities to implement blanket restrictions on future rent increases within a defined area experiencing excessive rent increases

¹ Following rent deregulation in 1988, the sector was largely ignored and prior to that policy interventions were mainly concerned with the poor quality of much of the PRS stock: clearance provisions from the 1880s; council house construction from 1919; slum clearance housing in the 1930s; high rise housing and associated clearance in the 1960s, and then housing improvement powers from the late 1960s.

The Scottish Government believe this major reform offers private tenants greater predictability, both in terms of tenure length and security. By contrast, many lobby groups and other commentators believed that the previous Short Assured Tenancy regime, with its typical six-month duration, had acted against tenants exercising their statutory rights, because by the time they had decided to take action, their tenancy would almost be concluded. Further, given its short duration, there was also a concern that if such rights were exercised a new tenancy might not be forthcoming.

Another issue that arose from introducing an open-ended tenancy was that of rent predictability. This has two elements, the first of which affects landlords' ability to raise rents, while the other allows tenants to challenge a subsequent rent rise. The previous Short Assured Tenancy, given its six-month duration, allowed for rent increases when issuing a new tenancy, should landlords so choose. Now with an open-ended tenancy, rent rises and their timeframe needed to be set down within legislation. Consequently, under the 2016 Act, the landlord can only increase the rent annually, and any rent rise needs to be notified to the tenants, in writing, three-months prior to the date of the proposed increase.

The 1988 Act deregulated all private rents, by allowing for a 'free negotiation' of the rent between landlord and tenant. The 2016 Act does not alter this free market principle, in setting the original asking price. On saying that, it does include two rent safeguarding, or regulation measures, against what are considered to be subsequent 'excessive rent rises'.

As already noted, the first of these was introduced because there was a perception that landlords, rather than use the new prescribed statutory grounds to end a tenancy, might simply resort to a using substantial rent rise to secure that outcome. As a means to guard against this:

- Tenants with the new tenancy have the right to challenge rent uplifts and to seek a housing market adjudication by a Rent Officer
- Should the tenant be unhappy with the outcome of the adjudication, there is a further right of appeal to the First-Tier Tribunal (Housing and Property Chamber), newly constituted to consider all disputes within the PRS, where they will make a final decision

The 2016 Act also allows local authorities to make a case to Scottish Ministers, to approve at the local area level 'rent regulation' measures for specified localities where the rents for existing tenants are shown to be rising excessively fast. If this declaration, known as a Rent Pressure Zone (RPZ), is approved by Ministers and then, in turn, the Scottish Parliament, annual rent rises for existing tenants, but not the initial rental asking price, would be restricted to a specified percentage for a maximum period of five years.

About this report

Section 2 looks at the history of rent control in Scotland, detailing the various factors which brought about these two new measures. It also reviews how similar arrangements currently operate in six European jurisdictions, as a means to set the changed Scottish situation within a broader context. This comparative element outlines the nature of the private rental market in each country, the rights of tenants and the nature of the actual 'rent regulation' measures being employed. The data monitoring and adjudication procedures that support such interventions are also discussed.

Section 3 then considers, in detail, the procedures and information being called upon to support the implementation of these two measures. This includes a review of the structure and quality of available data on the private rented sector and private rents. The views and current understandings of tenants on these 'rent regulation' measures are then also brought to bear, through exploring how they as individuals might go about exercising their new right, should they consider a subsequent rent rise to be too high. The recent guidance issued to local authorities, detailing how to make a submission to Ministers to designate a RPZ, is also examined.

Although the actual details of each national tenancy arrangement differ, reflecting distinct cultural, socio-political and legal traditions nonetheless, there is a high degree of similarity, both in terms of the policy ambitions and the actual intervention measures being practiced. By carefully considering how these matters have been addressed within other jurisdictions, and then comparing them with the ambitions and procedures set down for the Scottish arrangements, a number of recommendations for further reform are offered by way of conclusion in **Section 4**.

2 Rent Control and Rent Stabilisation

Brief History of the Evolution of Rent Control and Rent Regulation

Rent controls were introduced early on in the twentieth century and initially involved putting in place a maximum price ceiling. Rent freezes, or rent capping become standard practice right across Europe, arising out of public expenditure constraints imposed by World War I. In Britain's case, rent restrictions were introduced in 1915 as a war time measure, to help control wages and thus the cost of munitions manufacture (Melling, 1983). In this instance, government fixed both rents and mortgages at their pre-war 1914 level. Such rent freezes persisted throughout the inter-war period, because of continued public expenditure constraint, the result of the vast public debt incurred through pursuing hostilities and the consequential major economic depression of the 1930s. With World War II this hard form of rent control, termed 'first-generation' rent control, persisted and lingered on long afterwards. Such controls continued in Britain right into the late 1980s.

While rent control measures were common place, throughout the first half of the twentieth century, they were progressively modified and then in many jurisdictions done away with altogether, during the later years of that century (Arnott, 1995; 2003; Turner and Malpezzi, 2003). Following the 1973 oil crisis, and the emergent rampant inflation, a 'second generation' of rent control programs emerged, which typically allowed rents to increase annually, by a certain percentage, and also generally allowed supplementary additional discretionary rises in response to some combination of landlord cost increases, in response to cash flow and/or profitability concerns (Arnott, 1995; 2013; Turner and Malpezzi, 2003). Some national programs also excluded housing constructed after the application of rent controls, as well as properties defined as being luxury housing, while others sought automatic de-control when rents reached a specified level. In other places, there was also de-control when the local vacancy rate rose above a certain threshold, or when the tenants of rent controlled property vacated. These 'second generation' rent controls, were characterised as representing a gradual relaxation, or softening of the previous long-standing hard controls.

Latterly, in what has been termed the 'post-stagflation' era, in which high interest rates and low economic growth slowly gave way to very low inflation and high growth, rent control became perceived as a less pressing housing policy issue. Some jurisdictions retained their rent control programs, but due to reduced inflation rates, rents under the guideline rent increase provisions slowly drifted upwards towards market levels. In other jurisdictions, with gradual de-control, a free market position emerged over time.

Many jurisdictions dismantled rent controls entirely, most notably the UK in 1988, while others such as those in Scandinavia changed the form of controls that previously applied. Arnott (2003) argued that this evolution was so varied it largely evaded public notice, perhaps because private renting was generally in decline, given the subsidisation of other tenures, the advent of more accessible mortgage finance and the perceived limited profitability of private renting. This led to a gradual convergence to yet another form of rent regulation, whereby rent increases are controlled, but solely within an individual tenancy, as there is no restriction on the rents being asked. These 'third-generation' rent controls, or tenancy rent control, are generally considered a form of 'rent regulation' (Sandbu, 2015). As is clear from the introduction, the Scottish Government's PRS tenancy reforms have, in effect, brought into being a variant of 'third generation rent' control, after 30-years of a free market being in operation.

As previously noted, the explanation for this change relates to the housing market repercussions falling from the 2008 global financial crisis. Predicated on poor mortgage lending practices on low value American housing, which spawned a 'property bubble' funded through mortgage-backed securities and collateralised debt obligations. The resulting crash, predicated on the failure of these lending vehicles, impacted negatively on the international mortgage lending market resulting in a marked shift back to private renting and away from home ownership in certain countries. This has, in part, been facilitated by the imposition of stricter lending requirements for first-time buyers, and the parallel utilisation of new financial products, the Buy-to-Let mortgage, which spawned an entirely new investment stream into this segment of the housing market. It was the consequences of this particular financial re-adjustment that has encouraged, right across Europe, the revisiting of 'rent regulation' measures. Thus, again the recent Scottish tenancy reforms merely reflect a broader pattern of international housing policy reform targeted at a now revitalised and in some cases burgeoning PRS.

The ubiquitous use of the term rent control acts to obscure understanding about these particular housing policy changes, because it is such a loaded and highly politicised term. For example, press cuttings about the Scottish Government's ambitions in proposing a new tenancy often implied a return of rent control and thus the setting of rent caps. Yet it is clear that what the Scottish Government sought, in terms of reform, was not rent control in the popular and politicised understanding of that term, but rather a degree of rent safeguarding, via 'rent regulation'.

Rent Control and Rent Regulation in Europe

Rent regulation and rent control measures have recently been gaining a wider currency across Europe. Given this, there was some value in undertaking a brief comparative examination of the different PRS rental systems which currently operate in six different European countries. This comparative review and critique also sought to contextualise the recent PRS policy changes in Scotland, through better understanding how rent monitoring, rent regulation and control measures have developed and altered in recent years. It was also hoped this would offer some insights into the practicalities and complexities involved in creating and managing such systems, revealing how similar issues have already been addressed within each of these different jurisdictions.

Approach adopted

All European jurisdictions have, at one time or another, intervened to control the rents charged by private landlords, through pursuing a range of different rent regulation policies that sought to assert differing degrees of control over the actual rents charged. While 'first generation' rent control measures were common place, throughout the first half of the twentieth century, they were progressively done away with in many jurisdictions during the later years of that century, as already noted. Through time, what replaced them was either a move to an outright free market in private rents, or some variation of the 'second generation' rent controls, which allowed rents to rise by prescribed amounts, while also facilitated discretionary rises related to particular landlord cost increases. More recently there was a view that rent regulation was being allowed to 'die on the vine', as many countries allowed the re-emergence of a free market, while others altered their regulation mechanisms to exercise a degree of control over the rents charged within individual tenancies, so-called 'third generation' rent control, rather than resorting to previous blanket tenure wide rent regulation. This is often characterised in the literature as a move from 'hard' to 'soft' rent regulation. However, following the financial impact of the 2008 global financial crisis, with the marked rise in private renting and move away from home ownership, resulting in an unexpected readjustment of many national housing systems, most notable of which has been new pressures for private rented housing, there has been a marked switch back to some form of overt rent regulation.

Given this study's specific focus, particular attention was paid to how these changes, whether termed rent regulation, rent regulation or rent control, have played out in different countries: namely, France, Germany, Ireland, The Netherlands, Sweden and Denmark. As is evident from the map below, all but one of the selected countries operate 'rent regulation' arrangements that seek to control both the rents being asked for by landlords and any subsequent rise in that tenancy, whereas Germany only seeks to control rent rises within the tenancy, not the initial asking price. However, as will quickly become evident each does this in quite different ways, and while there are national arrangements these can be added to, or also superseded by local arrangements within particular cities, or parts of cities, via measures that seek to address rental 'hot spots', making the notion of national patterns something of a challenge.

Consideration of the Irish system, had much to commend it given the similarities with the recent Scottish experience. Ireland has rapidly moved away from a free market, after they previously enacted a broad suite of PRS reforms. By way of contrast, Sweden still operates very traditional rent control measures, that apply equally to both public and private rented housing. Although latterly undergoing perceptible changes, the basis of this system has been in place for over 60 years. Uniquely, the Swedish system involves direct tenant participation in the actual process of rent setting. Germany, offers another perspective, in that rent control has returned to many large metropolitan areas, following concerns about rapidly rising rents. Here these rent changes were evident at the municipal scale, given there is a long tradition of collecting and regularly publishing local rent data. Similarly, France now has two major rent control areas, one covering the whole of the Paris metropolitan area and another embracing the city of Lille. Here what are termed rent observatories are used to monitor rental changes, which then informs local policy and practice. Denmark and the Netherlands offer two examples of more dramatic change from previously very tightly regulated arrangements, that set rents on the basis of property quality and location via a property amenity points system. Both are now coming under pressure in relation to deregulation of property at the executive end of the market, a pattern evident throughout Europe.

EUROPEAN PRIVATE RENTAL SYSTEM 2017					
Country	PRS as % of stock/ increasing, stable or declining	Tenancy type	Rent regulation arrangements	Rental data	Welfare type
France	20 / stable	Fixed three-year - secure	In tenancy controls + city specific rent restrictions	Local rent observatory	Corporatist welfare
Germany	40 / stable	Open –ended secure	In tenancy controls + free market at top end + city specific rent restrictions	Regular local authority listing	Corporatist welfare
Ireland	15 / increasing	Fixed four-year, moving to open- ended secure	In tenancy controls + city specific rent restrictions	Residential Tenancies Board	Liberal
Netherlands	8 / declining	Open-ended secure	Utility value points + free market at top end	Local authority	Corporatist welfare
Sweden	29 / declining	Open-ended secure	Utility value points + free market at top end Direct tenant union involvement	Local authority, plus tenants' union SABO	Social Democratic
Denmark	14 / declining	Open-ended secure	Value-based & cost-based + free market top end	Rent Tribunal	Social Democratic

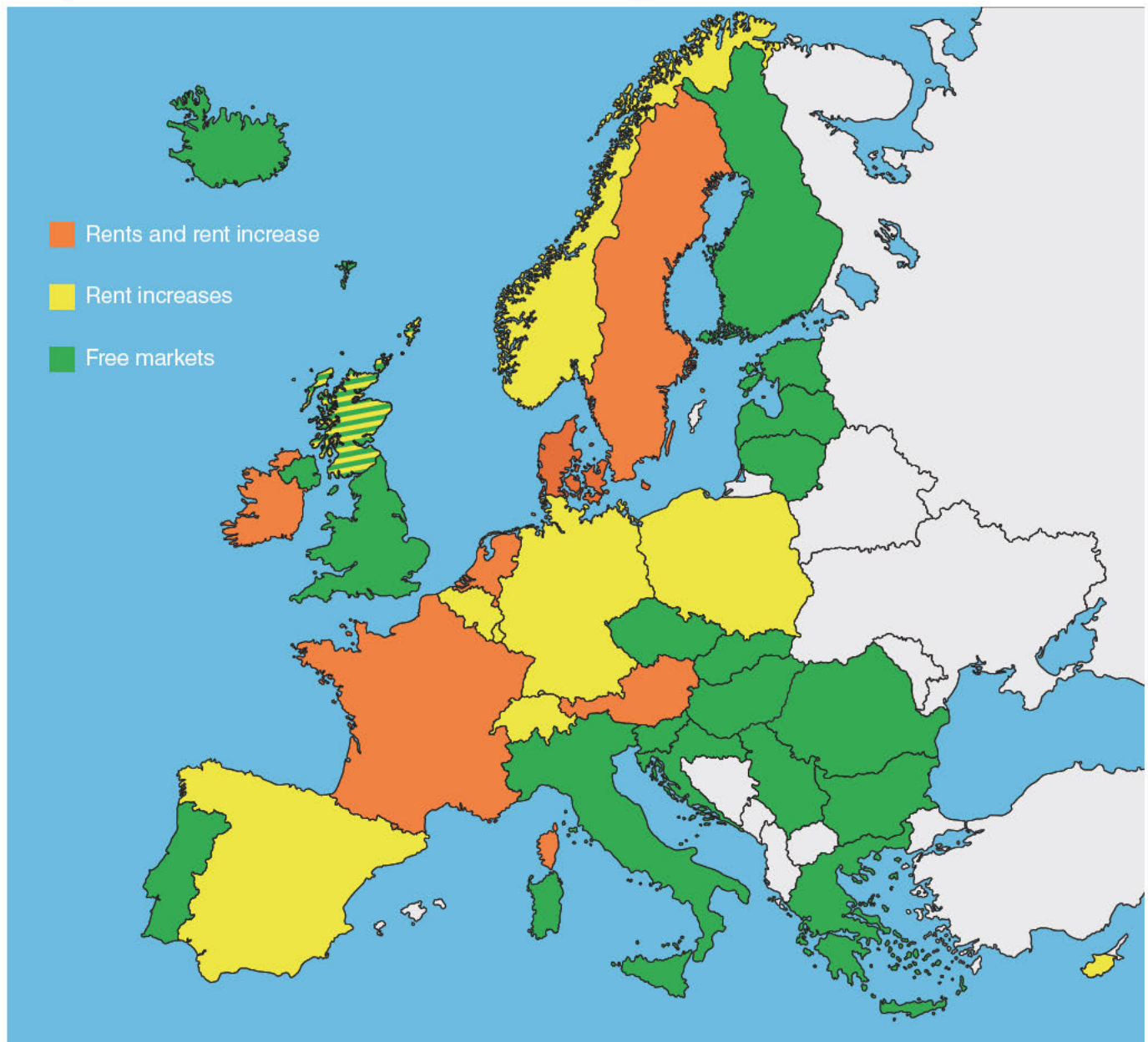
Core issues to emerge

The evidence presented from these six countries reveals that the operation of 'rent regulation' varies depending on the specifics of the national housing context, local housing market conditions, the continuing influence of past rent regulation regimes, the nature of enforcement practices, fiscal policy in respect of landlord businesses and overall land planning and property funding arrangements. Although there is little in all of this material to suggest these varied 'rent regulation' policies act to hold back the provision of new housing supply, given the arrangements being discussed are almost exclusively variants of 'rent regulation' measures and not the housing *bête noire* of rent control. Interestingly, in relation to additional measures focused on particular urban 'hot spots', there is also little evidence that such measures act to ensure such popular rented accommodation becomes significantly more affordable.

Each of the six housing national housing systems were undergoing a period of major transition. Further, each of them had witnessed a marked increase in demand for private rented accommodation, albeit that for many this had not increased overall supply, as a declining trend in private renting persists in the Netherlands, Denmark and to a lesser extent, in both Sweden and Germany. As a consequence, in some places, this has produced significant rent increases well above current inflation rates, raising serious affordability issues. It would also appear, although the specifics of intervention differ, depending on past housing practices and welfare policies, this is a trend which is affected in different ways by the housing market repercussions falling from the 2008 global financial crisis. In Ireland, with the marked collapse in the housing market, renting came under intense pressure, whereas in the Netherlands, Denmark and to lesser extent Germany, the decline in renting profitability has encouraged a switch to property selling on the part of landlords, many of whom are large businesses, and especially of the higher quality popular urban stock.

Demand for renting property has increased in certain countries as access to home ownership closed down, most spectacularly in Ireland. Whereas in other places, notably Germany, Denmark and Sweden, it is the growing market for home ownership, in countries traditionally dominated by different forms of rented accommodation, which has put pressure on the rented market because this has taken rental stock away, especially in the places experiencing increased rental demand. Although the triggers differ, all record a resulting marked jump in private rents and it is this which has produced the political response resulting in the re-emergence of some form of 'rent regulation'.

European 'Rent Control' and 'Rent Stabilisation' Arrangements 2017



Source: Adapted from Kettunen & Ruonavaara (2017)

This new phase of regulation tends to focus on subsequent annual increases, rather than the capping of rents. Typically, a benchmark rent rise figure is agreed, usually linked to inflation, which is then applied to all tenancies. In addition, within what are shown to be rental 'hot spots', through analysis of rent bid and charging data, then further additional locality specific restrictions also come into play. In some places such as Paris, Lille, Dublin, Cork, Munich and Berlin very large numbers of tenancies are affected, given such places traditionally have higher levels of renting than the national averages. The two Irish Rent Restriction Zones, Greater Dublin and Greater Cork, together embrace some 65 percent of Ireland's entire rental market. These zones were introduced, because of continued serious concerns about rapidly rising rents, despite a two-year national rent freeze being enacted in 2015. Ireland had become seriously concerned about the implications private rent rises were having on government's finances, given the high proportion of tenants in receipt of housing allowances.

To some degree, both these approaches, or elements, mirror what is about to be rolled out in Scotland. Any RPZ, if declared, would restrict subsequent rent rises for those holding that tenancy, but not what was being asked in rent for new tenancies. Outside of that specific area focus, the Scottish provisions merely try and keep any general rent rises down to market levels, given the prime concern here was to stop significant rent rises being used as a proxy for evictions.

Beyond the 'hot spots', most countries operate 'rent regulation' in many different ways, from Ireland's two-year blanket rent freeze, to sticking with tradition rental systems, such as those in Sweden and the Netherlands that employ house quality based points systems to calculate a rent which is below market rates. Both seek to exercise a downward pressure on rents. The Scottish variant on this is conceived as an individual right of appeal, should a tenant consider a proposed rent rise to be too high. Neither of Scotland's 'rent regulation' measures, from this international comparison, could be construed as constituting 'hard' rent control. Arguably, both would find themselves located at the more liberal free market end of a 'rent regulation' spectrum.

From the evidence offered up by the European comparisons, the sector wide 'rent regulation' measures can be effective, in terms of reducing tenants' rents and in the process curbing overall government spending on housing allowances. However, it is not clear how such measures act to improve matters over the long-term, especially in the absence of concerted efforts to boost additional housing supply. Overt supply-side solutions, as were used in the immediate post-war period, are no longer evident in any of the six countries examined. Thus, 'rent restrictions' primarily offer a useful stop gap, a breathing space, but not a long-term solution to rapidly rising private rents.

Another observation falling from this cross-national comparison, is that while there has been strong political pressure to return to stronger rent control measures in the face of rising demand and a limiting or limited supply, in specific urban 'hot spots', such powers have not been able to limit further rent rises. This was most evident in Ireland, Germany and also France, all of which had previously been free market jurisdictions of sorts. The reason is that landlords within these high-pressure areas locations, now subject to such restrictions, have been able to largely ignore them because tenants, keen to secure, or retain a tenancy, opt not to enforce their newly gained rights.

The overwhelming impression from considering the European evidence is that it is households on low and middle incomes that are being squeezed out of good quality rented housing within capital cities, or regional centres, and they are being replaced by those willing and able to pay the high rents. This is considered to be a new wave of gentrification, largely driven by rent changes and not, as in the past, by tenure changes. That said, in some instances tenure change is also occurring in parallel, adding further to these local housing market pressures. It is in these particular locations where private rents rise well ahead of wages, and new supply is markedly below that being demanded. This issue is less evident outside of these major capital cities, major conurbations or regional centres, although each country has its own specific localised 'hot spots'.

It is also very evident that past housing policy practices, given the power of 'path dependency', have sustained distinct policy trajectories in very particular ways. For example, the unitary housing market traditions of social democracy, evident in Sweden and Denmark, which is also mirrored in the welfare corporatism of Germany and France, has allowed for the continuation of systems that have long challenged the free reign of the market. Regulation, in one form or another, has stayed in place and still enjoys a high degree of popular acceptance. That said, it is in these countries that the pressures for change, and especially deregulation at the top end of the rental market, appear to be creating particularly acute problems. Not least through undermining of long held assumptions of what constitutes a fair rent and relatedly, security of tenure. The charging of the full cost of improvements, directly onto tenant rents in Germany, has become a displacement tool, which has forced many long-standing tenants out of secure tenancies in popular urban neighbourhoods. Such property is either rented out at a higher price, or with vacant possession sold on into owner occupation.

Scotland's inheritance is that of the free market, as was Ireland's. Perhaps because the repercussions of the crash following the 2008 global financial crisis represented such a challenge to Ireland's housing system, the move to a far more tightly regulated system has been very rapid. Scotland may have mirrored many of Ireland's tenancy reforms, but given less overt rent rise pressures, produced less of a commitment to tightening rent regulations. Scotland, as a political entity, also does not currently carry the housing allowance costs, as these are still a 'reserved matter' within the current devolution arrangements.

Finally, what does stand out in all of this is that each of these countries possess far better data on private rents, than currently exists in Scotland, and that possessing such data is critical to the implementation and operation of their particular 'rent regulation' legislation. All the countries had in place rental data sources that recorded not only asking prices being advertised, but also, critically, the rents being charged within a tenancy. Not only does this data provide far more detailed information on the actual rent being paid by tenants, but because of its policy heritage, in that it draws from past rent control traditions, it is also far more detailed in respect of property type, age, condition, amenities, useful square meterage and location. Where utility value pointing systems existed, to help set an appropriate rent, such details have always been collected. As the coverage of such data has also always been very high, given the adoption of standard agreed data parameters and collection methods, the generated information can be easily broken down to small spatial entities and tied into other local spatial planning data. There is also, generally, better data linkage in relation to the rent, property quality, the tenant, and the landlord and/or agent.

Such detail and granularity are in stark contrast to the rental market data collected managed by Rent Service Scotland (RSS), largely for Department of Works and Pensions (DWP) Local Housing Allowance (LHA) purposes. When compared with the rest of Europe, Scotland, and the rest of the UK, offers up PRS data which is both limited in its quality, information range and spatial coverage. This situation reflects a long-standing general lack of interest in this housing area, given its previous insignificance and the operation of a free market system. It is only in the last 10 years that landlord pricing information has been sought out, and that was to better control housing allowance welfare spending within the sector. Given private renting's markedly changed situation, and the international evidence offer here, such a situation is no longer sustainable.

3 Scottish Government's Policy Ambitions for Private Renting

In the Programme for Government 2015-16, within the housing section, a Private Tenancies Bill was announced, which was described as follows:

"The Private Tenancies Bill will increase security of tenure for tenants while providing appropriate safeguards for landlords, lenders and investors. This is part of the Scottish Government's broader approach to reforming the private rented sector to make it a more professionally managed and better regulated sector, that provides good quality homes, and is attractive to those who want to live, work and invest in it.

Introduce a Scottish Private Rented Tenancy to replace the current Assured system.

Remove the 'no-fault' ground for repossession, meaning a landlord can no longer ask a tenant to leave simply because the fixed-term has ended.

Provide comprehensive and robust grounds for repossession that will allow landlords to regain possession in specified circumstances.

Provide more predictable rents and protection for tenants against excessive rent increases, including the ability to introduce local rent controls for rent pressure areas.

Create a more streamlined, clearer to understand tenancy system that is fit for the modern private rented sector."

(Scottish Government, 2015, 6)

Private Housing (Tenancies) (Scotland) Act 2016

Having a new tenancy regime was the central plank of the entire legislative package. As the then Minister for Housing and Communities, Margaret Burgess reflected:

"There was a huge amount of evidence that tenants were being denied their rights. Tenants complained that they were just being asked to leave, despite having adhered to the lease. So, if tenants followed the tenancy, and did everything correctly, then only specific grounds to end the tenancy should be used"

In May 2014, the Scottish Government's Private Sector Tenancies Review Group had recommended the creation of an entirely new tenancy regime (SGPTRG, 2014a). The Private Housing (Tenancies) (Scotland) Act 2016, represented the Government's considered response. The core measures set out within this new Act included:

- Enhanced security for tenants, with the loss of the so-called 'no fault' ground, which had allowed landlords to seek possession of a property on the basis that the agreed period of let, typically six months, had come to an end
- Introduction of a model tenancy agreement with certain mandatory clauses
- Simplification of notice requirements with the replacement of Notice to Quit, Section 33 Notice and Section 19 Notice (AT6) by a new Notice to Leave with two notice periods for landlords and one for tenants and no need for the previous pre-tenancy notices
- No defined term of a lease and no minimum period of let
- New grounds for recovery of possession, some mandatory and others discretionary
- Rent increases limited to once every 12 months, and with a right for tenants to refer what they consider an excessive increase to a Rent Officer
- The opportunity for local authorities to implement restrictions on future rent increases in locations where there are excessive rent increases by the creation of Rent Pressure Zones

Opting to reform the tenancy regime constitutes a critical housing reform, given the central role tenancy plays in determining the overall functioning of this particular housing market. This legislative reform, as it worked through the Parliamentary process, also challenged the free market position, albeit that this was not the Government's intention.

The Scottish Government had always been keen to stress these reforms were about enhancing tenancy rights and as part of that ambition, introducing greater predictability. However, political pressures exercised during the passage of the Bill ensured 'rent regulation' also became part of the mix.

The new tenancy fundamentally altered the nature of the relationship between landlords and tenants, moving it decisively from a contractual to a statutory legal basis. The new Private Residential Tenancy will, over a short period of time, replace both Assured and Short Assured tenancies. Margaret Burgess considered the 2016 Act: *"necessary to rebalance the relationship between landlords and tenants"*.

As the two final bullet points above illustrate the Act also introduced a degree of rent predictability, as well as a degree of protection for tenants against excessive future rent increases. In her foreword for the *Programme for Government 2015-16*, the First Minister, Nicola Sturgeon, made a specific comment on rents, in stating that: *"The Private Tenancies Bill provides tenants with protection against excessive rent rises, while also giving clear rights and safeguards to landlords."* (Scottish Government, 2015, 1). As already noted in the introduction, given the significance of the tenancy changes, especially in relation to tenancy period and the grounds for repossession, a degree of rent protection was considered as a necessary backstop.

With the move from a short six-month tenancy period to an open-ended arrangement, there was a need to introduce a degree of rent predictability, as much for landlords as for tenants. With the advent of the open-ended tenancy regime there was a concern, both on the part of housing rights campaigners and also the government, that landlords might be tempted to use a significant rent rise as a quick and simple means of ending a tenancy. Under the previous short-assured arrangement there was an effective ending of the contract tenancy, at the end of its six-month duration, via the so-called 'no fault' ground for repossession. As Liz Ely, of Living Rent, noted: *"we had campaigned for rent restrictions, given that with the 'no fault' ground gone you could get 'no fault' de facto by rent increases"*. Rent increases, under the previous Short Assured regime were typically tied to the tenancy change, but with an open-ended tenancy arrangement now in place arrangements to allow rent increases needed to be built in. Under the Private Residential Tenancy rent rises are only permitted annually, and to be legal tenants require to be notified in writing three-months in advance. This gives both tenant and landlord a degree of rent predictability, in that rent rises will occur no more than once per year, as opposed to being random. Further, tenants can challenge what they deem to be an unreasonable rent increase, by referring the rent rise demand to a Rent Officer, who then determines the going market rent. This adjudication is also subject to an appeal to the new First Tier Tribunal (Housing and Property Chamber). It is this mechanism that is designed to challenge vexatious rent rises, although the use of the market as the means to determine an excessive rent rises, as will be argued later, may prove problematic in particular cases.

The second 'rent regulation' measure introduced into the legislation allows local authorities to make a case to have 'all or part of the authority's area' declared a Rent Pressure Zone, if they could show that a particular location had been subject to excessive recent rent increases. In order for local authorities to properly serve such a notice to Scottish Ministers they would need to provide evidence which demonstrates that:

- Rents payable within the proposed rent pressure zone are rising by too much
- Evidence that such rent rises are causing undue hardship to tenants
- Offer evidence that the local authority is coming under increasing pressure to provide housing, or subsidise the cost of housing, as a consequence of these rent rises

Unsurprisingly, strong opposition to these two rent specific additions to the original legislative package were voiced by landlords and investors. The managing director of Cullen Property ably articulated these concerns, when stating that:

"While many of the Scottish Government proposals for a new private rented sector tenancy will enhance security and flexibility for both tenants and landlords, evidence points to the fact rent controls will hinder investment in the sector, dis-incentivising small and large landlords from participating and/or maintaining their properties to a high standard. The consequences will be a drying up of supply and limiting choice for tenants, as well as a depleting the quality of the stock."

(Source: Business Insider, 2015, 14).

Housing academics, Professors Kenneth Gibb of Glasgow University and Peter Kemp of Oxford, when interviewed for this study, also both expressed the view that rent controls act to distort market signals and, as such, represent an unhelpful intervention within any housing market, the position long held by housing economists. What is argued here, however, is that this legislative change does not represent a return to 'hard' rent control, but rather the advent

of 'rent regulation' (Arnott, 1995). As will be illustrated through an in-depth consideration of the legislation and its supporting guidance, these two positions are subtly different. Characterising these changes as 'hard' rent control is therefore inaccurate and unhelpful.

Political Compromise and the Emergence of Rent Regulation

Both these 'rent regulation' measures did not constitute a significant part of the policy work which led up to the introduction of the Bill in October 2015. The Private Rented Sector Tenancy Review Group's recommendations and subsequent public consultation exercise had focused solely on changing the nature of the tenancy, while studiously avoiding any mention of rent control or rent restrictions (SGPTRG, 2014a). Proposals on 'rent stabilisation' were introduced relatively late in the day, in the second of the Scottish Government's consultation exercises on what form the new tenancy should take. Warnings that any attempt at rent restrictions would most likely reduce future investment by landlords and investors had held great sway throughout the initial policy formation stage (see SGPTRG, 2014b). Their inclusion within the 2016 Act thus offers an illustration of how the clear aims and ambitions of any Government, in respect of legislative reform, is often required to bend in response to the political realities inherent when pursuing legislative change.

Rent Pressure Zones

The RPZ, which gave local authorities the power to make a case to Ministers to declare such a measure, came about via political trade-offs and compromises which were made more significant by Ministers also coming under internal pressure from their own grassroots members at the SNP annual conference. This pressure was further reinforced by certain MSPs voicing deep concerns about rapidly rising rents in places such as Aberdeen. Ministers and MSPs were also subject to intense lobbying by the tenants group Living Rent, which had mounted a campaign to bring about rent control. As John Blackwood, of the Scottish Association of Landlords and also a Private Rented Sector Tenancy Review Group, member recounted:

"There was pressure coming from Labour and the Greens, given that in London there was much talk about the need for rent control. The SNP Government said it would consult, but had no plans to control rents. Rather what it wanted was greater predictability for tenants. The Greens crucially wanted greater security of tenure first, and then rent control"

The recent guidance (Scottish Government, 2017a) clarifies that local authority RPZs applications will only be considered valid if they provide sufficient evidence to demonstrate that a). rents are rising excessively in a particular area; b). these rent increases are causing undue hardship to existing tenants and c). rents are having a detrimental effect on the authority's broader housing services. The guidance also confirms that the locus of such a Zone is to be tightly specified such that:

- Any designated RPZ will only protect existing tenants who have a Private Residential Tenancy from rents rising by too much. The RPZ provisions do not extend to any other private tenants that live in the zone but have a Short Assured tenancy, and Assured tenancy or a regulated tenancy (a private tenancy which began before 2 January 1989)
- Any approved rent rise cap will only apply to rent increases for existing tenants in the zone for up to five years. It will not apply to initial rents for new tenancies, which will continue to be market-led
- The spatial coverage of a RPZ is intended to cover distinct localised areas as opposed to the whole local authority area

"The area to be designated might, for example, be a street(s), a postcode sector or a datazone. The data and evidence provided to support the application must match the area chosen. For example, if a street is proposed, evidence must be provided at street level. Therefore, when choosing the extent of the proposed RPZ, local authorities need to give careful consideration as to how they will collect the required data and evidence for that area in a way that is robust. The provisions in the Act on rent pressure zones address the problem of rents rising by too much in hot-spot areas and they are not intended to be applied to a whole local authority area. The RPZ provisions have been designed in such way as to prohibit the introduction of blanket national rent capping."

(Source: Scottish Government, 2017, 1)

Proof of evidence

The Guidance details nine criteria that outline the requirements that a local authority application for a RPZ must address in order to be considered valid.² These criteria are listed in **Appendix 1**. Four criteria focus on 'proof of evidence' and are discussed in detail below. The other criteria are of a more procedural bent, or seek to ensure those affected are properly informed of what is happening.

Excessive rent rises (criteria 3): According to criteria 3, the evidence required to show rents payable within the proposed RPZ are rising by too much are:

- A profile of PRS property characteristics (e.g. house type, size, age, location) and details of any changes to this profile impacting on rent changes
- Time series administrative, survey or other data showing the size of the rent increase, for existing tenants in the same properties, in a range of property types, sizes and ages
- Information on sample used to demonstrate the rent increase (e.g. sample frame, sample size, sampling approach, non-response rates, sample error or biases and coverage issues such as efforts made to increase coverage)
- Details of the methods used to analyse this evidence
- A statement based on this evidence (and any other evidence gathered) to explain why the local authority believes that rents are rising by too much in the proposed RPZ

It also makes clear:

“Rent data must be collected from existing tenants who have had a rent increase (in the same properties) and be representative of the PRS profile of the area. Other rent data (i.e. new lets) can be used as context only and cannot be used as supporting evidence as they may not represent the rents of existing tenants”

(Scottish Government, 2017, 8)

Causing tenants undue hardship (criteria 4): Guidance does not prescribe specific methods or data sources for assessing tenant hardship. However, it does require local authorities to submit details about the sources of evidence used and the methods employed for collecting and analysing this evidence. The guidance also reiterates that data on new lets will not be accepted as core supporting evidence because it may not necessarily represent what existing tenants are experiencing.

Adding to pressure to provide housing (criteria 5): As well as stressing the methods used to gather, collate and analyse evidence are transparent, the guidance asks local authorities to ensure applications are accompanied by supply plans, policies or strategies to help demonstrate how the proposed the RPZ ties into the overall strategic ambitions for housing.

Proposed annual rent uplift (criteria 7): Local authorities are asked to propose and justify the percentage point (X) that should be added to the proscribed CPI + one percentage point base, when calculating a new maximum rent increase within the RPZ, by demonstrating its impact on tenants, landlords and other relevant parties. This cap has been set has to be at least CPI, plus one percent so that, as the guidance states: *“investors will feel confident when planning their investments.”* (Scottish Government, 2017, 2). Moreover:

- Ministers have the power to add an additional percentage to the figure proposed by the local authority, if they consider it appropriate
- Private landlords, within any declared RPZ, will be able to apply to Rent Service Scotland, for a determination of a specific additional rent amount, to reflect any improvements made to their property, via the Improvement Cost guideline figure
- Discretionary powers exist to exempt individual properties from the specified cap, if they have undergone improvements

Early draft guidance proposals that local authority submissions should provide evidence of the impact this change would have on at least six businesses likely to be affected by the proposed RPZ were dropped.

² The guide also offers technical advice on quantitative and qualitative evidence that might be marshalled by a local authority, including a six-page annex that offers advice on methods, data analysis, sampling and conducting interviews.

In light of the implications for both tenants and landlords affected by a RPZ declaration, and the fact any declaration could be challenged in Court, it is not surprising the RPZ criteria are both detailed and extensive. However, for any local authority to meet all the specified criteria would represent a very big ask, given much of the evidence demanded is not readily accessible.

Challenges of meeting proof of evidence

For local authorities seeking to apply for a RPZ, the ability to measure and monitor local private rental market developments will become all important. With the new tenancy only coming into effect on 1 December 2017, and as the supporting evidence requires to be based exclusively on the rent paid by existing tenants, who have a Private Residential Tenancy, it could take upwards of three years before the evidence base to make an application is available. This timeframe reflects the time needed to pass before a sizable number of the new tenancies are in place to ensure a statistically valid sample of in tenancy rent increases.

There are currently no private rents data sources that would provide the evidence needed to support a RPZ application. As the guidance confirms, RSS rental data, which is the source for official statistics of private rents, is only considered useful when setting the broader context, given it is not designed to provide robust information below the BRMA area. The Scottish Government, also confirmed in written correspondence, that local authorities will need to gather additional information on RPZ rents.

Any local authority data gathering exercises would require to be on-going exercise, in order to build up information that tracks annual rent increases to both inform any application process and, thereafter, to police RPZ adherence. Local authorities may also lack sufficient intelligence to specify precisely the spatial boundaries of a RPZ in advance of data collection. Data gathering exercises may, therefore, need to be conducted over a somewhat wider area in order to later firm-up the proposed RPZ spatial boundaries. Cutbacks mean that local authority in-house research capacity is now thin on the ground, so authorities would more than likely need to commission consultants to gather and analyse the necessary data, which is likely to add the cost of what will inevitably be very challenging and speculative endeavour.

More generally, given the purpose and criteria that require to be met in order to even establish a RPZ, it would be disingenuous to characterise this measure as rent control as it is commonly perceived. Reflecting back on the frenetic discussions which led up to the introduction of the Bill to the Scottish Parliament, Margaret Burgess observed:

“We should take a lot of time to think about it, given things don’t always work out as you expect, the significance of unintended consequences. ... We need to be careful about interfering in the market. Tenants being unable exercise their rights is one issue, rent control is a quite separate area and it needs a lot more research”

Arguably, such sentiments are reflected within the strict published guidelines. The ability to secure a RPZ declaration is perhaps in stark contrast with the ambitions set for it by Living Rent, as articulated by Liz Ely:

“High rents are an issue, so we were keen on RPZs, and from our point of view they were a good result. We see them as a good means to build local campaigns, and the Glasgow Group is currently working on having one declared for Glasgow”

Tenants’ right to challenge proposed rent rises

The second ‘rent regulation’ measure, which is directly open to all tenants, in possession of the new Private Residential Tenancy and the Short Assured Tenancy, is the right to challenge a proposed rent increase by requesting it be adjudicated by a Rent Officer by applying to the RSS. Part of the policy rationale to include this in the new tenancy was to put in place a ‘back stop’ to curb the potential for landlords to use an excessive rent rise to circumvent the new statutorily defined repossession grounds.

Through section 32 of the 2016 Act, the RSS are required to determine the ‘open market rent’, should a tenant opt to challenge the landlord’s proposed increase on the new Private Residential Tenancy. The Act specific section reads as follows:

32. Determination of open market rent

- (1) *“Where an order maker is to determine the rent under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would –*
 - (a) *be a private residential tenancy,*
 - (b) *begin on the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made,*
 - (c) *have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.*
- (2) *In determining the open market rent of the property under subsection (1), the order maker is to disregard –*
 - (a) *any positive effect on the rental value of the property that is attributable to work paid for or carried out by the tenant or a previous tenant under the same tenancy, unless the work was paid for or carried out pursuant to a requirement under the terms of the tenancy,*
 - (b) *any negative effect on the rental value that is attributable to a failure by the tenant or a previous tenant under the same tenancy to comply with the terms of the tenancy.*
- (3) *In a case where two or more persons jointly are the tenant under a tenancy, a reference to the tenant in subsection (2) includes any one of them.”*

When a tenant takes a case to the Rent Officer, then they are obliged to accept their decision, or if unhappy with it they can then appeal to the First-Tier Tribunal, whose decision will be final. Interestingly, the benchmark set here is specified as the ‘open market rate’. So, if a tenant considers their proposed rent rise to be too high, then the appeal process defines that as being above the ‘open market rate’. The ‘open market’ measure might not immediately be the one tenants take to be the determinant of an excessive rent rise request. It would also be hard to construe this particular intervention measure to be rent control as it is most commonly understood. Commenting on this change, John Blackwood, Scottish Association of Landlords, observed:

“Individual challenges to their rent rise, go straight to the Rent Officer, and there is no requirement to provide any justification. So, Rent Officers are likely to get bombarded with requests and then Rent Officers will, in effect, set these rents”.

This then begs the question just how do Rent Officers go about determining whether a proposed rent rise is excessive, that is more than the open market rate?

Role of Rent Service Scotland

To gain a clear understanding of the role of the Rent Service Scotland (RSS), both in terms of setting rents and their role in the administration of this new ‘rent regulation’ measure, an interview was conducted with Christopher Donaldson, Head of Rent Service Scotland. The first port of call should a tenant considers a subsequent proposed rent rise to be too high will be the RSS. Rent Officers will be charged with making an ‘open market rent’ determination, and that will be compared against the landlord’s proposed increase.

RSS has 60 years’ experience of undertaking rent adjudications, initially for Fair Rents, introduced under the Rent Act, 1965, and then from April 2008 they were asked, as part of the Housing Benefit reforms, to set local benchmark rents for the Local Housing Allowance (LHA), for private rented properties, where the tenant is in receipt of Housing Benefit.

That organisational and operational legacy, feeds directly in the Rent Officer’s new rent determination task. To determine the ‘open market rent’ will involve extracted relevant comparable rent evidence from their Market Evidence Database, and then applying their own professional knowledge and intuition. In time, once the new Private Residential Tenancy beds in, tenants will start appealing rent rises if they consider them to be ‘excessive’, and then the Rent Officer will be tasked to adjudicate. RSS anticipates they might have to process some 1,600 adjudications in the first year, but the assumption is that this will progressively fall back over time. The basis for that working assumption is not at all clear, given the growth in Private Residential Tenancies over time, and increased understanding of the system on the part of tenants might equally generate more appeals.

Alternatively, given the benchmark is set at a market rate, this might actually discourage appeals as the final rent may well be higher than the rent rise they are appealing against. Clearly, the day-to-day workings of local rental markets will also be the crucial factor here, in that this will determine rent levels and what landlords consider to be an appropriate rent.

Role of the First-Tier Tribunal

As noted earlier, tenants, or for that matter landlords who disagree with the rent set by the Rent Officer can appeal to the newly created First-Tier Tribunal (Housing and Property Chamber). This takes over from the Private Rented Housing Panel (PRHP), established after the Housing (Scotland) Act 2006 to consider repairs matters within the sector which, in turn, took over from the Rent Assessment Committee that had been set up under the Rent Act 1965 to support the, then, Fair Rent system. It inherited all the PRHP's previous responsibilities, these also include applications for rent determinations by tenants with an Assured or Short Assured tenancies and the factoring registration and appeals issues dealt with by the Home Owner Housing Panel (HOHP). More generally, the new Tribunal will also deal with applications from either tenants or landlords, where they consider the terms of the new Private Residential Tenancy are not being met.³

Rent rise appeal cases will be considered by two people, a Surveyor Member and an Ordinary Member, and they will take place throughout Scotland. In considering any such appeal they will have the rental figure supplied by the Rent Officer in making the adjudication, and can then supplement this with additional information, such as directed on-line property searches, the locus of which would draw on their own professional expertise and intuition. In the case of a two-bedroomed flat in the Govanhill district of Glasgow, they are likely check data on two-bed flats from the same post code area, over the previous six-month period. This exercise would provide a range of rents, so then the issue of compatibility would then come into play. Are the properties all flats, or are some houses? Are the advertised amenities similar, or are there noticeable differences, such as the quality of kitchen and bathroom fittings, or the presence or absence of central heating or double glazing. Supplementary targeted on-line searches might require to be added, within Govanhill and its wider surrounds. The Surveyor Member, undertaking this work, will also inspect the actual property, given there can be specific issues pertinent to the dwelling that might have a bearing on its rent. That level of detail, it was explained, is not something current Rent Officers' procedures facilitate.

In hearing the case the Tribunal can also consider direct written and verbal representations from either the landlord, the tenant, or both. Interestingly, the Rent Officer who makes the original adjudication is not asked to appear. Given what has been said, there does appear to be some degree of leeway open to Tribunal members when considering a rent appeal, given they can avail themselves of additional and specifically targeted information, as well as testimony from the contesting parties and an actual property visit. The appeal procedure is thus far more involved than the work undertaken when the Rent Officer considers an appeal application.

This is, of course, entirely new territory, for although the Tribunal builds on from its original Rent Assessment Committee architecture, first hearing Fair Rent appeals under the 1965 Rent Act, later amended under the Rent (Scotland) Act 1984, assured and short assured tenancies under the Housing (Scotland) Act 1988 it now has to build up cases under the new provisions of the Private Housing (Tenancies) (Scotland) Act 2016. Each appeal is particular, given the specific requirements set down in legislation. The Fair Rent provisions of the 1984 Act, (s.48(1)) are, however, important in relation to the issue of comparability, as they specify that Rent Officers and the Tribunal must have "*regard to all the circumstances (other than personal circumstances) and in particular ... To apply their knowledge and expertise of current rents of comparable property in the area ... having regard to the age, character and locality of the dwelling house in question ... its state of repair ... quality, quantity and condition of furniture [provided for use under the tenancy]*". David Bartos, Advocate describes collecting the evidence for such appeals as being a 'composite task', drawing this terminology from the *Western Heritable Investments v. Hunter* case (Scottish Courts, 2004).

Interestingly, rent determinations and rent appeals have also always exhibited a degree of serendipity. As a long-standing Housing Panel member commented: "*I have served on the PRHP [now the First-Tier Tribunal] for 20 years now, and much of that time served on the rent committee. I still have no idea how the Rent Officers come to a determination*". Similarly, Rent Officers are never very sure just how rent appeal decisions were arrived at, either through the Rent Assessment Committees, or the succeeding PRHP. No doubt the same will be true for the Tribunal. Clearly, there have long been different ways of undertaking what is, in effect, the same task, that of setting a rent.

³ The First-Tier Tribunal for Scotland (Housing and Property Chamber) will deal with a range of determinations (see <https://www.housingandpropertychamber.scot/who-we-are>). It will take on the functions which previously were carried out by the Private Rented Housing Panel (PRHP) and the Homeowner Housing Panel (HOHP). This includes factoring adjudications.

Given the 30-year period when there was a free market in private rents, there was no real incentive, or requirement to build up a comprehensive dataset on private rents. The 2016 Act changes that, and for all those involved in supporting the Act's provision, the requirements that fall from the new Act will represent something of a learning curve. The way both parties, RSS and the Tribunal go about that process will be interesting to observe, especially in relation to the interplay of the data they use and their respective practices. Rent setting and adjudication, from reviewing the evidence, would appear to be more of an art than a science.

Monitoring PRS Rents

As noted earlier, in the comparative section, good quality rental information is a standard requirement for supporting any 'rent regulation' policy across Europe. An important issue for this research was, therefore, to consider what evidence currently exists to monitor private rental trends and the movement of private rent levels over time. Of particular interest is whether such data provides the quality of evidence required to make these two new 'rent regulation' measures workable.

There are six 'official' sources of evidence which relate to private renting, albeit that three draw from a single data source, namely the RSS Market Rental Database which, as was noted earlier, was created to determine annual LHA levels for DWP administration of the housing subsidy system, Housing Benefit. Rental information for this database comes from a variety of sources but, in the main, it is the rent being asking for via published landlord advertising.

The Scottish Government's Private Rented Sector Statistics is, in effect, the annual reporting of this database, so it provides average monthly rental figures, by property, by bedroom size, for each of the DWP's defined BRMAs. The ONS Index of Private Housing Rental Prices also draws on the RSS database to construct its Scottish component. This developmental project seeks to gain a better understanding of rent rise patterns right across Britain, which seeks to better inform national calculations underpinning the CPI Index, the new national guide to inflation. There has long been a concern, that because of poor PRS rent data, this critical element of household expenditure, which now includes a significant and ever increasing proportion of the population, is effectively ignored when calculating CPI. For rent comparison purposes, as an index measure it does not offer hard information on actual rent levels, so can be discounted in this context.

The other three datasets are the Scottish Government's Scottish Household Survey (which now includes the House Condition Survey), the DWP's Family Resources Survey (which includes the Households Below Average Income Dataset) and DWP administrative data, accessed via Stat-Xplore. While the first two surveys provide useful insights at the Scotland-wide level, they cannot support any robust analysis of the private rental market and conditions within the sector at local or small area level. Likewise, Stat-Xplore can be employed to offer some useful insights on the rent paid by households claiming Housing Benefit, but it predominantly covers the lower end of the private rental market.

Consequently, although each of these sources offer an insight into the rents being paid, as opposed to those being asked for, their limitations in terms of sample size, specific focus, information content, geographic scale and accessibility ensures they can offer little to support the 'rent regulation' measures as neither individual tenants, nor local authorities could use them to better inform their decision-making.

As the RSS Market Rental Database constitutes the sole source of Scottish PRS rent data, then it clearly demands closer inspection.

RSS Market Evidence Database

As noted already, the prime function of the RSS Market Rental Database is to determine annual LHA levels. The information collected is also employed to inform RSS's long-standing Fair Rent review work and will, in future, provide data to inform all Private Residential Tenancy rent increase adjudications. The Scottish Government have, however, made it clear that in relation to RPZ applications, this data can only be employed to set out the local housing market context, but cannot be used to indicate rent level changes, because it primarily covers rental asking prices not what is being paid within tenancies (Scottish Government, 2017, and see Appendix 2). Local authorities are, therefore, expected to commission their own local rent surveys to furnish such data. The other problem with this data set is that given its sample frame, which is driven by the BRMA, it cannot offer robust average rent level data, below that regional geographic scale.

To meet the BRMA requirements set for Scotland, a 'representative sample' of around 10 percent of all private lets, for each house type, defined by bedroom size, in each of the 18 BRMAs is collected annually. The PRS population for each of the BRMAs is calculated from a combination of local authority landlord registration records and the Census returns. With the sample size agreed, then annually local rental data for each of the property types, as defined by bedroom size, is collected. Christopher Donaldson, Head of RSS explained: *"Rent data comes from estate agents, letting agents, adverts in shop notices and printed adverts, as well as Facebook and Gumtree. Information is also taken from both Zoopla, and City Lets, although we don't take direct feeds. Over time we have changed the mix of sources, so more data comes from landlords via links with Scottish Association of Landlords and the various local authority PRS forums. This was largely done to reflect the changes in internet use within the PRS"*

Rent data may be sourced in a wide variety of ways, but in the end 97 percent of the rent information comes directly from advertised rents (Scottish Government, 2017b). Rent Officers are expected to continually evaluate the composition of the rent lists used for LHA purposes, and where necessary, based on their professional expertise and intuition, divert resources from their regular data collection instruments to targeted returns in order to provide additional information which addresses any perceived weaknesses in the current data. Given the scale of material coming solely from advertising sources it is not clear just how regularly collected and special targeted data collections are organised to deliver a 'representative sample' for each property type, defined by bedroom size, for each of the 18 BRMAs.

Collected data is required to cover all private lets, but excludes 'mid-market' rents, student halls of residence and private tenancies, subject of Housing Benefit claims and any regulated tenancies. Data includes a minimum level of address, property attributes and tenancy details. Rents relating to studio or bedsit properties, properties with five or more bedrooms, and Bed and Breakfast lodgings though collected, are not published, given their small sample sizes. Similarly, rents for bedrooms in shared properties are presented as a 'rent only' figure, thus excludes the cost of shared services.

While the information gathered is then employed internally by RSS to calculate the LHA rates for Housing Benefit, within each BRMA, by house size, and also provide evidence to help inform Fair Rent adjudications, it is also published annually by the Scottish Government (2017b). As such this document constitutes the only publically accessible source of statistical information covering private sector rent levels for Scotland. The reporting is, however, constrained by the way the data is constructed, so the findings are on a Scotland-wide and BRMA, by bedroom size only basis.

The latest report thus noted that:

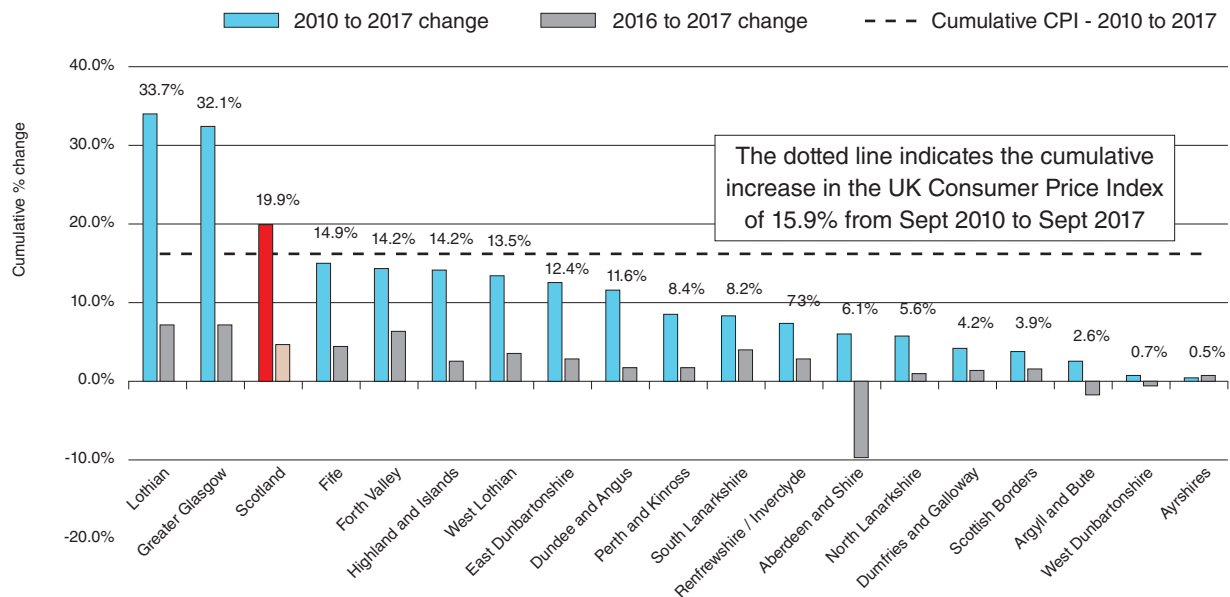
"15 out of 18 areas of Scotland saw increases in average 2-bedroom private rent levels between 2016 and 2017 (years to end Sept), ranging from 7.0% in Greater Glasgow to 0.7% in the Ayrshires. Rents for 2-bedroom properties in Aberdeen and Shire fell by 9.6%, the third consecutive annual decrease.

These regional trends combine to show a 4.4% increase in average 2-bedroom monthly rents at a Scotland level from £616 in 2016 to £643 in 2017.

At a Scotland level there were also increases in rents for 1-bedroom (4.0%), 3-bedroom (4.6%), 4-bedroom (4.9%) and 1-bedroom shared properties (3.0%).

These increases compare to UK CPI inflation of 3.0% in the year to Sept 2017.

CHART 1: Cumulative % Change in Average (mean) Rents from 2010 to 2017 (years to end-Sept), by Broad Rental Market Area - 2-Bedroom Properties



(Source: Scottish Government, 2017, 1)

Main findings for average rent changes between 2010 and 2017

Average rents have increased above the rate of inflation between 2010 and 2017 across all property sizes in both Lothian and Greater Glasgow.

East Dunbartonshire, Fife, Forth Valley, and Perth and Kinross have seen average rents rise above the rate of inflation for 3-bedroom, 4-bedroom and 1-bedroom shared properties.

Argyll and Bute, Dumfries and Galloway, and West Dunbartonshire have seen average rents rise less than the rate of inflation, or have seen average rents fall, for all property sizes between 2010 and 2017.”

As is evident from the above, RSS data is very broad brush, given the sample size does not allow for reporting below BRMA, to either local authority or below local authority scale. Not only that, but the Scottish Government urges some caution: “the Private Sector Rent Statistics for Scotland publication allows an assessment of market-evidence average rents, along with changes over time at a BRMA level and by property size, although some caution is needed in interpreting the results given that the composition and quality of private rental stock can vary by area and can change over time.” (Scottish Government, 2017, Annex D). Its value in supporting the policy ambitions of the ‘rent regulation’ is, therefore, highly questionable, and this relates to three technical concerns: the construction of the baseline figures, both nationally and locally, sampling sizes and procedures and, finally, the quality of the collected data.

Baseline calculations

Calculating the overall baseline figure for the number of private rented properties in Scotland is not an easy task. Although it is a legal requirement for landlords to register their rented properties with the local authority not all do so, despite the risk of incurring a £50,000 fine. Further, not all local authorities share their landlord registration data, so Census data is drawn upon to supplement local information, even though the Census by now is quite out-of-date. The date of the last Census was 2011, and there has been a marked increase in private renting since then. Both qualifications mean that the baseline employed could be significantly under estimating the actual size of Scotland’s current PRS market. This is important as it determines the sample sizes then employed within each BRMA. In response to these concerns, the overall sample size for Scotland was recently increased from 27,000 to 30,000, which set at 10 percent of the overall stock size, puts the PRS at some 330,000 dwellings. Yet, industry experts still consider that figure to be an underestimate.

Dropping down the scale, the **Rent Officer Handbook** states that a BRMA is an area: “*within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from those facilities and services*”. Further, the BRMA is subject to two further conditions:

- “1. *It must contain residential premises of a variety of types, including such premises held on a variety of tenures.*”
- “2. *There must be sufficient numbers of PRS premises to ensure that, in the Rent Officer’s opinion, the local housing allowance for the categories of dwelling in the area for which the Rent Officer is required to determine a local housing allowance is representative of the rents that a landlord might reasonably be expected to obtain in that area.*”

(Source: Valuation Office, 2017)

How the BRMA boundaries are arrived at still remains clouded in some mystery, and is one of the least transparent aspects of the current Social Security system. Christopher Donaldson explained that: “*The BRMA in Scotland are larger than those in Northern Ireland and Wales, but the Scottish Government has no say in their size, as these are defined by the DWP for LHA payments*”. That said, it is the case that RSS were asked to recommend BRMAs, based on the above objective criteria, so the boundaries were not imposed.

While the setting of BRMA boundaries is not a central concern of this research, it has some relevance given the current geographic unit employed cannot support statistical reporting at local authority and small area level as this would be helpful to those, whether individuals or local authorities, when deciding whether to utilise the new provisions open to them under the 2016 Act.

At their current scale, the Lothian BRMA for example, averages the rents for the 2-bedroom accommodation across the whole of the Lothians, thus Edinburgh’s Marchmont, Old Town and New Town districts, which currently experience high demand, are combined with areas with less demand such as Dalkeith, Roslyn and Penicuik in Midlothian. So, does the Lothian figure get pulled up by Edinburgh rents, or pulled down by Midlothian’s? While this currently has a bearing on the Lothians’ LHA determination, and thus local affordability issues for those claiming Housing Benefit, in future it effectively makes it impossible to draw on this data to decide whether or not your rent rise in Marchmont is too high. The Lothians figure is next to useless, given the high-demand being currently experienced in that particular locality.

BRMAs are ultimately defined by Rent Officer judgement, which within Scotland, appears unduly weighted towards the number of cases needed to feed their Market Rental Database, especially outside of the four main cities. Further, it was not evident how, or even if, Rent Officers employ the 2011 Census as a benchmark to help them ensure a proportionate spread of data, by property type and geography. Further, it is also not clear if sufficient consideration is being given to the other factors which Rent Officers are specifically asked to take account of in undertaking this exercise. Northern Ireland, which already operates much smaller BRMAs, is currently undertaking a review of their size to better fit the requirements of their LHA determinations. That would suggest the current size of the Scottish ones should also be reviewed, especially given the additional demands now being placed upon them in Scotland. There is a wider problem here, and the noticeable lack of Scottish Parliamentary scrutiny in respect of this seemingly technical matter, which highlights a more serious gap in both housing and welfare policy. As welfare powers are retained under the devolution settlement the Parliament has tended to ignore their operational architecture. That said, given the imminent increase in Social Security powers this is likely to change. It is also worth remembering that the Smith Commission (2014) talked about the Scottish Government taking powers to vary LHA rates and, although this has not happened, there is now an increasing interest in welfare matters by Scottish politicians. The large size of BRMAs has always caused major problems within high rent pockets in otherwise low market areas. A good illustration of this is provided by high Arran rents sitting within the wider Ayrshires BRMA, producing a LHA rate that fails to match the actuality of rents being advertised on the island (Craigforth Consultancy, 2013).

Sampling size and procedures

There are two sampling concerns which fall on from this, namely the size of the sample and the use of the so-called ‘combined approach’ to achieve that sample, across house types within each BRMA. The 10 percent sample can only ever represent a ‘guide figure’ at BRMA level, argued RSS, not a definitive number. As noted earlier, to address these potential weaknesses the local knowledge of Rent Officers is brought to bear, through confidence testing and the interpretation of other available data to refine the sample guide level. In this way, a ‘representative sample’ for each property size, as defined by the number of bedrooms, is eventually worked through for each of the 18 BRMAs.

In terms of the broad number of cases being sought, assuming an equal split per BRMA the number of cases averages just over 1,660, and that then is further divided by the 4-bedroom sizes. While the different BRMAs will clearly differ in size, depending on the scale of local private renting, it is also clear that the cases numbers, per property type, could be quite small indeed, and thus run the risk of skewing the generated average rent figure.

In England, the Valuation Office considers a 20 percent sample to be appropriate within BRMAs, double the current Scottish sample. In England, all but one region has equivalent effective sample of over 44,000. The Scottish sample, as noted above, was recently raised to 30,000. In the North East of England, the final sample is just 24,000, whereas each of the other regions (excluding both North East and London/South East) have a sample base of over 100,000. Why a 10 percent sample threshold is used in Scotland, while a sample double that is expected in England is not clear, nor from what has already been said, justifiable.

Further, in the absence of a robust up-to-date baseline or sample frame, conventional sampling techniques such as quota and random sampling are not possible. As a result, RSS rely on an approach which combines the use of both regular and specifically targeted data sources on rents. Certain techniques employed to capture additional rental data appear, if anything, somewhat haphazard. As Liz Ely noted: *"RSS asked Living Rent to get information on the rents charged to tenants, but we did not think it was our job to try and get members to provide that information"*. Whereas, when John Blackwood, of the Scottish Association of Landlords, was asked to do the same: *"As landlords we supported the RSS ..., by sending out their rent data forms to all our members – both landlords and agents - and encouraged them to fill them in and return them"*. Such data additional collection instruments appear problematic, in that quality control in relation to data accuracy is hard to achieve, and the obvious imbalance in returns from landlords and tenants merely further acts to skew the data towards landlord sources.

It is also surprising no attempt has been made by Scottish Government statisticians to provide a case-matched, tracked-sample, or weighted-index approach to better monitor changes to rent levels over time. It is technically possible, as the ONS currently do this for their rental index which draws from the same Scottish data sources. Perhaps scaling up might introduce concerns about repeat cases being present within the dataset. Finally, constantly altering the data sources must have some impact on the actual quality of the data, and thus its accuracy.

Data quality

As presently framed, the RSS database does not attempt to record rents being paid by tenants, rather the database records locally advertised rents, by the bedroom size of that property. As is made very clear in the latest official publication on private rents: *"The rental information contained in the market evidence data base is largely based on advertised rents, therefore it is important to note that the statistics presented in this publication do not represent rent increases for existing tenants"* (Scottish Government, 2017, 2).

There are two dimensions to this issue, one relates to rent rise lags and the other, as to whether the asking price recorded is the actual rent achieved. Dan Cookson, a housing data expert raised the first issue point: *"So has there been a rent change over the three or four years the tenancy has run? Over a long time, there may not have been any rent rise. Rents tend to change at a tenancy change over. If tenants were deemed 'good', then landlords were happy not to increase the rent. When they go, the place gets freshened up, and a higher rent is then asked for. If there is high demand and a limited supply, then this rent will be realised. But measuring what rents are actually being paid, as opposed to be asked for is, therefore, a real challenge"*. Anecdotal evidence from Liz Ely further illustrates that point: *"Tenants don't always know what the going rate is. I rented a flat for a long time and the monthly rent was £450. When I left it was advertised at £650"*. Consequently, the rents being recorded on the RSS database may not reflect what is actually being paid by this who currently hold a tenancy.

This then leads into the potential disparity between what is advertised and what is achieved. As Dan Cookson observed: *"A substantial amount of that rent data now comes from portals, and what is never asked is whether that rent is achieved. So, we do not have a handle on what actually happens within the tenancy. With advertised rents, prices change and inflation also plays a part so what is advertised, it's not always a true reflection of what is actually happening in the market"*.

John Blackwood offers a useful insight into the rental disparity issue: *"Aberdeen was the big pressure area when the Bill and RPZ was progressing through Parliament. But now rents paid are anything between 30 and 50 percent below the advertised. Landlords in the city are trying to ... stop rents falling below the 30 percent less figure."* Aberdeen and Shire BRMA, had long been the classic 'hot market', before witnessing a recent downturn in oil related activity. Last year, rents fell by 9.6 percent, the third consecutive fall in the last three years (Scottish Government, 2017). However, given the above observation, just how accurate is that figure? While the portal generated data from Aberdeen based letting organisations will record these asking prices for new lets, were they

achieved, or were landlords happy to accept a lower price? And what was happening within existing Aberdeen tenancies? Given the dramatically changed circumstances within the local market were existing tenants able to negotiate a reduced rent?

By contrast, within Scotland's two current 'hot markets', Edinburgh and Glasgow, rental asking prices are likely to be achieved. As Liz Ely, of Living Rent noted: *"You know what people are paying in the local area through friends' knowledge, or by doing a bit of a recce on local adverts, Gumtree or City Lets. Ok these are bid prices, but that is what they get in Glasgow and Edinburgh, where I have some knowledge, you'll never get it for less"*. So, in some parts of the country assumptions about the advertised asking price can be taken to be a proxy for the going rate, but in other places this may well not be the case. Currently, given the nature of the data collection instruments it is bid price rents that are captured, and not what people are actually paying. Other surveys record this, as we have noted, but the scale is country wide, so again of little help to those who might think about utilising the new 'rent regulation' powers of the 2016 Act.

Official concerns about overall data quality are also exposed by the technical endorsement of this statistical source. The Private Rent Statistics publication states: *'Official and National Statistics are produced to high professional standards set out in the Code of Practice for Official Statistics. Both undergo regular quality assurance reviews to ensure that they meet customer needs and are produced free from any political interference'* (Scottish Government, 2017). However, on inquiry, while this document is an Official Statistics publication, it does not carry the classification of National Statistics. National Statistics is a term used for statistics publications that have been assessed by the UK Statistics Authority (UKSA) and certified as being compliant with their Code of Practice. The Private Rent Statistics Bulletin is produced to comply with the standards, as set out in the Code of Practice, however, the output has not been assessed by UKSA, therefore, only the Official Statistics classification was deemed to be the appropriate quality descriptor.

A changed situation for rental data

Recording what is actually being paid by tenants will become a more pressing matter, following the implementation of these new tenancy provisions. This is because one of the unintended consequences of this new tenancy package is that it will alter the existing pattern of rent rises. As John Blackwood, observed:

"The new legislation is interesting as it implies landlords will raise rents annually, but I don't know landlords that automatically do this presently... I ask landlords when did they last increase the rent and they say, I don't put up rents. They say the rent comes in, and they look after the place, so I don't bother"

However, he went on to suggest that by: *"Setting down a law that states you will have rent rises each year, will produce more rent rises ...annual rent rises will become automatic"*.

While landlords might take time to adjust their practice, agents who typically work on the basis of a percentage fee, are more likely to get tuned into this change and automatically build in annual rent increases. There was a view expressed that tenancy 'churn' was financially advantageous to agents, given the fees charged by agents to secure a new tenancy. With the advent of more secure tenancies, and as a result less turnover, then there will be an incentive on the part of agents to replace that loss of 'churn' income. This further adds to the case for having more accurate information on local rent level being charged rather than what is being asked for.

As such a dataset does not currently exist to provide that information its worth quickly considering how we might achieve this. As Blackwood argues: *"We do need to get to a better idea of the market"*. The ultimate system would be to get access to all the rental data, on both new and existing lets, and structured in such a way to allow for the calculation of rent rises. So how exactly could that information be secured?

Commercial rent data sources, such as Zoopla, City Lets and Letting Web could be combined to offer one single data source, but as has already been argued that data solely provides advertised rentals, not necessarily the rent finally agreed, and it says nothing about the rent being charged for an already existing tenancy. While some of this information currently feeds into the Rental Market Database it is also worth considering the small number of cases each of these sites record, within any period, when compared to the scale of the overall private rented market. The tail in this instance is wagging the dog.

Agents and property managers are another obvious source of rental data, but there would be major challenges accessing consistent data from these varied sources. Each agent collects rental information for their clients as well as for their own commercial purposes and that is not something they are likely to share. They are also likely to employ different software packages, and use varied information parameters that vary depending on their requirements. It is also the case that such entities are not in the business of collecting information for others to use.

Crucially, no one is offering them a payment for that data. Clearly, left to its own devices the market could piece all this data together, but only if they saw some value in it for themselves, and that is hard to see. The accessibility of advertised rent data is commercially useful, as it helps frame both landlord and tenant expectations. A data set that reflects the rents actually being paid might be seen to be a means of suppressing rental expectations.

Are there other existing 'official' vehicles that could generate a live, accurate, current and geographically specific dataset on PRS rents? In Ireland, because landlords are required to register all rents with the Residential Tenancies Board, such a dataset has been generated through the provisions of the landlord registration system. That said, it is interesting to note that only 85 percent of 'actual' activity is officially recorded, for a variety of reasons. Rental arrangements turn out to be both varied and complex when you dig down. Further, in Ireland although the Residential Tenancies Board holds the rental data, they would not share it with officials from either Dublin or Cork when they were preparing Rent Pressure Zone applications because they considered that to be a breach of their data sharing protocols. That information could then only be secured via the Department of the Environment.

Within Scotland, landlord registration powers lie with the country's 32 local authorities, and presently there is no single shared database, so each operate to their own arrangements. Data compatibility and protocol issues would thus also arise. Another possibility to source such data would be via the three approved rent deposit schemes operating in Scotland, but to ensure taking on such a function would not commercially compromise operators, all would have to agree to undertake this task. As they already collect quite a lot of relevant information on the tenancy adding the rent figure would not constitute an onerous task. This could be best achieved by using secondary legislation, as trying to get each of the three providers to agree a format themselves voluntarily might be difficult to achieve, given competing business competition issues. The only limitation with this approach is that the rental data captured in this way would likely be limited to actual initial rents, the risk being that this data then becomes dated. However, as the Scottish Government's chief housing statistician made clear in correspondence: "*The Scottish Government has no plans to improve the quality of this data in the near future*".

Tenants' Perspectives on Rent Regulation

The PRS tenants' consultation element of the study focused on their understandings of both 'rent regulation' measures, then exploring as to whether they would make use of these measures. The focus of the questioning drew on the initial detailed consideration of both measures which emerged from undertaking the first phases of the study. In the week that the on-line questionnaire ran a total of 12 people completed it. The on-line study was designed to be part of the first phase of a Shelter Scotland's public awareness campaign, designed to draw people's attention to the powers contained within the 2016 Act and coincided with the official introduction of the Private Residential Tenancy in December 2016. Given this tie in, it is likely to have attracted people who had an active interest in these reforms. Two-thirds of the participants were current private renters, and one other had recently been, and planned to rent again in the near future. The other three contributors were non-renters, but had an interest in the legislation, and although the question was not asked, they may well have been landlords.

In terms of what is of major importance when renting it was clear price was most significant, and then how that figure linked to the number of rooms and its location. Both the quality of accommodation and the nature of the heating system were secondary considerations. Tenancy periods ranging from six weeks to 28 years. Interestingly, given that the Short Assured tenancy was designed to run for a six-month period, the majority of these respondents had tenancies running into years, rather than months, perhaps vindicating the switch to an open-ended tenancy regime.

Reflecting the tenancy periods, there was an even split in their experience of rent rises, with half having not had a rent rise, while the other half had. That said, given the long length of tenancy periods, it would have to be said there was no pattern of substantive rent increases, with the percentage rises over time being very small, suggesting an intermittent pattern of landlords seeking to raise rents. That said, inflation had not been a significant factor in recent years. Given what has been said previously about the new Act, about changing landlord culture in relation to rent rises, this is an interesting finding.

Perhaps reflecting the survey's tie in with the Shelter public awareness campaign, all but two of the respondents were aware of the advent of the new tenancy, its annual rent rise stipulation and the tenant's right to challenge any proposed increase, if they considered it too high. Interestingly, all respondents who were renting, or thinking of renting, stated they would be confident about challenging what they considered to be an unacceptable increase. When asked why they would pursue such an action, two noted they had past experience of exercising tenancy rights, with some success. In one of these cases, this had resulted in the installation of double glazing to improve the insulation standard within their flat. Two other mentioned they had recently undertaken basic housing law training, so also again felt confident. Another mentioned that they thought the new Tribunal would be supportive of

their decision. By contrast a few mentioned concerns about possible landlord intimidation, if they pursued such an action. These responses suggest that the participants are people with an interest in such matters and thus perhaps better informed about the law and their rights than the general public.

When exploring what would be considered to constitute an excessive rent increase, most people thought anything beyond the current rate of inflation, though two proffered a 10 percent rise as being the excessive maximum. In exploring what information, they would draw on to help them to decide whether they should appeal against a rent increase, no one made mention of the only official data set on private rents. Most considered local knowledge of rents and recent increases to be critical here. One person mentioned checking with Shelter, while a few others mentioned rent equivalents within the social rented sector, as well as other comparable private rents in the local area, but not one was able to make it clear how such information would be secured. All however were aware of on-line sites such as City Lets and Zoopla. The problem here, as has been argued above, is that these sources provide rental asking prices, bid rents, which are not indicative of the rent people are really paying.

In relation to how they would go about making an appeal only one person mentioning approaching a Rent Officer. Everyone else only had a very basic understanding, with two mentioning seeking advice for a Citizens Advice Bureau, Shelter or their landlord. Another said they would check on-line, or consult the actual legislation.

In relation to the question about their knowledge of RPZs, three-quarters said were aware of them, but a quarter had no idea as to what they were. Opinions about them varied from: *"A daft idea from daft politicians (sorry all politicians are daft, some are just dafter than others)"*; to *"tenants can appeal to local authorities to apply for Rent Pressure status if rent increases are deemed to be unreasonable"*. Some were clear that they had been devised for: *"Areas where rent is determined by demand"*, and where a *"lack of availability, creates demand, a bidding war"*. For those who knew what they were, half of them thought a RPZ should apply in the area where they currently resided.

When asked how they would go about taking forward the idea of a RPZ again views varied: *"I wouldn't try because it's a daft idea which will cause more harm than good"*; to a commitment to: *"Refuse to pay excessive rent levels, and to be the victim of extortion by unscrupulous private landlords"*; to: *"putting pressure on my local authority"*; or simply: *"speak to my local councillor"*.

In exploring what they considered to be the advantages of a RPZ the notion of rent control was very much to the fore: *"Knowing that rent rises will be capped"*. That said, another offered a broader perspective: *"Get a better mix of community, rather than it becoming a zone for exclusive groups"*. Similarly, one respondent offered a more analytical, personal perceptive: *"If it's a RPZ it's likely to be central, or well-connected and, therefore, within a commutable distance of lots of workplaces. An RPZ may make it easier for me to stay put for longer, but time will tell"*. While there was some understanding that a RPZ was not just about stabilising the pressures arising from rising rents, one respondent also saw it as offering a curb on the 'gentrification' of some neighbourhoods. This implies wider concerns about the perceived broader social changes presently occurring, as a result of rent rises, given previously 'gentrification' was primarily considered to be caused by the influx of homeowners into a what had previously been a predominantly rented area. There was also a concern that a RPZ could make matters worse, in that: *"It may mean less private rentals are available, if a landlord no longer makes the vast profits they did previously"*. Overall, there were mixed views about the potential impacts of RPZ, and a noticeable lack of understanding about what the actual powers and guidance determines they will be.

The notion that RPZs are about rent control is, as has been shown earlier, somewhat misplaced, but does play to a very strong private renting narrative. Again, this lack of understanding was surprising, given these respondents though small in number were interested in the reforms and thus were reasonably well informed. Again, this would suggest that the public information program is currently falling short.

The follow-up focus group work involved two separate group discussions, one held in Edinburgh on the 8th of November and another, in Glasgow the following week, on the 15th of November 2017. Both sessions involved engaging with a mixture of invited participants, from established tenants' groups, in the main drawn from the Living Rent Campaign and Shelter Scotland's Private Tenants Forum. In total 16 people participated, and the listing of participants can be found in [Appendix 3](#).

Again, the core consideration being explored was what do tenants actually know about the new tenancy provisions, and how exactly would they envisage going about challenging a subsequent rent rise under the new tenancy arrangement, should they considered it to be excessive? A critical point here, is what do tenants consider to be an excessive increase, and how would they come to such a conclusion. While the question structure was identical to the on-line survey the focus group format allowed for more in-depth questioning of the participants.

With no cap being applied to the initial asking rent, what is commonly understood as rent control is not being introduced, yet this was not really appreciated. Publicity about RPZs had raised the profile of rent control, even although, as was discussed earlier, the locus of the rent elements in the 2016 Act focus on 'rent regulation', which applies solely to any subsequent rent rise. This caused some confusion on the part of participants, and thus underlined the need for clear information on what impact the RPZ policy will have on private renters.

The opening discussions focused on what factors tenants considered as a priority when looking to secure a new tenancy. As with the on-line participants, the cost was the number one issue, the rent level and associated Council Tax payments. For most, being on a limited income, largely determined what they could afford. For one participant, currently in receipt of Housing Benefit, this meant they were now unable to continue living in their preferred city centre location and were now having to consider viewing new flats some 50 miles away. Being under 35, the LHA figure they were working to was just £267 per month. As they want to live alone, the only properties available at that price, within Glasgow, were described as being quite awful, hence the pressure to relocate.

While mention was made of a play-off between being in a central location, and the cost of transport when living further out, convenience meant city centre locations were always preferred in both cities. That said, the focus group population was primarily under 30. For students, in particular, the size of accommodation, in terms of the number of bedrooms was also important, as that then determined how many people could stay, and then what the rent figure could be divided by. They reported that large flats of five bedrooms and a large kitchen, in the Marchmont district of Edinburgh, were now costing £700 per room, per month. Previously, the going rate there for students had been £500 a month. The explanation given for the marked jump in price was put down to the plethora of new commercial student flats and the rents they were charging. Landlords, or their agents were now looking to match these figures. Interestingly, in that discussion, it was also said to be common for foreign students to be asked by some agents to pay the entire six-months rent up-front, as well as provide a deposit.

In terms of internal amenities: *"If would be nice if the flat was well insulated and there was a good gas central heating system, but the bottom line is the rent"*. Much comment was made about the inadequacies of almost ubiquitous electric heating systems and, in one case, someone had actually viewed a flat which did not appear to have any heating. As a few participants were disabled, and thus spent a great deal of time in the property, heating was considered very important, but in the end not a deal breaker.

Landlord reputation in choosing a property was not considered an issue, in that it was not always clear who the actual landlord was, and most people only dealt with agents. That said, agent reputation did play a part, with some people explicitly saying they would not look at properties marketed by certain well-known agents, given either past experiences, or their poor reputation.

The landlord registration system was considered to be of some value, as they were assured there was a system in place. Participants also said they make use of the local landlord registration database to check whether the property was registered. Worryingly, in respect of professional practice, when one participant mentioned to the agent that the property being marketed was not registered, they had replied that was okay. In general, however, people were not clear as to how you would find out about a landlord's reputation, given there were now just so many of them.

Given the provisions of the 2016 Act, and encouraged by the business models employed by certain landlords and their agents, annual rent rises could become the norm so exploring experiences of rent rises, within existing SAT tenancies was of interest. The discussion then moved onto gauging tenant views about what potentially could be a very major change in tenancy practices and costs.

Experiences of rent rises presented quite a mixed picture. Given the number of tenancies individuals had held, seeing any consistent rent rise pattern proved challenging. For one participant, who resided in the same place for three years, at every six-month period when the tenancy rolled on, the rent would increase. Two people mentioned that their rent had increased twice within the tenancy, so that was twice within a six-month period. But many had not experienced a rise during the entire tenancy period, which was in one case three years and in another ten years. In that case, this was because the property was old and needed work carried out on it. Rent increases, however, only really featured when they secured a new tenancy. In terms of the actual amount, rent rises were always referred to in cash terms, an extra £150 a year, rather than in percentage terms. Percentage increases were thus not part of the tenants' current vocabulary on rents. That said, one participant stated: *"From my experience, letting agents tend to go with inflation, and while that seems ok my wages have not kept up with inflation"*.

Bearing in mind these tenants were, in the main, active in the tenants' movement, or had direct contact with Shelter, in the main, they possessed quite a basic knowledge of the new tenancy arrangements. Most, for example, did not realise they would, in future, be able to challenge a rent rise if they considered it too high. That said, as already noted, the official publicity about these new tenancies was only just emerging, albeit a good 18 months after the Act had been passed.

A few participants knew that under the new tenancy arrangements the fixed end date was about to go and in its place, was to be a new open-ended tenancy, that could only be ended through recourse to a legally prescribed set of repossession grounds. Knowledge about these grounds was also patchy, although a few did think that the right for landlords to end the tenancy if they decided to sell, was likely to be widely abused. As one person commented: *"they could just say they wanted to sell, but then just re-let and then say, it didn't sell"*

Two participants had direct experience of property sales, during their tenancy, with one having the tenancy extinguished, while the other was required to pay a higher rent to the new landlord. In addition, there was a concern voiced that access to the new tenancy might actually be denied them, if the landlords, or their agents, opted keep them on a rolling six-month contract, tied to the original SAT.

Improved security of tenure was welcomed by everyone, but whether this would result in tenants feeling empowered to assert their tenancy rights met with a mixed response. As one participant said: *"I've never complained about anything, because I feel you might just get kicked out"*. Another said, they would challenge issues because that needed to be done. They went on to qualify this by stating that the tenants' union would undertake challenges in order to set down some parameters. However, for one participant such discussion felt a bit unreal: *"It's just so far from my reality. I'm not challenging the landlord on the basics, even now. The information is not there. I'm just managing to get by, so its unimaginable to take that on"*. This participant felt there was a serious gap in a general understanding these new rights, with the most vulnerable people being well outside this loop.

There was a strongly expressed view, at both meetings, that the real villains of the piece in tenancy matters were letting agents, and not landlords. Most participants took the view that agents were keen to end tenancies, because they wanted 'churn', given it generated additional fees and, with the potential for annual rents rises, an increase in their income, given they worked on a percentage fee basis. Further, as one student participant noted: *"although tenancy fees are illegal, and that was clarified in the last Housing Act [2011] they are still being charged by agents"*. This raises questions about enforcement powers, and the willingness and capacity of regulators to actually enforce the legal requirements.

Having clarified that tenants in future can challenge the rent rise, questioning moved onto just how exactly individuals would go about doing that, and also what would stop them for exercising that right? As with the on-line discussion, this revealed a range of understandings.

In terms of checking whether their proposed rent rise was out of kilter with local rents, mention was made of Googling Zoopla, City Lets and the estate agents Rettie & Co. and Coulters. Shop window adverts were also mentioned, as was asking friends and neighbours in the neighbourhood or stair. The only 'official' data mentioned by anyone, and this was a minority, was the LHA rate. But then that was felt to be quite unhelpful in terms of getting any handle on local rent levels. As one Glasgow participant noted: *"the LHA figure for a one bedroomed flat in the city is £370 per month, for that it would likely be a complete wreck"*.

There was a general feeling that on-line access to current the rents being asked for new tenancies was helping to further drive up rents. When the 'official' rental data sources were introduced into the discussion, again these were not generally known. National 'official' rent data sources were thus, for the most part, invisible.

One participant made the point that unless future rent rises could be broken down into percentage increases, then pitching one rent against the another was always going to be a fraught and subjective exercise. Differences could easily be put down to location, or the quality of the property in question, its décor and furnishings, rather than being out of kilter with local rates. Another noted that if no improvements had taken place, then why should a rent have to rise. They again made the point that inflation rises were hardly acceptable if your wages had stayed fixed for years. Those active in Living Rent took the view that if enough people in one area started complaining, then it might act as a counterweight to ever increasing rents, although they also acknowledged that current Edinburgh rent rises were perhaps a very unique Scottish situation.

This then led into a broader discussion about RPZs, which was generally considered a useful development given accelerating rents in both Edinburgh and Glasgow. That was not surprising given the activist composition of these two groups. That said, no one had seen the guidance covering such declarations, although to be fair it had only just been issued. In discussions about the data requirements and technicalities set out in that guidance, there was some surprise about the amount of information demanded, to ensure the issue was considered by Ministers. Further, if a RPZ was declared, they did not quite follow that a cap on new rents would not apply, and that a rent increase block was to be set at a minimum of CPI plus one-percent, which to them hardly constituted a rent increase restriction. One participant also thought the improvements opt out ensured there was always a way for individual landlords

to avoid any rent control measures. However, participants were not at all concerned about the technicalities of declaring a RPZ, but rather saw them primarily as a focus for local campaigning activity, the means to highlight what they felt were wide-spread concerns about high rents and the need for some form of rent control.

Overall, these discussions revealed real concerns about rent rises within popular inner-city locations, especially in Edinburgh, and about the social changes they were causing. It was also clear that while these reforms very welcome there was a concern that the new powers might be avoided by more unscrupulous landlords, and more so by their agents, given the rule breaking that is currently taking place in relation to deposits and fees. It was also evident that the new 'rent regulation' measures had insufficient publicity and even housing activists were poorly informed about the nature of these new powers and the official procedures put in place to support them. The most striking finding was that no one really had any appreciation or understanding as to how they would judge whether a rent rise was too high. An above inflation rise was the most preferred measure of an unacceptable increase. Crucially, the legal basis for determining a rent rise appeal through a Rent Officer was not well understood. Finally, official rental data was largely unknown.

Procedures, Practices and Supporting Information

As is clear from all this discussion, rent adjudication is likely to become a larger task than it has been the case in recent years. Once core to the work of RSS, in respect of setting Fair Rents, over the last 30 years that task declined markedly as these old tenancies worked themselves out of the system. Now RSS is working on the presumption that, in the first year of these powers coming into place, some 1,600 rent rise appeals might need to be processed.

Adjudication, as a process, has long proved to be a contentious issue. The procedures and process involved in this activity are, therefore, worth exploring, given it brings together all the elements that have been discussed above: the legislation, the bodies charged with regulating the system, their practices in light of that, and the tenants who could pursue such an adjudication.

This was demonstrated recently following a Fair Rent case which was appealed to the Inner House of the High Court of the Judiciary (Scottish Courts, 2017; Upton, 2017). Here the PRHP was asked to adjudicate a Fair Rent⁴ case appeal by the tenant who was dismayed at the substantial rent rise set by the Rent Officer. The rent had risen from £3,504 per year (£292/mth) to £4,788 per year (£399/mth), an increase of 37 percent. While these types of tenancies are now relatively rare and the Fair Rent determination procedure is unique in nature, how these cases proceeded illustrates well how the rent adjudication process works.

In the rent determination appeal the Committee set the rent at £6,204 per year (£517/mth), a 77 percent increase on the original rent. In coming to this decision, the Committee considered Fair Rents for comparable properties but had then chosen to exclude them, as they did not consider that they provided the best available evidence. Instead the committee relied on evidence sourced from internet searches for full market private rental properties in the area. This produced a figure of £7,800 per year (£650/mth), with deductions for the state of repair and the tenant's improvements giving the final Fair Rent of £6,204 per year (£517/mth).

In the appeal to the Inner House the court ruled that the Committee had given due regard to the registered Fair Rents, for comparable properties, but had exercised its judgment, by preferring the evidence afforded by the 'open market rents'. As has been noted earlier, judgement or intuition has long played a part in such rent determinations and subsequent adjudications. It was also made clear earlier that the various pieces of rent setting legislation argue that in any adjudication procedure a composite of rent data is required in order to come to a final determination. However, the most interesting matter to arise out of this decision was the Inner House's refusal to acknowledge any difference between social and private rented sector housing, for the purposes of determining a Fair Rent. Lord Drummond Young, in the appeal ruling states: *"in my opinion privately rented housing and social housing cannot be said to form two wholly distinct markets, they rather form different aspects of a single market in low – or moderate-cost rented housing."* (Scottish Courts, 2017, para 17).

⁴ Fair Rents are a kind of controlled rent for private and social rented sector dwellings which were let out before 2 January 1989. The Rent Service Scotland provides valuations for tenants and landlords and keeps a register of Fair Rents. (Scottish Government, 2018)

The appellant had invited the Court to find that there was a distinction between the rents in those two sectors, and to hold that 'comparable' properties ought to be from the same sector. This was rejected by Inner House ruling. In setting out the legal background Lord Drummond Young, stated there was in his opinion:

"no warrant for treating houses let by housing associations in a fundamentally different manner from other rented property for the purpose of fixing a fair rent under section 48. Thus, in setting a fair rent for property owned by a housing association or other social landlord, a committee may have regard to evidence both of registered rents, including obviously those where the landlord is a social landlord, and of rents fixed by the market in the private sector so far as those are comparable."

(Scottish Courts, 2017, para 15)

The Court went on to state that, in exercising judgment, the Rent Officer or Committee can elect to put greater emphasis on rents charged to properties in the social rented sector, than in the private rented sector, given that those properties appear more directly comparable, but that is a decision for the Committee. Again, judgement in such cases involves drawing on a mix of evidence, to produce a 'composite', to again quote the Advocate David Bartos, and that demands professional judgement and discretion.

Two issues arise from this case which are pertinent to the considerations of this report. The first is the marked disparity in the rents the two adjudication approaches produced. While the focus in this instance was on setting a Fair Rent, the underlying mechanics of the process mirror what which will apply in Private Residential Tenancies appeals, given determining the 'open market rent' was central in both instances. Within a year, RSS will be asked to set the 'open market rent', where there is a disagreement on the between the landlord and tenant, while the Tribunal will be asked to adjudicate on that revised figure, if the first-stage outcome is subsequently appealed.

As matters currently stand, neither the Rent Service Scotland nor the Tribunal's Rent Assessment Committee provide transparency as to the method they employ to undertake that process, so it is quite unclear why their respective rental outcomes were so markedly different. A 21 percent discrepancy between their respective adjudicated market rent demands some explanation. The earlier observation that rent setting is more of an art than science does resonate loudly here. In undertaking this study, it was evident that neither RSS nor the Tribunal had any real understanding or appreciation as to how each went about undertaking their rent adjudication task.

The second point here, which directly relates to the first, is the significance accorded to professional, expertise come intuition, and the differences that apply in this regard in both rent adjudication process. The difficulty here is that such discretion appears to be applied in two quite different ways, by these two official bodies, hence, the markedly different rental outcomes.

Concluding Remarks

Overall, from undertaking this review of Private Housing (Tenancies) (Scotland) Act 2016 we see tenants' rights being enhanced, as a result of having a new tenancy that is open-ended and not, as in the past, time limited. This new tenancy should result in greater security, both as a consequence of the tenancies open-ended nature and the advent of prescribed statutory repossession grounds for landlords. Because of the tenancy's open-ended nature 'rent regulation' provisions needed to be added, so tenants were given the right to challenge what they considered to be a significant rent rise. At face value, this seems both appropriate and proportionate, given concerns that the new statutory repossession grounds could perhaps be circumvented by landlords simply demanding a significant rent increase. In addition, the new Private Residential Tenancy also insists that all previous tenancy rights provisions are clearly stated within the tenancy document issued by landlords, which enhances tenants' rights, while also ensuring landlords fully understand their legal responsibilities when renting a property. To help in this task the Scottish Government has provided a 'model tenancy agreement'.

The Scottish Government was also minded to show concern about significant rent rise 'hot spots', largely centred on Aberdeen at that time, and bowed to the pressure to introduce RPZs, which secured the Bill's passage into law in its entirety. The recent RPZ guidance sets down the detailed case local authorities are required to produce, involving amassing both quantitative and qualitative information, in order for such a designation to be approved by Ministers. Given the implications of such a declaration to landlords, and those investing in private renting, such rigour has some justification.

At the same time, the legislation allows individual tenants to challenge what they consider to be an excessive rent rise. In this case tenants are not asked to make a case themselves, but rather refer the proposed rent increase, in the first instance, to a Rent Officer to have a market rent set. As noted earlier, there is a serious concern that a proposed rent increase may be considered excessive by the tenant, but may well still be less than the going 'market rent' determined by RSS. On receipt of the appeal the Rent Officer will consult the 'official' PRS rental database, for comparable properties, and then drawing on their professional judgement determine what the 'open market rent'

should be. Should that not be accepted by the tenant, or for that matter the landlord, either can then apply to the First-Tier Tribunal (Housing and Property Chamber) for a final adjudication. In this instance, the 'open market rent' will again be independently arrived at, albeit through undergoing a different procedure, given that submissions from both parties are permitted, and a professional assessment of the property in question is undertaken by a Surveyor Member of the First-Tier Tribunal. In looking for comparable rents the intuition and professional judgement of the Tribunal members is drawn upon when constructing a composite of appropriate rental comparisons. Again, given the implications for both tenants and landlords a rigorous appeals procedure feels appropriate, albeit that concerns about the role played by professional judgement in setting an 'open market rent' do arise.

The real problem identified in all of this is the quality of data being drawn upon to make such decisions, and the lack of transparency which surrounds such processes. The Rental Market Database, which is the mainstay of RSS adjudications was created for a very specific purpose, namely to generate LHA rates, at a time when the PRS was quite small. It employs rent data essentially drawn from landlord advertising, which raises questions about its validity as a measure of current market conditions. It is also collected over very large geographic areas, by bedroom size, so cannot offer a local data set that is helpful to those interested in pursuing such a case. As the Scottish Government makes clear, in the RPZ Guidance: *"Rent data must be collected from existing tenants who have had a rent increase (in the same properties) and be representative of the PRS profile of the area. Other rent data (i.e. new lets) can be used as context only and cannot be used as supporting evidence as they may not represent the rents of existing tenants."* (Scottish Government, 2017, 8).

As a result, within a RPZ the only 'official' information collected on rents is deemed invalid, because it does not represent rents being paid by existing tenants, a valid criticism, but in the case of deciding whether individual tenants' rents have been set too high by their landlord, it will be the sole statistical tool employed to inform that first adjudication. This does appear peculiar. For local authorities to make their 'rent regulation' case, bespoke, spatially specific, individual tenancy data noting rent rises within the tenancy is demanded. Whereas, when RSS is asked to adjudicate on tenant rent rise appeals, that very same dataset is deemed adequate. That is not a sustainable position. Further, the First-Tier Tribunal when considering market rent appeals, rather than resorting to a data base of rents constructs a bespoke rental composite every time. How this is achieved will vary, depending on the professional judgements of the two people charged with that task, one of whom is a professional surveyor. The rent data selection is both particular and limited, and in most cases would not be considered statistically valid. Here the approach adopted is data light, and is too heavily skewed towards professional intuition. Access to a systematically generated and comprehensive data set on properties, their attributes and the rents charged would go some way to addressing these concerns.

4 Conclusions and Recommendations

The following conclusions and recommendations endeavour to facilitate wider discussion about what might help improve the operation of the 'rent regulation' measures established by the Private Housing (Tenancies) (Scotland) Act 2016. Hopefully it will also encourage a wider debate about private rents and why most European countries still see much merit in practicing 'rent regulation', despite the many challenges this throws up.

Free market approach to 'rent regulation'

The two 'rent regulation' measures, as the report makes clear, were not a central part of the Government's thinking in relation to reforming the private tenancy. The Government's ambition was to set in place a modern tenancy, as a means of consolidating the regulatory and management reforms they had introduced in two previous Acts. The resulting 2016 Act enhanced tenant security and delivered a set of statutory provisions that are standard throughout Europe, as the report's comparative section illustrates. However, the Act also brought into being a degree of 'rent regulation', something the Government was initially quite wary of.

The introduction of an open-ended tenancy, over a fixed term one, ensured the need for rent appeals to allay a fear that landlords would simply resort to rent hikes as a simple means to breach the new statutory repossession grounds. In addition, strong cross party-political pressure voicing concerns about localised rental 'hot spots' delivered the RPZs. As RPZs were not originally designed to be part of the reform measures, this perhaps explains the apparent light touch subsequently adopted in respect of administering 'rent regulation'. Scotland, perhaps uniquely in Europe has offered up an almost free market approach to 'rent regulation'.

Rent Pressure Zones represent much work for little gain

In reflecting on the legislation and supporting guidance for RPZs, the specified requirements needed before any application can be considered by Ministers represents a big ask for any local authority. Collecting unique data on rent increases within the Private Residential Tenancy will take years to work though, given the tenancy has only recently been introduced. Collecting the required individual household data will be technically challenging and time consuming, thus a potentially expensive exercise. The other contextual elements demanded present equally technical challenges, again requiring significant resources, both in terms of time and money.

Then having invested time, effort and considerable money in drawing up the application, there is then no guarantee of Ministerial, or Parliamentary approval. These procedures contrast starkly with the approach employed in Ireland where, if the defined criteria are met, the RPZ is automatically approved. Finally, if approved then the rent rises of CPI plus whatever percentage addition Ministers set, will then be a need to be monitored and policed over the five-year period.

“ The complexity, high costs and uncertainty associated with making an RPZ application means that local authorities will need to think very carefully about whether the perceived benefits are likely to outweigh the costs. ”

And fundamentally, as currently constituted RPZs are not actually about rent control, but rather a curb on outright profiteering. High rents can still be demanded, it is only the subsequent rent rises that will be tied to a rate a few percentage points above inflation. The Government's reasoning here is quite explicit: it does not want to see any loss of investor confidence. Protecting tenants from exploitation was secondary and consequently the impact of the RPZ measures is limited.

Given all this, it seems likely that most local authorities will not consider a RPZ to be an attractive, or necessary intervention to pursue. While it is right that the Scottish Government insists that local authorities must provide a robust and compelling case for a RPZ, given the potential risk of creating further market distortions, the requirements set out in the guidance are exceptionally challenging. Whether by design, or otherwise they may very well effectively curtail consideration of this measure.

Rental 'hot spots' hit the poorest households hardest

Across Europe presently there is strong political pressures to increase or, in some cases re-introduce greater 'rent regulation'. Rents, especially in capital and regional cities are rising fast, in the face of rising demand and a limited supply of rented accommodation or, in some instances, even a decline in supply. Although the catalyst for these changes was put down to the 2008 global financial crisis, and the varied housing market repercussions that fell from

that, the marketisation of the housing system is ultimately the driver of this change, and this was a process already well entrenched before that particular financial rupture.

“ The European evidence also suggests that ‘rent restriction’ powers offer up something of a mixed bag.

In some cases, Ireland, Denmark and Germany, the area targeted rent restriction powers were found to be having a limited impact, because within rental ‘hot spots’ landlords were largely able to ignore the measures, given that tenants, keen to secure or retain a tenancy, and with the income to do so, choose not to exercise their newly acquired rights. Those without such financial power in these localities often found themselves displaced, ejected from neighbourhoods where they had long resided, from properties they had assumed were their home given the secure tenancies they possessed.

Affordability issues demand supply side interventions

In other countries, France, the Netherlands, Sweden, but also in other parts of both Denmark and Germany long established ‘rent regulation’ measures continue to blunt market forces, to a degree.

“ Ultimately, it is supply-side policies, embracing both land-use and the financing new social rented housing, that will have a much bigger and more positive impact on the affordability issues impacting on lower income groups within society.

Public policy-makers came to this conclusion a century ago, and it still has great resonance to this day (Royal Commission, 1917).

Greater clarity is needed in respect of rent rise appeals

The other ‘rent regulation’ measure, that of giving individual tenants the right to appeal a rent increase, should they consider it ‘excessive’, is more likely to be used. However, the report has highlighted several issues that will require careful consideration to ensure this measure is workable and functions properly. Perhaps the first thing to make abundantly clear, is that this provision has not been seen as an instrument to limit annual rent increases, but rather as a means to protect the tenant’s security of tenure, given substantial rent rises could be used as a means to force people out, rather than going through the statutory repossession provision.

The tenant receives notice of a rent rise, and if they consider it too high, they can appeal to the Rent Officer for an adjudication. But, in effect, that decision subjects their proposed rent to market testing. The tenant might be seeking to limit the annual rent uplift, but the rent being suggested might well be below the market rate. In setting the process in motion they are agreeing to accept the market figure which could well be higher than the rent rise being asked for. There is a real danger, that in the mind of tenants these two separate issues then become conflated. Reviewing an annual uplift was designed to ensure tenants do not face undue financial pressure, in any given year, which might make them consider rescinding their tenancy. It is not about whether the rent level is above, or below the market rate.

The official thinking here does need revisiting, and the Scottish Government should issue guidance to RSS and the First-Tier Tribunal clarifying this difference, given the potential dangers in conflating the two issues. One unintended consequence of the move to open-ended tenancies is the prospect of annual rent increases. Having a rent rise appeal system that acts to impose a default market rate may add further to the upward pressure on rents. Public information about this provision is only now starting to emerge. Feedback from tenants made it abundantly clear that much remains to be done to properly publicise and explain this particular provision within the Private Residential Tenancy regime.

Private Rental Market data is inadequate and not fit for purpose

There is a glaring need to improve the quality of rent information available to tenants, so they can check whether any proposed rent rise is too high.

“ What is quite surprising, given this new right for private tenants right, is that there is currently no accessible, reliable public dataset on private rents and annual rent uplifts.

Evidence drawn from the tenant focus group sessions revealed the haphazard way people might go about seeking out such information, none of which offered a substitute to being able to access robust local rent information. ‘Official’ rent information, which draws directly from the RSS, was not known about. In the event, however, it cannot

offer any guide to local rents levels, given the sampling frame was designed solely to serve the DWP requirements for calculating LHA, within Scotland's 18 BRMAs, and thus cannot be scaled to support information at either a local authority or neighbourhood scale.

Then, there is the central issue as to how Rent Officers objectively go about determining 'the' market rent? The study revealed that the data drawn upon to undertake this exercise is not fit for purpose. The robustness of the 'official' data source, the RSS Rental Market Database was called into question given how it is compiled, the sampling frame adopted, data thresholds and the quality checks employed. Given such concerns, it is worth noting that the sample figure employed for English BRMAs is 20 percent of rents, twice that expected for Scotland. That then led into a definitional debate about what constitutes the market, and whether the RSS database provides an accurate reflection of the market.

Information on the rents being asked for by landlords, drawn largely from adverts, dominates the RSS database, whereas the rents being paid by tenants barely feature. These two rent figures can be quite far apart, given the time lag effects in relation to rent rises, given the previous SAT displayed a more random pattern of rent increases over time, as highlighted by both landlord and tenant evidence. Given the poor quality of rental data currently held, there is actually no evidence to confirm, or refute that actual rents differ substantially from advertised rents. Indeed, anecdotal feedback suggested there is no difference in Edinburgh and Glasgow, currently the country's most robust markets. Aberdeen, of course, given the recent collapse in the market, offered a quite different pattern, in that anecdotal evidence suggests agreed rents are below those advertised. That said, the number of tenants with a shortfall in Housing Benefit, as result of cuts to LHA, suggests this gap may be more theoretical than real. More worryingly, if actual rents were included and these were indeed lower than advertised, then LHA rates would fall, causing further affordability problems.

Good data is essential to protect tenants' rights

The lesson from Europe here is that good data is central to effective implementation of tenants' rights and an essential tool in ensuring 'rent regulation'. Yet, this part of the equation is completely lacking in the Scottish Government's approach to date.

“ The 'rent regulation' measures may not have been their preferred approach, but now they are set in legislation it is critical that a proper set of mechanisms are in place to support them, and one of these must be high quality data on private rents.

Given the Scottish Government is demanding that local authorities, in taking forward a RPZ application, need to provide information on house type, size, age and location for the local private market being considered for such a designation, it is odd that they do not expect the data they collect to similarly conform. However, it is clear from correspondence with the Scottish Government there are no current plans to improve on this poor state of affairs.

One relatively straightforward means of securing such information would be to require the capture of specified data fields from the three bodies that currently operate Scotland's Tenancy Deposit Schemes. In holding the tenant's deposit they already collect a range of information on each individual letting. This could be standardised and expanded to cover: the nature of accommodation (size, bedrooms, basic dwelling type, age and crucially amenities), its location, council tax payable, the landlord, the agent (if appropriate) and landlord registration number. One challenge here would be to find a means whereby rent increases are recorded on the data set. To take this matter forward the Scottish Government should constitute a short-life working group to review this issue and sort out the related data protection, access, usage and sharing issues.

Good data critical in supporting the 2016 Act provisions

Having a quality private rental data set, is not just a concern for tenants concerned about rent rises, but must also be a prime consideration for those now being asked to adjudicate on such matters. As was fully discussed, Rent Officers reach their decisions on what constitutes a market rent primarily by drawing on their rental market database. Further, as the recent case law illustrates appeal adjudicators draw from range of other sources, influenced by professional discretion, to produce a unique 'composite' in order to arrive at their view as to what the market rent for a specific property should be. The wide variations in the resulting market rents, thrown up by this particular case, acts to reinforce the need to have a more systematic, consistent, rigorous and transparent method of reaching such decisions. A robust private rental dataset would be of great value here. It is time Scotland, like other European nations, made rent setting more of a science and less of an art.

References

- Andersen, H (2008) 'Is the private rented sector an efficient producer of housing service? Private landlords in Denmark and their economic strategies', *European Journal of Housing Policy*, 8, 3, pp.263-286.
- Arnott, R (2003) 'Tenancy rent control', *Swedish Economic Policy Review*, 10, pp.81-121.
- Arnott, R (1995) 'Time for revisionism on rent control?', *Journal of Economic Perspectives*, 9, 1, pp. 99-120.
- Berry, K and Berthier, A (2015) 'Private rents', *SPICe Briefing Paper: 15/56*. Edinburgh: Scottish Parliament. Available at: http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_15-66_Private_Rents.pdf
- Business Insider (2015) 'The burning question: Will the Scottish Government's proposals to introduce rent controls damage the property market?', *Business Insider*, October.
- Council of Mortgage Lenders (2017) *Private Tenancies Scotland implementation - Rent Pressure Zones: Response by the Council of Mortgage Lenders to the Scottish Government consultation proposals*. London: CML. (22nd May) Available at: <https://www.cml.org.uk/policy/consultations/private-tenancies-scotland-rent-pressure-zones/>
- Craigforth Consultancy (2013) *Housing Needs and Demand Assessment: Isle of Arran and Isle of Cumbrae, Report to North Ayrshire Council*. Irvine: North Ayrshire Council.
- Crook, T and Kemp, P (2014) *Private Rental Housing: Comparative perspectives*. Cheltenham: Edward Elgar.
- Davies, B Snelling, C Turner, E and Marquardt, S (2017) *Lessons from Germany: Tenant power in the rental market*. London: IPPR. Available at: <http://www.ippr.org/read/lessons-from-germany-tenant-power-in-the-rental-market#>
- DKM Economic Consultants (2014) *Future of the Private Rented Sector. Report by DKM Economic Consultants on behalf of Private Residential Tenancies Board*. Dublin: PRTB/Housing Agency, October.
- DWP (2009) *Supporting People into Work: The Next Stages in Housing Benefit: A Consultation*. (December), London: DWP. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422155/Supporting_people_into_work-Housing_Benefit_consultation.pdf
- Fitzsimons, J (2014) 'The German private rental sector: A holistic approach', *Realdania Working Paper*. Copenhagen: Realdania.
- Fitzsimons, J (2013) 'The Dutch private rental sector: A holistic review', *Realdania Working Paper*. Copenhagen: Realdania.
- GDW (2015) *Anbieterstruktur auf dem deutschen Wohnungsmarkt*. Berlin: GDW. Available at: <http://web.gdw.de/uploads/pdf/infografiken/15.10.2014/Anbieterstruktur.pdf>
- Goffette-Nagote, F (2017) 'The impacts of rent control on maintenance: Historical analysis in Lyon', paper presented at *Les politiques publiques de contrôle des loyers en Europe 1914-2014*, École normale supérieure de Lyon, 13th June.
- Hayden, A Gray, P McAnulty, U O'Malley, C and Jordan, B (2010) 'The private rented sectors in Northern Ireland and the Republic of Ireland: A case study in convergence analysis', *International Journal of Housing Policy* 10, 4, pp. 421-441.
- Hoeksta, J (2017) 'Rent policy in the Netherlands', paper presented at *Les politiques publiques de contrôle des loyers en Europe 1914-2014*, École normale supérieure de Lyon, 13th June.
- Jenkins, B (2009) 'Rent control: Do economists agree?', in *Economic Journal Watch*. 6, 1, pp. 73-112.
- Kemp, P and Kofner, S (2010) 'Contrasting varieties of private renting: England and Germany', *International Journal of Housing Policy*. 10, 4, pp 379-398.
- Kemeny, J Kersloot, J and Thalman, P (2005) 'Non-profit housing influencing, leading and dominating the unitary rental market: Three case studies', *Housing Studies*, 20, 6, pp 855-872.
- Kettunen, H and Ruanavaara, H (2017) 'Is free market in private renting the norm in Europe? Finland in European and Nordic comparison', paper presented at *ENHR Private Rental Markets Workshop, Rent Control in a Comparative Perspective*, École normale supérieure de Lyon, 14 June.
- Labour Party (2012) 'Private rented housing - Providing stability and affordability for renters and families', *Labour's Policy Review*. London: The Labour Party. Available at: https://www.policyforum.labour.org.uk/uploads/editor/files/Private_Rented_Housing_2.pdf
- Leferrere, A (2017) Discussant contribution on the impacts of rent control on maintenance: Historical analysis in Lyon', paper presented at *Les politiques publiques de contrôle des loyers en Europe 1914-2014*, École normale supérieure de Lyon, 13th June.
- Lind, H (2014) 'Social housing in Sweden', in K Scanlon, C Whitehead and M Arrigoitia (eds.) *Social Housing in Europe*. London: Wiley-Blackwell.
- Norris, M and Coates, D (2014) 'How housing killed the Celtic tiger: Anatomy and consequences of Ireland's housing boom and bust', *Journal of Housing and the Built Environment*, 29, pp 299-315.
- Melling, J (1983) *Rent Strikes: Peoples' Struggle for Housing in West of Scotland, 1890-1916*. Edinburgh: Polygon Books.

- Office of National Statistics (2017) **Comparing Measures of Private Rental Growth in the UK**. London: ONS. Available at: UK (ONS, 2017) Available at: <https://www.ons.gov.uk/economy/inflationandpriceindices/articles/comparingmeasuresofprivaterentalgrowthintheuk/quarter3jultosept2017>.
- Office of National Statistics (2013) **Index of Private Housing Rental Prices: Historic Series**. London: ONS. Available at: <http://webarchive.nationalarchives.gov.uk/20160106022839/http://www.ons.gov.uk/ons/rel/hpi/index-of-private-housing-rental-prices/historical-series/iphpr-article.html>
- Paish, F (1950) 'The economics of rent restrictions', *Lloyds Bank Review*. London: Lloyds Bank.
- Rhodes, D (2007) 'The buy-to-let landlord', in D Hughes and S Lowe (eds.) *The Private Rented Housing market: Regulation or Deregulation*. Aldershot: Ashgate.
- Royal Commission on Housing (1917) **Report of the Royal Commission on the Housing of the Industrial Population of Scotland, Rural and Urban**. Edinburgh: HMSO. Available at: https://archive.org/stream/reportofroyalcom00scotrich/reportofroyalcom00scotrich_djvu.txt
- Sandhu, M (2015) 'Free lunch: rent controls that aren't', *Financial Times*, 27th April. Available at: <https://www.ft.com/content/da7b3bee-ecc0-11e4-b82f-00144feab7de>
- Scanlon, K and Kochan, B (eds) (2011) **Towards a Sustainable Private Rented Sector: The lessons from other countries**. London: London School of Economics. Available at: <http://eprints.lse.ac.uk/56070/>
- Scanlon, K and Whitehead, C (2015) **Proposals for Regulation of the Private Rented Sector: An Analysis. Interim Report for the National Landlords Association**. London: London School of Economics.
- Scanlon, K and Whitehead, C (2014) **Rent Stabilisation: Principals and International Experience. A report to the London Borough of Camden**. London: London School of Economics E. Available at: <http://www.lse.ac.uk/geography-and-environment/research/lse-london/documents/Reports/Rent-Stabilisation-report-2014.pdf>
- Scottish Courts (2017) **Appeal by James Wright Against Elderpark Housing Association**, [2017] CSIH 54 XA109/16. Edinburgh: Scottish Courts.
- Scottish Courts (2004) **Western Heritable Investments v. Hunter**, [2004] C 635 ScotCS 77. Edinburgh: Scottish Courts.
- Scottish Courts (2004) **Western Heritable Investments v. Husband**, [1983] SC(HL) 60. Edinburgh: Scottish Courts.
- Scottish Government (2017) **Local Housing Allowance Rates 2017-18**. Edinburgh: Scottish Government. Available at: <https://beta.gov.scot/publications/local-housing-allowance-rates-2017/>
- Scottish Government (2017a) **Private Housing (Tenancies) (Scotland) Act 2016: Rent Pressure Zones**. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Resource/0052/00527741.pdf>
- Scottish Government (2017b) **Private Sector Rent Statistics 2010-17**. Edinburgh: Scottish Government. Available at: <https://beta.gov.scot/publications/private-sector-rent-statistics-scotland-2010-2017/pages/16/>
- Scottish Government (2015) **Programme for Government 2015-16**. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2015/09/7685/1>
- Scottish Government (2015a) **Financial Memorandum prepared to accompany the Private Housing (Tenancies) (Scotland) Bill** (SP Bill 79), as introduced in the Scottish Parliament on 7 October 2015. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_Bills/Private%20Housing%20%28Tenancies%29%20%28Scotland%29%20Bill/SPBill79ENS042015.pdf
- Scottish Government (2015b) **Housing Statistics for Scotland 2015: Key Trends Summary**. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Resource/0048/00484822.pdf>
- Scottish Government's Private Tenancies Review Group (2014) **Final Report of the Review of the Private Rented Sector Tenancy Regime**, (May). Edinburgh: Scottish Government. Available at: <https://www.webarchive.org.uk/wayback/archive/20170111200326/http://www.gov.scot/Resource/0045/00450792.pdf>
- Scottish Government's Private Tenancies Review Group (2014a) **Private Tenancies Review Group, Minutes of Meetings, 7th October 2013, 4th November 2013, 21 January 2014 and 19 February 2014**. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/government/Tenancy-Review/meetings>
- Scottish Government (2012) **Property Factors (Scotland) Act 2011: Code of conduct for Property Factors**. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2012/07/6791/downloads>
- Skifter Andersen, H (2014) 'Denmark', in T, Crook and P, Kemp (eds.) **Private Rental Housing: Comparative perspectives**. Cheltenham: Edward Elgar.
- Smith Commission (2014) **The Smith Commission: Report of the Smith Commission for further devolution of power to the Scottish parliament (27th November 2014)**. Edinburgh: The Smith Commission. Available at: <http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/>
- Stephens, M Burns, N and McKay, L (2002) **Social Market or Safety Net? British Rented Housing in a European Context**. Bristol: Policy Press.
- Threshold (2015) **Dublin Tenancy Protection Service: One Year of Preventing Homelessness**. Dublin: Threshold. Available at: https://www.threshold.ie/download/pdf/tps_15_annual_report.pdf

- Trigg, T (2014) '*Why it's nearly impossible to rent an apartment in Stockholm*', *Quartz*, 12th September Available at: <https://qz.com/264418/why-its-nearly-impossible-to-rent-an-apartment-in-stockholm/>
- Valuation Office (2017) *Rent Officers Handbook*. London: Valuation Office Authority. Available at: <http://cti.voa.gov.uk/corporate/publications/Manuals/RentOfficerHandbook/LocalHousingAllowances/Determination/b-roh-broad-rental-market-areas.html>
- Turner, B and Malpezzi, S (2003) 'A review of empirical evidence on the costs and benefits of rent control', *Swedish Economic Policy Review*, 10. pp. 11-56. Available at: <http://www.government.se/contentassets/6e57e1d818bb4b289ac512bb7d307fa5/bengt-turner--stephen-malpezzi-a-review-of-empirical-evidence-on-the-costs-and-benefits-of-rent-control>
- Upton, A (2017) 'The "Wright" approach to Fair Rent? Why private rents count as comparable figures for social housing tenants', *HM Insights*. Available at: <https://www.harpermacleod.co.uk/hm-insights/2017/august/the-wright-approach-to-fair-rent-why-private-rents-count-as-comparable-figures-for-social-housing-tenants/>
- Westerheide, P (2011) 'The private rented sector in Germany', in K Scanlon and B Kochan (eds) *Towards a Sustainable Private Rented Sector: The lessons from other countries*. London: London School of Economics. Available at: <http://eprints.lse.ac.uk/56070/>
- Whitehead, C Monk, S Markkanen, S and Scanlon, K (2012) *The Private Rented Sector in the New Century: A Comparative Approach*. Copenhagen: Boligøkonomisk Videncenter. Available at: <http://www.lse.ac.uk/business-and-consultancy/consulting/consulting-reports/the-private-rented-sector-in-the-new-century>
- W (2017) 'Private rented housing: the rent control debate' House of Commons Library, *Briefing Paper 6760*, (3 April). London: House of Commons. Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06760>

Appendix 1: Official Datasets on PRS Rents in Scotland

Source / Title	Author	References / Link	Comments / Observations
Rent Service Scotland Market Evidence Database	Rent Service Scotland	http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/tenants/Local-Housing-Allowance/figures	A more detailed description of the methodology employed to create this database is provided in Appendix 4. This information comes from Annex C of the Scottish Government's Statistics Report on Private Sector Rent, http://www.gov.scot/Resource/0052/00527494.pdf . There are also a detailed set of tables showing sample sizes (numbers of properties' rents recorded) on the database, for each BRMA and property size grouping. This data is only publically accessible through the annual statistical analysis (see immediately below).
Private Sector Rent Statistics	Scottish Government Housing Statistics	http://www.gov.scot/Resource/0052/00527494.pdf	The publication only offers an annual statistical analysis. The rent data drawn from the RSS Market Evidence Database is solely published by BRMA areas only because the number of cases collected on the database are, in most contexts, is too small to support any geographical analysis at a scale lower than BRMA.
Index of Private Housing Rental Prices	Office for National Statistics	https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/	<p>This is a quarterly experimental price index designed to track private rental prices paid by tenants in Great Britain and its constituent countries. Although derived from the RSS Market Evidence Database, there are important differences as to how the ONS process and use that data:</p> <p>“The ONS Index uses the rental data to create a matched-sample dataset to ensure that only like-for-like properties are compared over time.</p> <p>The ONS matched-sample dataset retains rental records for a period of time (an assumption based on average tenancy length), and it is therefore an attempt to measure rental price changes for all rents and not just a measure of recent rental market evidence.</p> <p>The ONS Index is mix-adjusted in that it uses expenditure weights to adjust to the overall distribution of types of properties in the rental market (by expenditure).</p> <p>The Index does not provide any information on actual rental levels, and the Index values provided are not available at a sub-Scotland basis.”</p> <p>What it provides is a Single Index figure, the baseline (100) for which starts at January 2011, which allows rent rises overall to be understood within a common single measure. Full details of the methodology employed to calculate the IPHRP are published by the ONS (ONS, 2013). Further, the ONS have also recently produced an article on comparing measures of private rental growth in the UK (ONS, 2017).</p>

Source / Title	Author	References / Link	Comments / Observations
Scottish Household & House Condition Surveys	Scottish Government Housing Statistics	https://discover.ukdataservice.ac.uk/series/?sn=2000048 Case level data from the survey are available through the UK Data Archive	While SHS collect rental data, the actual amount is removed from the UK Data Archive dataset, for 'disclosure control purposes'. An alternative expression was expressed, namely that a lack of resources ensures the data is not cleaned. However, if for whatever reason, the collected rent data could be accessed, the small sample size ensures its unsuitability for tracking local rent changes over time. The 2014 'sample survey', covers just 1,184 respondents renting from a private landlord, & another 200 renting privately from an employer, family member, &/or organisation. At this scale, small area analysis would not be possible.
Family Resources Survey & Households Below Average Income datasets	Department for Work and Pensions	https://discover.ukdataservice.ac.uk/series/?sn=200017 Case level data are available through the UK Data Archive	Good quality data on incomes and rents, but again the sample size is very small for Scotland. In 2015-16 FRS Scottish sample recorded only 379 respondents who rented privately. Data combined over a number of years might give useful insights into the broad all-Scotland picture. There is a BRMA variable in the survey list, but this is missing from the actual UK Data Archive dataset (all values show up as zero). Given the small sample size the variable would probably be next to useless in any case.
Stat_Xplore	Department for Work and Pensions	https://stat-xplore.dwp.gov.uk/webapi/info/frontpage.htm Scottish data are available at Datazone (coded to Datazones at the time of the 2011 Census, based on the address of the claimant household)	Designed by DWP as a user friendly, on-line tool, to produce Housing Benefit statistics and some other benefits. Its main limitation is that it covers only the lower end of the private rental market, renters in receipt of Housing Benefit. Details the banded amount of Housing Benefit, household type, whether the claimant is employed, and whether rent is paid directly to landlord or tenant. While Eligible Rent is part of the dataset, it is not currently a variable in the database, but no explanation is offered as to why it is not included. As a result, this data set offers good quality, low level geographic data (subject to some random perturbation to preserve confidentiality); but shows only benefit amounts, which will be low for those on partial Housing Benefit and covers only lower end of the market, because of LHA restrictions. So, overall, it can only provide indirect evidence.

Appendix 2: Individuals and Organisations, either Interviewed, or Consulted

Robert Aldridge, formerly Homeless Action Scotland, Edinburgh

Hans Skifter Andersen, Danish Building Research Institute, Aalborg University

David Bartos Advocate, Edinburgh

James Battye, Shelter Scotland, Edinburgh

John Blackwood, Scottish Association of Landlords & First-Tier Tribunal for Scotland (Housing and Property Chamber), Edinburgh

Nick Bailey, Big Urban Data Centre, University of Glasgow

Rosemarie Brochie, Shelter Scotland, Edinburgh

Margaret Burgess, formerly Housing & Communities Minister, Scottish Government, Edinburgh

Andrew Cowan, T.C. Young, Solicitors, Glasgow

Dan Cookson, Housing Data Consultant, Cupar

Aileen Devany, First-tier Tribunal for Scotland (Housing and Property Tribunal) Glasgow

Christopher Donaldson, Rent Service Scotland, Edinburgh

Liz Ely, Living Rent Campaign, Glasgow

Kenneth Gibb, University of Glasgow

Florence Goffette-Nagat, Groupe d'Analyse et de Théorie Economique, University of Lyon

Duncan Gray, Shelter Scotland, Edinburgh

Susan Gilroy, Scottish Government, Edinburgh

Aideen Hayden, formerly Irish Senate Member & Residential Tenancies Board member, Dublin

Kenny Haycox, Edinburgh City Council

Joris Hoekstra, Delft University of Technology, Delft

Mariell Juhlin, formerly Swedish Tenants Association, Stockholm

Peter Kemp, Oxford University

Stefan Kofner, University of Applied Social Research, Zittau Görlitz

Adam Krawczyk, Scottish Government, Edinburgh

Anne Laferrère, Institut national de la statistique et des études économiques, Paris

Barry Stalker, Scottish Government, Edinburgh

Appendix 3: Individuals Contributing to the Tenant Focus Groups

Diane Adams

Penny Anderson

Jon Black

Rebecca Chan

Emma Craig

Liam Don

Scott Donohoe

Gerry Kielty

Tamara Mulherin

Jen Parker

Emma Saunders

Mike Williamson

Pauline Hay (Shelter Scotland)

Jen Leonard (Shelter Scotland)

Annie Mackenzie (Shelter Scotland)

Stephen Wishart (Shelter Scotland)

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no-one will have to turn to us for help.

We're here so no-one has to fight bad housing or homelessness on their own.

Please support us at **shelterscotland.org**

Registered charity in England and Wales (263710) and in Scotland (SC002327)

Shelter Scotland
Scotiabank House
6 South Charlotte Street
Edinburgh EH2 4AW
shelterscotland.org

Shelter
Scotland



BRIEFING PAPER

Number 6760, 3 April 2017

Private rented housing: the rent control debate

By Wendy [REDACTED]

Contents:

1. Rent setting - current provisions
2. A renewed focus on rent levels
3. Rent control: the debate
4. Some international comparisons



Contents

Summary	3
1. Rent setting - current provisions	4
1.1 England post-1989 deregulation	4
1.2 Scotland	4
1.3 Wales	5
1.4 Northern Ireland	5
2. A renewed focus on rent levels	6
2.1 Housing Benefit expenditure	6
2.2 Affordability	9
3. Rent control: the debate	11
3.1 Opposition to rent control	11
3.2 Support for 'predictable' rent increases	13
3.3 Different types of rent control	16
3.4 Policy developments	17
A model tenancy agreement	17
New-build private rented housing	18
A London living rent	18
4. Some international comparisons	19
4.1 The international context of rent control and regulation	19
The Netherlands	20
Finland	21
Sweden	21
Germany	21
New York City	22
Paris	23
4.2 Further reading	23

Summary

The private rented sector overtook social housing as the UK's second largest tenure in 2014. The [English Housing Survey 2015-16](#) notes that the sector accounts for 4.5 million (20%) of households. The proportion of households with children living in the sector has increased. In addition, the survey found that "private renters spend a significantly greater proportion of their income on their housing costs than social renters or those buying with a mortgage."

After 1989, private sector rents in most of the UK were deregulated on new tenancies, this has remained the case but devolution of housing policy is now leading to different approaches in Scotland and Northern Ireland.

Despite claims that Housing Benefit would "take the strain" of increased rent levels following deregulation, in 2010 the Coalition Government identified a need to address "ballooning" expenditure on Housing Benefit. In 2013 the Department for Work and Pensions [estimated](#) that £2.9 billion (33%) of private sector Housing Benefit expenditure in 2010/11 could be attributed to real terms rent growth over the previous ten years. There has also been an increased focus on the affordability of private rented housing, particularly in high housing demand areas such as London and the south east.

While the Government has sought to reduce Housing Benefit expenditure by introducing a number of restrictions on eligibility, some commentators have called for a degree of rent regulation to control rent increases during the term of a tenancy. The Coalition Government published a [model tenancy agreement](#) which landlords can use to offer longer tenancies with more predictable rent increases. Shelter is arguing for a "stable rental contract" to offer tenants predictable rent increases. A distinction can be drawn between rent *controls*, which impose nominal rent caps, and systems that permit rents to adjust to near-market levels but which allow for a degree of regulation.

Not surprisingly, there is substantial opposition amongst landlords, both individuals and institutional investors and their representative bodies, to interventions which would restrict rents both at the start of, and during the term, of a tenancy. It is argued that market intervention would result in landlords withdrawing investment, both in terms of new supply and upkeep of the existing stock.

Comparisons are frequently drawn with different rent regulation regimes operated elsewhere in Europe. When seeking to learn lessons from alternative regimes it is important to bear in mind that the private rented sector in the UK is not directly comparable to that in, for example, France, Germany and Switzerland, where a much greater proportion of the population sees private renting as the 'normal' choice of tenure.

This briefing paper provides an overview of the debate around rent control/regulation and includes some information on a small selection of international rent regimes. The Library briefing paper: [A short history of rent control](#) contains information on the history of rent control in the UK.

1. Rent setting - current provisions

Britain, like many other countries, put in place measures to limit the initial rent that landlords could charge, as well as any subsequent increases, in response to housing shortages during and after both World Wars. In England, rent regulation ended for most new lettings after 15 January 1989 but still continues in different forms across Europe and in a number of cities in the United States. The Library briefing paper, [A short history of rent control](#), contains more detail on the history of rent control in the UK.

Housing policy is a devolved matter and different approaches to rent regulation in the private rented sector are being adopted by some of the devolved nations.

1.1 England post-1989 deregulation

Since January 1989, when Part I of the *Housing Act 1988* came into force, most new private lettings have been either assured or assured shorthold tenancies on which market rents can be charged.

Prior to this, private sector tenancies were generally covered by the *Rent Act 1977* and were subject to 'fair' or 'registered' rents set by independent rent officers. These tenancies are now 'dying on the vine'.

The *Housing Act 1980* had been the Conservative Government's first attempt to deregulate the private rented sector. Shorthold tenancies introduced by the Act were designed to encourage investment in the private rented sector by making it easier for landlords to gain possession at the end of a fixed-term of between one and five years, or after six months from the start of the tenancy.¹ The measure was largely unsuccessful as shorthold tenancies failed to take-off. The 1988 Act replaced the 1980 Act's provisions in respect of shorthold tenancies and made more substantial changes, including the deregulation of rents for new lettings and the introduction of assured tenancies.

Assured and assured shorthold tenants have limited rights to refer rent increases to a Rent Assessment Committee (RAC) – assured shorthold tenants can also refer the rent to a RAC at the beginning of their tenancy.

1.2 Scotland

Most tenancies in the private rented sector in Scotland are short assured, under the *Housing (Scotland) Act 1988*. These must be for a minimum of six months' duration. Market rents can be charged on these tenancies.

¹ Initially, under a shorthold tenancy, rents had to be registered as 'fair', however, this requirement ceased to apply to all shorthold tenancies by 1987. Kemp P, *Private Renting in Transition*, 2004, p52

The *Private Housing (Tenancies) (Scotland) Act 2016* will, when commenced later in 2017, introduce a new type of tenancy for the private rented sector in Scotland to replace the short assured tenancy and assured tenancy for all future lets. The new tenancy will be known as a private residential tenancy.

Private residential tenancies will be open-ended, and there will be no 'no-fault' ground for possession equivalent to the current notice that can be given under section 33 of the *Housing (Scotland) Act 1988*.

The *Private Housing (Tenancies) (Scotland) Act 2016* will allow local authorities to implement rent caps in designated areas (rent pressure zones) where there are excessive rent increases. Applications must be made to Scottish Ministers, who will then lay regulations before the Scottish Parliament. Tenants unhappy with a proposed rent increase will also be able to refer a case to a rent officer for adjudication (provided the property is not in a rent pressure zone).

Further background on the legislation is available in [briefings](#) by the Scottish Parliament Information Centre.

1.3 Wales

Currently, as in England, most private sector tenancies in Wales are assured shorthold tenancies. The *Renting Homes (Wales) Act 2016* is introducing a new legal framework for renting a home in Wales. While there have been calls from opposition politicians in Wales for rent control in the private rented sector, the current Welsh Government has not indicated any intention to pursue such a policy.

1.4 Northern Ireland

Until 1978 all private sector rents in Northern Ireland were controlled. Sector-wide rent control was removed in 1978 with the exception of rents for protected and statutory tenancies which remain controlled (currently approximately 900 tenancies). In April 2007 additional rent control was introduced. For all tenancies which commenced after this date and where the property was built before 1945 and does not meet the statutory fitness standard, the rent is determined by the Rent Officer for Northern Ireland. The rent for these properties remains controlled until the property is made fit.

The Department for Communities in Northern Ireland (DfC) has said that, in order to address affordability issues in the sector, it will:

Introduce legislation to stipulate that rents can only be increased once in any 12 month period.²

² DfC, [Private Rented Sector in Northern Ireland – Proposals for Change](#), January 2017

2. A renewed focus on rent levels

2.1 Housing Benefit expenditure

When the *Housing Act 1988* deregulated private sector rent levels for new tenancies created after 15 January 1989 (England and Wales) a likely outcome was identified as an increase in expenditure on Housing Benefit. The then Minister for Housing, Sir George Young, responded to concerns expressed about increased rent levels in all tenures with reassurances that Housing Benefit “would take the strain”:

Mr. Soley: Tenants of housing associations, councils and the private sector face a disgraceful position. Did not rents in the housing association sector go up by about 25 per cent. the other year? Is not it also true that council rents will go up dramatically in the next couple of weeks and that private sector rents are out of the reach of many people? In those three examples housing benefit does not meet the needs of many people, particularly pensioners with small occupational pensions. What will the Government do about rents that are increasingly unaffordable in a rented sector has suffered a collapse, with the loss of 1.5 million properties in the past 10 years? There must be an answer that produces affordable rents in affordable properties.

Sir George Young: I do not accept the premise on which the hon. Gentleman based his question. Housing benefit will underpin market rents-- we have made that absolutely clear. If people cannot afford to pay that market rent, housing benefit will take the strain.³

After coming into power in 2010 the Coalition Government announced a package of welfare reforms aimed at reducing public expenditure as part of its deficit reduction programme. Housing Benefit was targeted as a key area for reform due to ‘ballooning’ expenditure in this area:

Housing Benefit expenditure has ballooned in the past 10 years, from £11 billion in 1999/2000 to £20 billion in 2009/10, in cash terms. Within this total, expenditure on working age recipients has increased from £7 billion to over £14 billion. Without reform, total expenditure is forecast to reach £25 billion by 2015/16, a further rise of 24 per cent. This is unsustainable in any economic climate, but the need to tackle the record deficit makes reform even more pressing.

In 2013 the Department for Work and Pensions (DWP) released an analysis of the impact of rent growth on Housing Benefit expenditure. On private sector rents the analysis found:

...that the average eligible private sector rent for Housing Benefit (HB) increased by 45% in real terms between 2000/01 and 2010/11. An estimated £2.9 billion (33%) of private sector HB expenditure in 2010/11 can be attributed to real terms rent growth over the previous ten years.⁴

³ HC Deb 30 January 1991 cc939-40

⁴ DWP, [Impact of rent growth on Housing Benefit expenditure](#), 2013

Most tenants who are reliant on benefit assistance to meet their rent payments in the deregulated private rented sector⁵ receive the Local Housing Allowance (LHA). The LHA is a flat rate payment based on the number of bedrooms a claimant is deemed to require within a Broad Market Rental area. The amount of LHA actually received depends on an individual's personal circumstances – it is a means tested benefit.

The default arrangement is that LHA is paid direct to claimants rather than their landlords. After its introduction in 2008 there was evidence to suggest that direct payment of LHA to claimants had resulted in increased rent arrears (and evictions) of private sector tenants.⁶

As part of the aforementioned package of welfare reform, in 2011 the Coalition Government changed the basis on which LHA rates are calculated from the 50th percentile of market rents to the 30th percentile and also introduced national caps. The uprating of LHA rates was restricted in 2014 and 2015. The current Government has frozen LHA rates with effect from April 2016 for four years.⁷ Several local authorities identified the disparity between LHA rates and actual rent levels as a significant contributor to the ending of private sector tenancies and, as a result, homelessness, when giving evidence to the Communities and Local Government (CLG) Select Committee:

Cambridgeshire District Council for example highlighted that “A significant barrier to accessing the private rented sector is the difference between LHA rates and typical rent levels. Typically rents are at least £250pcm more than the LHA rates across all property sizes, making the private rented sector unaffordable for those on a low income.” Westminster City Council has the largest private rented sector in England with very high rents, and there is a £536.54 disparity between the average weekly rent of a three bedroom home and the capped LHA rate.⁸

Other Housing Benefit measures which have impacted on claimants in the private rented sector include:

- An extension of the Shared Accommodation Rate (SAR). Since January 2012 most single people under the age of 35 have been restricted to the LHA rate for a room in a shared house. The SAR previously applied to those under 25 years of age.
- The household Benefit Cap was reduced from £26,000 to £23,000 in London and £20,000 elsewhere from 7 November 2016.⁹
- Entitlement to the housing element of Universal Credit for new claimants (with a number of exemptions) after 1 April 2017 applies to young people aged 18 to 21.

⁵ Refers to tenancies created after Part 1 of the *Housing Act 1988* came into force on 15 January 1989.

⁶ DWP, The Local Authority Omnibus Survey – Wave 20, August 2010

⁷ There is some provision for uplift in areas with the most expensive rents.

⁸ [CLG Select Committee, Third Report of 2016-17, Homelessness, HC 40](#), August 2016, para 17

⁹ This is a cap on the overall benefit a household can receive – some benefits are exempt.

In evidence to the CLG Select Committee's inquiry into the private rented sector (2013-14), the Housing Law Practitioners' Association (HLPAs) said that benefit recipients were subject to "de facto rent control" because of Housing Benefit restrictions.¹⁰ Indeed, the Welsh Affairs Committee's report, [The impact of changes to housing benefit in Wales](#), (2013), concluded that "direct rent controls" would be needed to bring down the Housing Benefit bill. The Report said:

We acknowledge that one of the main reasons for recent increases in the housing benefit bill and projected further increases is inflation in private housing sector rents. Efforts to control housing benefit increases therefore have to include strategies to manage spiralling rents in the private rented sector, including direct rent controls.¹¹

Commons Library briefing paper 05638, [Housing Benefit measures announced since 2010](#), contains a detailed assessment of Housing Benefit measures and some modelling of the impact of these changes on Housing Benefit claimants, particularly the freezing LHA rates.

Expenditure on Housing Benefit in 2016/17 is forecast to be, in real terms 2015/16 prices, £23.7 billion. In 2016/17 expenditure on local authority tenants will comprise 25% of HB expenditure, expenditure on housing association tenants 38% and expenditure on private tenants 37%.

Housing Benefit expenditure 1978/79 to 2020/21, by tenancy type

£ Million, real terms 2015/16 prices



Notes

Data forecast from 2015/16 onwards

Source

[DWP Benefit Expenditure and Caseload tables, March Budget 2016](#), "Housing Benefit" table

In 2016/17, there are forecast to be around 4.8 million households in receipt of Housing Benefit in Great Britain. Of these, 28% are local authority tenants, 40% are registered social landlord (housing association) tenants and 33% are private sector tenants.

¹⁰ [Ev w248, para 8](#)

¹¹ Welsh Affairs Committee, *The impact of changes to housing benefit in Wales*, 17 October 2013, HC 159-I 2013-14, para 4. This paragraph was subject to amendment and voted on by the Committee which agreed the published wording by 7 votes to two (see the formal minutes on page 31 of the Report).

Housing Benefit caseload 1978/79 to 2020/21, by tenancy type



Notes

Data forecast from 2015/16 onwards

Source

[DWP Benefit Expenditure and Caseload tables, March Budget 2016](#), "Housing Benefit" table

Commentators argue that measures to restrict Housing Benefit have made it more difficult for low income households to access the private rented sector. In turn, they have questioned whether more action should be taken to control rent increases as opposed to restricting benefit entitlement.

2.2 Affordability

The Office for National Statistics (ONS) private housing rental index indicates that private rents grew by 2.3% over the year to August 2016 in Great Britain.¹²

Income to rent ratios

The ONS have compared median private rents with individual salary data as a way of comparing affordability in local authorities across England (see map below).

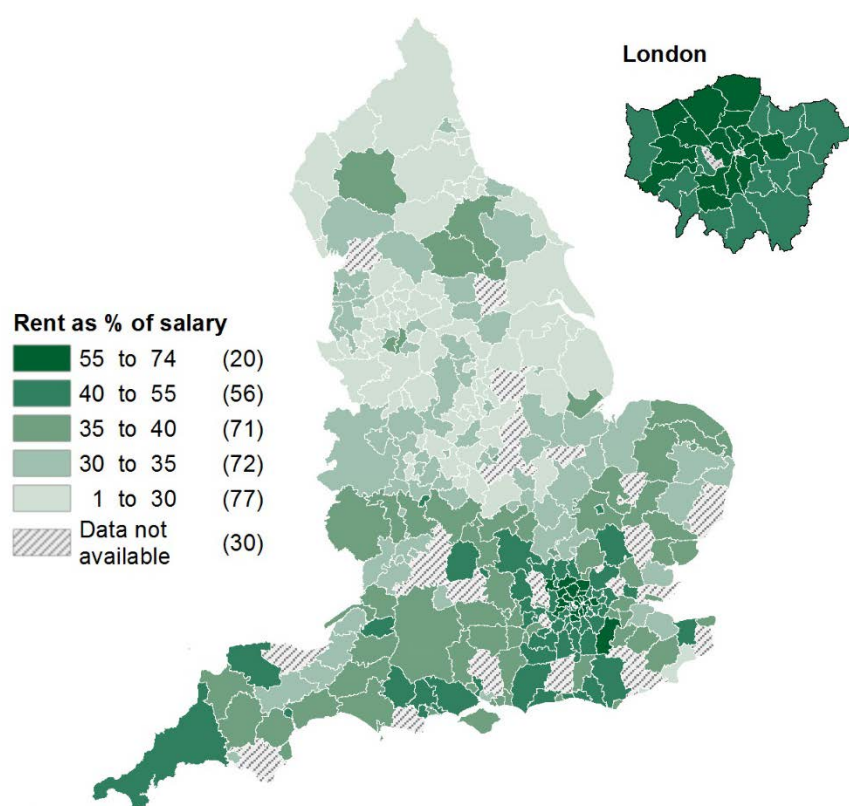
Across much of England, median rents are around 30-40% of median monthly earnings. However, the proportion can be considerably higher, particularly in London and parts of the South East. The 15 areas with the highest proportions were in Greater London (the highest was in Westminster at 73%).

There were 71 areas with rents of less than 30% of median earnings, mainly concentrated in the North and Midlands. The 'most affordable' area by this measure was Copeland (19%).

¹² Office for National Statistics, [Index of private housing rental prices in Great Britain](#), August 2016

Median private monthly rents as a proportion of gross monthly salary¹³

Local authorities in England, 2015



© Crown copyright. All rights reserved. House of Commons Library (OS) 100040654 (2016)

There are some limitations to this approach. The measure applies to employees only and doesn't take additional income sources or deductions into account. It measures individual salary rather than accounting for the combined income of households. The small sample size means that areas should be compared with caution – some of the variation will be due solely to fluctuation in the sample.

The [English Housing Survey 2015-16](#) found that "In 2015-16, the average private rent in London was £300 per week, about twice the average rent outside London (£153 per week)." Private renters also spent a higher proportion of their income on housing costs:

On average, those buying their home with a mortgage spent 18% of their household income on mortgage payments whereas rent payments were 28% of household income for social renters and 35% of household income for private renters. Excluding Housing Benefit, the average proportion of income spent on rent was 37% for social renters and 41% for private renters.¹⁴

¹³ Source: Office for National Statistics, [Housing summary measures analysis](#) dataset

¹⁴ [English Housing Survey 2015-16](#), para 1.44

3. Rent control: the debate

The growth of the private rented sector has prompted an increased focus on regulatory controls. There have been calls for the introduction of longer, more secure tenancies and, in general, a focus on *predictable* rent increases, as opposed to formal systems of rent control.

3.1 Opposition to rent control

Opposition to rent control is not new. The Fraser Institute published a series of papers in 1981 under the title [Rent Control: Myths and Realities](#), setting out the arguments against rent control. The publication compared photographs of the damage to housing caused by aerial wartime bombing and damage attributed to the use of rent control and cited Professor of Economics in Stockholm, Assar Lindbeck, who, in 1972, said:

In many cases rent control appears to be the most efficient technique presently known to destroy a city – except for bombing.¹⁵

Studies on the use of rent control have listed both positive and negative effects, including:

- making many rents in the private sector affordable for some tenants;
- leading to anomalies in rent levels for similar properties as well as for the same property under different ownership;
- reducing investment in new housing stock in the private rented sector and in the upkeep of existing stock;¹⁶
- increasing demand for private rented sector housing that cannot be met because of landlord disinvestment;¹⁷ and
- reduced mobility of tenants in rent controlled accommodation.

While evidence on reduced mobility for those in rent controlled accommodation is less than for some of the other effects of rent control because of limited research in this area, Richard Arnott said in [Tenancy rent control](#) that:

In the case of housing, because of its durability, rent control discourages mobility, which results in households being increasingly mismatched with units, and adversely impacts the allocation of workers over jobs.¹⁸

¹⁵ Olsen E and Walker M, '[Rent Control: Myths and Realities: International Evidence of the Effects of Rent Control in Six Countries](#)', The Fraser Institute, 1981, p213 quoting Lindbeck A, The political economy of the new left, 1972

¹⁶ Malpass P and Murie A, Housing Policy and Practice, Fourth Edition, 1994, p45

¹⁷ Olsen E and Walker M, '[Rent Control: Myths and Realities: International Evidence of the Effects of Rent Control in Six Countries](#)', The Fraser Institute, 1981, p269

¹⁸ Arnott R, [Tenancy rent control](#), Swedish Economic Policy Review 10, 89-121, 2003, p109

In [The Future of Private Renting in the UK](#), (2004) Professor Michael Ball concluded that the status quo should be maintained in terms of deregulated rents:

Rent controls and permanent security of tenure have been successfully abolished in the UK. To go back to them would create severe market distortions and cost the Treasury dearly for no clear social or economic benefit. [...]

...the overall message is that the growth of the private rented sector over the past fifteen years has been a major success. That success has primarily been market-driven, yet still it is one in which policy has played an important part. Success has come about by allowing a free market to operate and the forces of competition within it to work. The UK as a whole is highly unlikely again to become a nation of private renters, but the tenure once more is playing a key and sustainable role in housing provision. The objective of policy should be to keep it that way.¹⁹

Similarly, in [The Future of the Private Rented Sector](#) (2008) the Smith Institute said it was the “lifting of the controls on rent and on the prohibition on short-term lettings in the Housing Act 1988 that led directly to the growth – after decades of decline – in the sector”.²⁰

Landlord bodies, such as the [National Landlords Association](#) (NLA) oppose rent control and argue that reintroducing controls would result in a decline in the sector as lenders would be less willing to offer finance for buy-to-let mortgages, while landlords would withdraw from the market or cease to invest in new property.²¹

An HM Treasury paper, [Investment in the UK private rented sector](#) (2010), supported the view that landlords withdraw from the market in the face of regulatory controls:

The impact of pre-1988 rent controls was that little new PRS stock entered the market, with longer-run rates of return being depressed. What stock remained tended to be older than in other tenures, and of lower quality, as the use value of higher quality stock was considerably higher in the owner-occupied sector, resulting in tenure switch. Those who remained often lacked funds (or incentives) for the adequate repair and improvement of properties. Many consider rent control to have been a major contributory factor to the subsequent decay of much of the inner city housing stock.

However, since 1988 Governments have taken a less restrictive approach to PRS regulation. The removal of rent control and introduction of Assured Shorthold Tenancies halted, and began to turn around the previous decline in private rental provision.²²

In October 2013, Professor Michael Ball produced a report for the Residential Landlords Association (RLA), [Why governments should not enforce long-term contracts in the UK's private rented sector](#), which argued against any form of compulsory rent ‘stabilisation’ or control

¹⁹ Ball M, [The Future of Private Renting in the UK](#), The Social Market Foundation, 2004, p5 and 67

²⁰ The Smith Institute, [The Future of the Private Rented Sector](#), Edited by Peter Bill, Paul Hackett and Catherine Glossop, 2008, p71

²¹ NLA, [“Rent control is not the answer,”](#) [accessed on 30 March 2016]

²² HM Treasury, [Investment in the UK private rented sector](#), February 2010,

either at the start of or during tenancies. Publication of the report followed the Coalition Government's announcement of an intention to introduce a model tenancy agreement and a tenants' charter:

This report argues that recent proposals to introduce fixed-term contracts and bans on real rent changes within them are poorly thought out. If such tenancy rent control schemes were enforced, they would fatally undermine the huge increase in the private rented sector of the past two decades.²³

3.2 Support for 'predictable' rent increases

While there appears to be no widespread calls for the reintroduction of rent control, there have been some calls for a method of limiting increases in rents in areas where they are particularly high.

In [Housing options and solutions for young people in 2020](#) (2012), the Joseph Rowntree Foundation considered a system of landlord incentives together with checks and balances for achieving a stable private rented sector market:

Many landlords saw mechanisms such as landlord registration or accreditation schemes as burdens that did not offer them any advantages. While there are valuable schemes working to increase access and promote positive relationships between landlords and tenants, more fundamental reforms are needed.

An alternative structure of landlord incentives, together with checks and balances around tenants' interests, would be a good starting point for reform. This may alleviate concerns about the increase in security of tenure reducing the supply of private rented homes. Other studies suggest scope for governments to trade incentives and constraints, not only to increase the supply of private rented housing but also the conditions on which it is offered to tenants, including rent levels and security of tenancy. This approach could make best use of existing UK housing tenure structures, where the ability to offer longer term tenures is available but rarely used. Tax incentives may help overcome the problem of buy-to-let lenders being unwilling to support longer term tenancies within their mortgage terms. With many more households in the PRS by 2020, closer working relationships between representatives of landlords and tenants need to be forged and policy-makers must consider the needs of tenants and landlords more fully.

In [A better deal: towards more stable private renting](#) (2012) Shelter set out the case for a "stable rental contract" to offer tenants predictable rent increases:

Shelter believes that a new rental offer should be developed using the current legal framework. It should be called **the Stable Rental Contract** – and it would:

- give renters five years in their home during which they could not be evicted without a good reason
- allow landlords to increase rents annually by a maximum of CPI during the five years

²³ RLA, [Why governments should not enforce long-term contracts in the UK's private rented sector](#), 2013

- give renters the chance to decorate their home as long as they return it to neutral afterwards
- allow renters to give two months' notice to end the tenancy
- give landlords the right to end the tenancy if they sell the property.²⁴

A further Shelter report, [The rent trap and the fading dream of owning a home](#) (2013), drew comparisons with rental contracts in other European countries:

In contrast, rental contracts in England are short – typically six or 12 months – and there are no limits to how much rents can be increased. This means that renters in England have an expensive, unpredictable time in a place they would like to call home. Every rent increase could destabilise their finances, making it harder and harder to save up a deposit and build up assets.²⁵

Shelter's Director of Communications, Policy and Campaigns, Kate Boycott, gave oral evidence to the CLG Select Committee's inquiry into the private rented sector (2013-14) in which she addressed the need for longer term tenancies offering predictable rent increases:

We propose that this is a tenancy that could be used right now to cope with a certain segment of the market. If it was deemed that, actually, it was preferable for the whole market to go to longer-term tenancies with predictable rents, that is a slightly different situation. What we are advocating is that it becomes a more normal contract that offers particularly this predictability of rent rises to the tenant, with some safeguards on both sides. If it is better for the landlord to have that longer-term assurance that the rent is going to be there, they are not going to have the cost of voids and changing tenancies.²⁶

The British Property Federation's evidence to the Committee rejected index-linking as a means of delivering more stable rents on the basis that "it is neither stable nor predictable."²⁷ Some suggested alternatives included a fixed uplift provided for in tenancy agreements, e.g. an annual increase of 2%, or a link to average earnings.²⁸

The Select Committee noted that, for the most part, evidence submitted was against measures to control rents on the basis that this would adversely affect investment and lead to a reduction in supply.²⁹ The Committee did not recommend a return to rent control or regulation:

Problems with the affordability of rents are particularly acute in London and the South East. Although in other parts of the country average rents and yields are relatively stable, we are still concerned that some families are struggling to meet the costs of their rent. We do not, however, support rent control which would serve only to reduce investment in the sector at a time when it is most needed. We agree that the most effective way to make rents

²⁴ Shelter, [A better deal: towards more stable private renting](#), 2012

²⁵ Shelter, [The rent trap and the fading dream of owning a home](#), 2013

²⁶ [HC 50-II](#), Session 2013-14, July 2013

²⁷ [HC 50](#), Session 2013-14, July 2013, para 112

²⁸ Ibid.

²⁹ [HC 50](#), Session 2013-14, July 2013, para 109

more affordable would be to increase supply, particularly in those areas where demand is highest.³⁰

The Committee did not make a specific recommendation on the issue of securing more predictable rent increases but commented:

There is no perfect way to set rent, but, where longer tenancies are being established, linking increases to inflation or average earnings, or voluntarily agreeing a fixed uplift each year merit consideration and could provide tenants and landlords with a degree of stability, though over time mechanisms may emerge as, for example, in the commercial property sector. Tenants', landlords' and agents' groups should encourage their members to discuss these options at the outset of a tenancy. Existing arrangements for setting and increasing rent are often arbitrary and uneven, and reflect the immaturity of the market.³¹

The London Assembly's Housing Committee commissioned the Cambridge Centre for Housing Policy and Research (CCHPR) to consider the likely impact of a range of rent stabilisation measures on London's housing market. This work built on a previous study, commissioned by Shelter, to look at the national picture.³² [Research on the effect of rent stabilisation measures in London](#) (2015) modelled the potential impact on the sector of the following scenarios:

- No rent controls.
- Rent increases restricted to CPI and five-year tenancy agreements.
- Rent increases limited to the lower of either the increase in average earnings, or CPI, whichever is the lower in any given year.
- A temporary three year freeze on all private rents, including between tenancies, after which they return to market rents.
- Rent increases limited to the lower of either the increase in average earnings, or CPI, whichever is the lower in any given year, applied to all tenancies except for new-build or stock entering the PRS for the first time which are assumed to start out at market rents, but then have their rental increase limited in the same manner as other stock.
- Rents are cut to two thirds of their current value immediately, and thereafter allowed to rise only in line with the lower of either wage inflation or CPI.
- Rents are prevented from rising to higher than market rents.

While stressing that the conclusions are 'tentative', the authors found a more significant impact in London than in other regions; under only one of the scenarios (cutting rents by two thirds) would the size of the sector be expected to reduce:

Outside London there are some areas where rent growth is very low, or non-existent, and rent stabilisation measures would therefore have very little impact. This has not been the case in London over recent years, though past trends may not necessarily continue.

³⁰ Ibid., para 110

³¹ Ibid., para 113

³² CCHPR, [The effects of rent controls on supply and markets](#), 2015

Only under scenario 5 (upper projection) did the quantitative modelling suggest that the actual *size* of the sector would decline. The analysis has suggested that scenarios 1-4 and 6 produce only small reductions in average rents, with an average fall in affected rents of between 0 and 15 percent. This leads to an aggregate loss of rental income to the sector of between 0 and 10 percent (as not all tenancies are affected at all times), though it is possible that on a localised level their impact may be more significant.³³

The authors found a good deal of resistance amongst landlords, both individuals and larger institutional investors, to interventions in the market in regard to rent levels:

Overall, interviewees felt that the rent stabilisations and controls discussed risked distorting rental markets and deterring investment, particularly if rents were to become seriously decoupled from the market. There was suspicion that such measures could constitute a step towards the kind of rent controls that they perceived had undermined investment in the private rented sector in the period before 1988.³⁴

3.3 Different types of rent control

As the previous section indicates, there is more than one method of controlling rents and rent increases.

The rent controls introduced early on in many countries were relatively simple maximum price ceilings: known as ‘first generation rent control’. By the late 1900s many of these had developed into more complex systems which regulated rents within tenancies: widely known as ‘second generation rent control’.³⁵ In [A review of empirical evidence on the costs and benefits of rent control](#) (2003) Bengt Turner and Stephen Malpezzi set out the main types of rent control, which they argued have varying effects:

...one key feature [of rent control systems] is whether controlled rents are adjusted for changes in costs (with cost pass-through provisions or adjustments for inflation); how close the adjustment is to changes in market conditions; how it is applied to different classes of units; or whether rents are effectively frozen over time. Other key provisions which vary from place to place include breadth of coverage, how initial rent levels are set, treatment of new construction, whether rents are reset for new tenants, and tenure security provisions. Rent control’s effects can vary markedly depending on these specifics, and on market conditions, as well as enforcement practices.³⁶

In 2003 the Swedish Economic Policy Review published a study of [Tenancy rent control](#) – a form of rent control that allows rents to change between tenancies but controls rent during a tenancy. The author of the study, Richard Arnott, argued that this form of rent control would result in a slightly less efficient housing market than

³³ Ibid., p34

³⁴ Ibid., p35

³⁵ Arnott R, [A review of empirical evidence on the costs and benefits of rent control](#), Swedish Economic Policy Review 10, 11-56, 2003, p14

³⁶ Ibid.

would be the case in a completely free market but that the effects would be limited and would not get worse over time.³⁷ He said:

The big advantage of tenancy rent control is that it provides a safety valve—unrestricted rent increases between tenancies—that ensures that the performance of the housing market will not get progressively worse. Rather, tenancy rent control will lead to the establishment of a different long-run equilibrium.³⁸

The 2003 study sets out in some detail the effects of different forms of tenancy rent control on landlords and tenants.³⁹

Peter Malpass and Alan Murie argue in *Housing policy and practice* that the introduction of rent control and its continuation after the First and Second World Wars led directly to government subsidy of new building in the form of local authority housing.⁴⁰ This, the authors argue, was because encouraging investment in the private rented sector following both World Wars would rely on either high rental returns or state subsidy. As successive governments were unable to decontrol rents until the 1980s, this left state subsidy as the only option for creating new, affordable housing.⁴¹ In Britain, in contrast to other European nations, direct public subsidy of private landlords was ruled out as politically unfeasible. Jean Conway, in *Housing Policy*, argues that rent control is not the main reason for the decline in the private rented sector, saying that:

Most housing analysts agree that a more powerful explanation lies in the unfavourable tax and subsidy position of private renting in relation to other tenures. Unlike landlords in many other European countries, British landlords receive virtually no direct subsidy, apart from loan interest payments which are tax deductible in line with commercial business taxation. Management and maintenance costs and depreciation are borne entirely by landlords, and they are subject to capital gains tax from which owner-occupiers are exempt.⁴²

3.4 Policy developments

A model tenancy agreement

The Coalition Government announced on 16 October 2013 a [set of proposals](#) for protecting tenants in the private rented sector. A voluntary [model tenancy agreement](#) "which landlords and tenants can use for longer tenancies to provide extra security and stability for families" was first published in September 2014 and has subsequently been updated. The model agreement provides for rent increases during the term of the tenancy on the following basis:

³⁷ Arnott R, [Tenancy rent control](#), Swedish Economic Policy Review 10, 89-121, 2003, p102-3

³⁸ Arnott R, [Tenancy rent control](#), Swedish Economic Policy Review 10, 89-121, 2003, p102-3

³⁹ Ibid.

⁴⁰ See also, Conway J, *Housing Policy*, *Gildredge Social Policy*, Series Editor Pete Alcock, 2001, p20

⁴¹ Malpass P and Murie A, *Housing Policy and Practice*, Fourth Edition, 1994, p50

⁴² Conway J, *Housing Policy*, *Gildredge Social Policy*, Series Editor Pete Alcock, 2001, p25

Tenancies of less than two years: If the landlord and tenant have agreed a fixed term of less than two years then it is recommended that you fix the rent for the whole of the term.

Tenancies of two or more years: If the landlord and tenant have agreed a tenancy of two or more years then you need to agree whether the rent will stay the same for the whole term or whether the landlord can choose to increase it each year.

If you agree that the rent should stay the same for the whole term then you need to use **option 1**. If you agree that the landlord should be able to increase the rent each year then you need to agree whether this should be by way of a fixed percentage increase each year - **option 2** - or by the annual change in the consumer price index ("CPI") - **option 3**.

New-build private rented housing

The [Housing White Paper](#) (February 2017) refers to the Government's desire for newly built private rented housing to offer longer tenancies with more predictable rent increases:

ensure that family-friendly tenancies of three or more years are available for those tenants that want them on schemes that benefit from our changes. We are working with the British Property Federation and National Housing Federation to consolidate this approach across the sector.⁴³

A London living rent

The London Mayor's election manifesto included a commitment to increase the supply of housing in London and to introduce:

...a new type of home for people struggling to rent privately, where rents are based on one third of average local wages.⁴⁴

The manifesto also said Sadiq Khan would seek additional powers as Mayor:

I will fight for the Mayor and London councils to have a greater say in strengthening renters' rights over tenancy lengths, rent rises, and the quality of accommodation.⁴⁵

⁴³ [Housing White Paper](#), February 2017, p50

⁴⁴ [A Manifesto for all Londoners](#), 2016

⁴⁵ Ibid.

4. Some international comparisons

4.1 The international context of rent control and regulation

After 1989, private sector rents in most of the UK were deregulated on new tenancies, although devolution of housing policy is now leading to different approaches in Scotland and Northern Ireland. In much of Europe, in contrast, rents are still controlled by governments in some way. There has, however, been a general trend towards deregulation since the 1980s. Many countries have deregulated rents on new buildings rather than on new lettings, so the majority of tenancies are still subject to rent control.

Professor of Housing Economics at the London School of Economics (LSE), Christine Whitehead, highlights the difference between much of the rent regulation that is in place to varying degrees in many developed countries and the kind of rent control that was introduced in Britain in 1915:

It is important to make it clear that what is commonly thought of as rent control – nominal caps on rent levels – is hardly found today. Those countries that do combine strong rent regulation with sizable private rented sectors usually have systems that permit rents to adjust to near-market levels even though they are formally 'controlled'.⁴⁶

In [Towards a sustainable private rented sector – learning the lessons from other countries](#) (2011), this LSE study found that, in countries where strong rent control did not apply, the affordability of rental housing was an issue (USA, Belgium, Hong Kong, Norway, France and Australia). In contrast, in countries where rent was controlled, policy discussions had centred more on the specifics of rent regulation (Sweden, Switzerland and Denmark). In Switzerland had seen discussions about whether rent rises should reflect increases in the mortgage interest rate or the cost of living. While In Denmark, where despite the decontrol of rents for buildings built after 1991, there had been no surge in new supply, rent control had been discussed.⁴⁷

Although there are many similarities between the housing sectors in the rest of the developed world and the UK, it is important to note that none are directly comparable. For example, a greater proportion of the populations of France, Germany and Switzerland have rented their homes than has traditionally been the case in in the UK.⁴⁸

⁴⁶ Professor Whitehead C et al, *The Private Rented Sector in the New Century: A Comparative Approach*, September 2012, p13

⁴⁷ Scanlon K and Kochan B (eds), *Towards a Sustainable Private Rented Sector: The Lessons from Other Countries*, LSE London, 2011

⁴⁸ Scanlon K and Kochan B (eds), *Towards a Sustainable Private Rented Sector: The Lessons from Other Countries*, LSE London, 2011

Another LSE study, *Contrasting Varieties of Private Renting: England and Germany* (2010) set out the broad differences between the US, European and British models of private renting at that time:

Since the 1960s, the British market in private rented housing has been dominated by individual landlords with small property portfolios providing short-term lettings. This is in contrast to the USA, for example, where institutional investors (dedicated property companies, pension funds, etc.) own enormous portfolios, often dominated by purpose-built single-tenure rental developments. The US experience is often cited as a model, but European models of private renting can also offer lessons. In France, Germany, Sweden and Austria, private renting is often a normal long-term tenure choice even for middle-income households and the landlords tend to be private individuals owning a few properties. In all these countries the sector is larger than in the UK, but only in Switzerland is it dominated by institutional investors.⁴⁹

The following sections provide a brief overview of how rent control/regulation operates in a selection of countries and cities.

The Netherlands

Throughout the post-war period, the private rented sector in the Netherlands was one of the most highly regulated in Europe. Rent regulation, including a freeze on rents which started during WWII lasted until 1951, followed by a series of differentiated increases. In 1950 a general rent increase was introduced and from 1955 rent levels were related to the difference between costs and 'bricks and mortar' subsidies rather than pre-war rent levels. From 1967 rents were increased annually and decontrol began in areas with a housing surplus of 1.5% or more. From 1971 a points index for calculating maximum rent based on housing quality was introduced.

Housing in the Netherlands is dominated (73%) by housing association ownership. The private rented sector in the Netherlands declined from 17 per cent in 1980 to 8 percent in 2010. In a 2012 study Professor Whitehead said:

Strong regulation, particularly rent control, is often seen as one reason for the decline in private renting. But as importantly both owner occupation and the social rented sector have benefited from subsidies and tax incentives while private landlords have been disadvantaged; especially from the 1980s on.

Compared with other European countries, the social rented sector has dominated the housing market throughout the post-war period. Almost a third of households rent a social dwelling. Regulation is generally perceived as beneficial, which may be why successive governments have found it difficult to introduce deregulation despite concern that regulation has contributed to the private rented sector's decline.⁵⁰

Tenancy agreements in the private housing sector have now been liberalised; the tenant and the landlord have more freedom to agree the

⁴⁹ Kemp P, and Kofner S, *Contrasting Varieties of Private Renting: England and Germany*, February 2010

⁵⁰ Professor Whitehead C et al, *The Private Rented Sector in the New Century: A Comparative Approach*, September 2012, p146

rent and services provided. There is no maximum rent. Only self-contained housing can be rented under such an agreement.

If the tenancy is not liberalised, the rent payable is subject to a ceiling. The maximum rent depends on the quality of the housing provided. There is a [rent points system](#) (in Dutch).⁵¹

Finland

Finland has had a history of state control and regulation over the private rented sector, with government control extending to rent setting, increases, and security of tenure. Landlords' ability to regain control over their properties was limited; the eviction of tenants was allowed under very limited conditions. Regulations were relaxed in 1987 to enable landlords to generate a reasonable profit from their rental properties.

In 1970 the private rented sector in Finland stood at about one third of the stock. The sector fell to about 13% during the 1980s but recovered after deregulation measures in the 1990s.

The deregulation of the sector took place in two stages between 1993, when new contracts were deregulated, and 1995, when deregulation was extended to cover all private rental properties. Initial rents and rent increases are no longer regulated, except in the case of those fixed-term contracts with predetermined rents which do not include clauses allowing rent increases. Notice periods apply to all private rented tenancies, and are linked to the duration of the tenancy.

Rents in Finland have risen since deregulation, especially in the Helsinki region. Equally, since deregulation the size of the sector has increased in absolute and, to a limited degree, in relative terms. This growth is seen as related to conditions in other tenures as much as in private renting.

Sweden

The rent at the start of a tenancy in Sweden is negotiated between the parties to the contract but certain mandatory rules can require that the rent is subject to review if rent control legislation is breached.

Today the rents in Sweden are determined through a utility value system (*bruksvärdesystem*), which sets the reasonable rent for an apartment. Section 55 of the Swedish Tenancy Act states that the rent cannot be considered to be reasonable if it is substantially higher than the rent for units of equivalent utility value.⁵²

Tenants can refer 'excessive' rent levels to a regional Rent Tribunal for determination if agreement cannot be reached with the landlord.

Germany

The historical level of private renting in Germany is difficult to establish due to reunification and the close relationship between social and

⁵¹ [Netherlands Government website](#) [accessed on 3 April 2017]

⁵² Norberg, Per; Juul-Sandberg, Jakob, [Rent control and other aspects of tenancy law in Sweden, Denmark and Finland](#), 2016

private renting but it is thought that the sector has remained relatively stable.⁵³ Peter Westerheide, in an LSE study, commented that:

The private rented sector in Germany has some unique characteristics compared to other countries. In particular, renting is not seen as an inferior housing option but as a fully accepted alternative to owner occupation. This is particularly the case in cities where the majority of private households live long periods of their life or even their whole lives in a rented apartment or house. German households' propensity to rent can be partly explained by a strong regulatory framework, which gives tenants a high degree of security but also by a long tradition of renting as 'the standard option' amongst all groups in the population.⁵⁴

After 1971 initial rents were not strictly regulated though they were prevented from exceeding the rents for comparable dwellings in the same area by more than 20%. Rents could be increased during a tenancy — within a maximum of two years and not by more than 20% within a three-year period — if they were demonstrably below the local rent levels for comparable dwellings.⁵⁵

In 2012 Professor Whitehead concluded that:

...regulation in the [private rented sector] is generally perceived as beneficial to tenants without being harmful to landlords. Fiscal incentives have been widely used to encourage investment in the [sector] and privately rented property is a common form of pension provision. The effects of cuts to depreciation allowances in 2006, together with more recent reorganisation of the subsidy system and pension structure, may however lead to some reduction in the private rented sector.⁵⁶

In 2015 a new law known as the *Mietpreisbremse* ("rental price brake") came into effect in certain German property hotspots, mainly the cities of Berlin, Munich and Düsseldorf, which limits rents on new tenancies to 10% above existing rental benchmarks. Tenants are heavily protected, but landlords are cut some slack too. Rents in Germany can be subject to higher increases if the property is improved. The "brake" does not apply to newly-constructed properties.⁵⁷

New York City

The New York State Division of Housing and Community Renewal (DHCR) is the state agency responsible for administering the rent regulation laws in New York City. There are two aspects to rent regulation in NYC – the first is traditional 'rent control' which applies to a minority of tenants (less than 2%) and the second is 'rent stabilisation' which applies to around 45.5% of rented apartments. Briefly, rent controls usually limit the rent that can be charged to sub-market levels (e.g. fair rents in England) while rent stabilisation tends to limit the

⁵³ Professor Whitehead C et al, *The Private Rented Sector in the New Century: A Comparative Approach*, September 2012, p134

⁵⁴ Westerheide P, et al, *Towards a Sustainable Private Rented Sector: The Lessons from Other Countries*, Scanlon K and Kochan B (eds), LSE London, 2011, p45

⁵⁵ Professor Whitehead C et al, *The Private Rented Sector in the New Century: A Comparative Approach*, September 2012, p13

⁵⁶ Professor Whitehead C et al, *The Private Rented Sector in the New Century: A Comparative Approach*, September 2012, p134

⁵⁷ *Financial Time*, "[A German lesson in rent controls](#)", 12 June 2015

frequency and/or size of rent increases by linking them to inflation or interest rates.

In order to benefit from rent control in NCY the tenant must live in a building built before 1947 and occupied by the same family since 1 July 1971. Family members can pass on the tenancy but the new tenant must have lived in the dwelling for two years before the previous tenant dies or leaves. Rent controlled apartments become rent stabilised when vacant, aside from buildings with fewer than 6 units – these are removed from the programme.

There are no set requirements for an apartment to qualify as rent stabilised but most are in 6+ unit buildings built before 1974 and were priced below \$2,000 before 2011 or below \$2,700 in 2017. Once the rent reaches a certain level (\$2,700) or if the tenant's income exceeds \$200,000, the landlord can deregulate the apartment and bring it up to market-rates. Owners of properties built more recently can agree to rent stabilisation in exchange for tax benefits.

More information is provided in DHCR Fact Sheet 1: [Rent Stabilisation and Rent Control](#) (updated 2016).

Paris

In August 2015 new rent controls were introduced in Paris. The application of these controls in other cities may follow. The system is referred to locally as the *Loi Alur* and works as follows:

In zones of high demand...all rental contracts are overseen by an official observatory. This observatory estimates and fixes a median rent per square meter for a given area, separating the district's real estate into price bands based on whether it's furnished and the number of rooms. No future rental contract is allowed to charge more than 20 percent more than the fixed median rent for the apartment's price band. This not only (in theory) prevents galloping rent rises, it also provides prospective tenants with a clear marker of how much landlords have the right to charge.⁵⁸

4.2 Further reading

European examples of rent regimes

[Lisbon stalls on rent and lease reform](#), FT, 13 March 2017

[EU critical of Govt's help-to-buy and rent cap schemes](#), RTE, 8 March 2017 (Ireland)

[New Irish rent controls to cap increases in major cities](#), Reuters, 13 December 2016

[Distributional price effects of rent controls in Berlin: When expectation meets reality](#), Econstor, November 2016

[The Rent Is Now Somewhat Less High in Paris](#), Citylab, 3 August 2016

[Market break or simply fake? Empirics on the causal effects of rent controls in Germany](#), German Institute for Economic Research, 2016

⁵⁸ CityLab, [The rent is now somewhat less high in Paris](#), 3 August 2016

[*Rent control and other aspects of tenancy law in Sweden, Denmark and Finland*](#), Syddansk Universitet, 2016

[*Do rent controls work?*](#), Economist, 31 August 2015

[*An answer to Britain's housing crisis? Berlin is first German city to introduce rent control*](#), Telegraph, 2 June 2015

[*The Austrian Rent Control system and its effects on economy and society*](#), International Union of Property Owners, January 2015

[*The Private Rented Sector in the New Century - A Comparative Approach*](#), Cambridge University, September 2012

USA: examples of rent regimes

[*Why New York-style rent controls would not work in London*](#), Conversation, 30 March 2016

[*Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts*](#), Journal of Political Economy, vol. 122 no. 3, 2014, pp661-717

[*The Misallocation of Housing Under Rent Control*](#), American Economic Review, vol. 93 No. 4, September 2003, pp1027-45

[*A Critique of the Legal and Philosophical Case for Rent Control*](#), Journal of Business Ethics, vol. 40, 2002, pp75-90

Other comparisons

[*How Rent Controls Work In Other Countries*](#), Londonist, 2 January 2014 (San Francisco, Germany & Paris)

[*Housing Markets and Structural Policies in OECD Countries*](#), OECD, January 2011

Economic impact of rent control/regulation

[*The effects of rent controls on supply and markets*](#), Cambridge Centre for Housing and Planning Research, May 2015

[*The flaws in rent ceilings*](#), Institute of Economic Affairs, September 2014

[*Rent Control: Do Economists Agree?*](#), Econ Journal Watch, vol. 6 no. 1, January 2009, pp 73-112

[*Efficiency Pricing, Tenancy Rent Control and Monopolistic Landlords*](#), Economica, vol. 70, 2003, pp223-32

[*Rent regulation: A conceptual and comparative analysis*](#), European Journal of Housing Policy, 2001

[*The economics of tenancy rent control*](#), Economic Journal, vol. 110, 2000, pp939-62

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).

[REDACTED]

From: [REDACTED]
Sent: 29 March 2019 18:42
To: James Murray
Cc: David Lunts; James Clark; Debra Levison; [REDACTED] [REDACTED] Rickardo Hyatt; [REDACTED]
Subject: Rent control note for Nick Bowes catch up on Monday

Hi James,

As discussed earlier, here's a note for your meeting with Nick on Monday. I think I've accurately reflected what we covered in our catch up, but let me know if I've misunderstood or missed anything.

I'm not in on Monday or Tuesday, but we can discuss Nick's feedback first thing Wednesday and I can send out an update to NEF, Karen et al based on this.

Overview:

- What we have discussed so far with NEF is that the Mayor's rent reform blueprint could call for powers to reduce and regulate rents over time in order to significantly improve affordability for London's renters, in tandem with measures to increase security of tenure and protection from eviction
- However, the blueprint should be clear that attempts to increase affordability through rent control and stabilisation will fail unless a wider package of measures are in place. The other key elements in the package must be:
 - o addressing the shortage of affordable housing
 - o increasing support with housing costs through the welfare system
- The blueprint could set out that while rent regulation should be used to reduce rents slowly over time, rent controls alone cannot be used to reduce rents to an affordable level. This would only be likely to reduce the supply of much-needed accommodation, resulting in increased homelessness.
- Instead, a combination of reduced and regulated rents, significantly increased LHA rates and substantial increases in social housing must be employed together to offer London renters a better deal.

The Mayor's proposed model of rent regulation:

- The blueprint could call for the powers to introduce a form of rent regulation for London that would:
 - o set a more affordable target rent [though we should review the language as this sounds too much like target rents in the social sector]
 - o contain measures to reduce existing rents to that target rent over a defined period of time
 - o contain measures to regulate rent increases over time, both within and between tenancies, linked to local incomes, once the target rent has been achieved in order to maintain rents at this more affordable level
 - o be coupled with increases to both supply and demand-side housing market subsidies (e.g. increases in HB/LHA element of UC, increases in housebuilding subsidy)
- The blueprint should not set out the specific way in which these measures should be achieved (e.g. what the target rent should be, at what rate rents or rental increases should decrease in order to meet it, by what formula rents should be allowed to increase once target rent has been achieved) as these measures will need to be considered carefully and subjected to rigorous modelling and impact assessment, once the Mayor has the powers he needs to implement them [this is because we simply do not have time to do proper modelling of the different scenarios before the report is due to be published, so I think it is important not to hold the Mayor hostage to fortune by throwing our weight behind any specific measure]
- Instead the blueprint should call for Government to devolve powers to the Mayor to make these decisions
- The blueprint could also set out some possible ideas for models that the Mayor has commissioned NEF to produce, which should be considered as possible options to inform future thinking about what model of rent control would work best for London.

Points raised by GLA housing policy colleagues for consideration:

- An alternative approach to implementing measures to actively reduce rents could be measures to stabilise rent increases at a slower rate than wage growth, coupled with the other elements in the package of measures. Over time this would result in rents becoming affordable and in the meantime the gap could be met by increased welfare provision. This would be a much longer-term approach to improving the affordability of rents, but would also be likely to have a less serious impact on supply and still allow the Mayor to say that he was lobbying for the powers to bring rents in line with incomes. This would certainly be a preferable approach in terms of impact on the market, however the downside would be that it might attract criticism from renters groups for failing to go far enough. If we decide to go with this option, the report could still make use of the work NEF have done in analysing other models, but could ultimately conclude that none of these is the right approach for London.
- As discussed with NEF, lobbying for the introduction of both the London Model and a more radical approach on rent control represents a very significant change to existing market conditions and would be likely to make the rental market significantly less attractive to a wide range of landlords and investors and cause a great deal of uncertainty. It is important for the Mayor's office to understand that even a small decrease in the supply of rental homes as a result of landlords deciding to sell their properties would result in an increase in evictions and homelessness. It is also difficult to predict what the other wide-ranging unintended consequences of such a measure might be.
- All of the measures proposed by NEF require very significant set-up bureaucracy, in particular the collection of a wide range of data on rents and incomes which does not currently exist. They would also require ongoing monitoring if we accept that self-regulation is not a good option in a market with London's imbalance between supply and demand.
- In markets such as New York and Berlin where rents are controlled both within and between tenancies, rates of housebuilding are even lower than in London
- There is an important fourth element of the package of measures outlined above, which is incentivising investment in the sector through taxation and possibly other means. This would be necessary to try and soften the impacts of rent control on the market. It would be good to ask NEF if they have done any thinking about this on Thursday.

Possible ideas for reducing rents from NEF:

1. Start with existing market rent and reduce all rents across the board by X% per year over a defined period until target rent is achieved.
 - Pros:
 - o Very simple, linked to a clear existing price (rents currently achieved)
 - o No need to recalculate rents up-front, simply decrease them from their existing level by an agreed proportion
 - Cons:
 - o this would not tackle the current inequity in existing rents, e.g. two identical flats next door to each other being rented out for significantly different rents
 - o Not tackling this would disadvantage those tenants who are paying too much currently, but also those landlords who for whatever reason are choosing to charge a rent that is lower than the market average as all rents would decrease at the same rate
 - o Though linked to an existing number (rents achieved) this is not a published, verifiable index so there would be opportunity for exploitation. This data would have to be collected and published, giving tenants the opportunity to challenge.
 - o Policing whether landlords accurately recorded the rents they are currently charging would be labour intensive
2. Link rents to a proportion of existing property value
 - Pros:

- Comparatively simple, linked to a clear existing price (house prices currently achievable)
- Cons:
 - Could 'overvalue' some poor quality properties that happen to be in a good location or be high priced for another reason
 - There could be an appeals process to sort this out, but that would require an army of rent officers making it difficult to administer
 - Though linked to an existing number (house price valuations) this is not a published, verifiable index so there would be opportunity for exploitation or else this data would have to be collected. Many properties that have not recently been sold or valued would need to be valued and those values recorded.
- 3. Linking rents to a points system based on a wide range of factors to calculate the 'true' rental value of a property if scarcity weren't a factor
 - Factors could include council tax bands, property age and condition, location, size, energy efficiency, and amenities like gardens, garages etc
 - Pros:
 - The approach that would most accurately set a 'fair' rent for a property
 - Could be self-regulating, based on a system of self-declaration of property points which would be published and which tenants could challenge
 - Cons:
 - Most complicated option - a lot of work to determine the property points system and hard for renters/landlords to understand
 - Landlords might raise rents up to the max chargeable
 - Landlords incentivised to upgrade properties in order to charge higher rents, which would have good consequences for property conditions and negative ones for affordability
 - Scarcity means anything that puts the onus on the tenant to police likely to work poorly
 - Could have spot checks, but again this would require significant 'rent officer'-style infrastructure
 - This is essentially the system they have in Germany, which has come under a lot of criticism as what makes a property attractive or desirable is subjective

How to regulate rent increases once target rents have been achieved?

- This should probably involve a rental index that tracks the rise and fall of local incomes and pegs rent increases locally to this. NEF's recommendation was that all rent increases, both within and between tenancies should be regulated by the same mechanism.
- Pros:
 - This would ensure rents remained affordable, and reduce incentives for a) landlords to try and get tenants out to increase rents b) tenants to stay put in properties to avoid a rent increase
- Cons:
 - This would result in rents over time becoming substantially divorced from their actual market value, presuming the imbalance between supply and demand persists. This in turn could exacerbate the supply problems in the market as many existing rentals could be lost, though exempting new supply would help. However, exempting new supply would also be likely to create a two-tier market of luxury new-build rentals and low cost, but probably poorer quality existing rentals.

Thanks,

██████

██████ ████████

Private Rented Sector Programme Manager, Private Rented Sector Team, Housing and land
 GreaterLondonAuthority
 169 Union Street, London SE1 0LL

Extract from GLA Briefing to James Murray
Date: 11 September 2018
Title: Brief for ITV London live studio interview

Lines on rent control

- The Government's proposal in their consultation on longer tenancies that details of rent increases should be advertised and included in tenancy agreement sounds positive in principle. But this would not address the problem of rents already being unaffordable to many (around a quarter of privately-renting households in London spending more than half of their income on rent) and could be open to abuse. Furthermore, vulnerable renters may not be in a position to fully understand the terms they are signing up to and as such may end up agreeing to unreasonable rent increases or rent increases they cannot afford. It would also be difficult to enforce and ensure landlords and agents were displaying information about rent increases clearly.
- Addressing existing rent levels would be a truly radical approach, which would require significant investment, as well as fiscal and legislative changes, to ensure that renters, landlords, and housing supply were protected from adverse effects.
- Security and affordability are related – a strong system of security of tenure would likely have a stabilising effect on rents, and would be needed to underpin measures to stabilise or control rents. Landlords are much less likely to increase rents each year for existing tenants and therefore developing a strong system of security of tenure is central to affordability. That is why we are developing our new London Model:
 - open-ended tenancies, that allow renters to leave whenever they want or need to, providing they give the landlord sufficient notice;
 - an end to 'no fault' evictions to prevent tenancies in normal circumstances ending at short notice and for spurious reasons; and
 - reform of existing grounds for possession, with appropriate safeguards built-in, to allow landlords to ~~reclaim~~ regain possession of their properties more efficiently and quickly where they do have a legitimate reason.
- The Mayor will therefore consider what measures would limit unacceptable rent increases without negatively impacting on housing supply, and how they could work in the capital, once the new London Model is complete.
- Two areas where the Government could take immediate action to help affordability are reforming Housing Benefit, to help tenants on low incomes, and improving the First Tier Tribunal system and more widely publicising its powers, to enable tenants to challenge unreasonable rents.

Extract from GLA Briefing to James Murray
Date: 21 December 2018
Title: Housing in London – meeting with Jeremy Corbyn MP

Top lines – Housing

Private Rented Sector:

- The Rogue Landlord and Agent Checker is the first database in the country to 'name and shame' unscrupulous landlords, while allowing data sharing between local authorities to help prevent repeat offending.

- The London Model is your blueprint for reform of the private rented sector. It is currently under development, but the central tenets are ending Section 21 no-fault evictions and introducing open-ended tenancies while ensuring that landlords can still regain possession of their property when they have a reasonable reason to do so.
- In parallel with this, you will consider what rent control and rent stabilisation measures to campaign and lobby for to help address affordability in London's private rented sector, as arguments in favour of these measures are becoming overwhelming.

Background – private rented sector:

Despite having no statutory powers over London's private rented sector, you have been using the full extent of your powers to help London's 2.4 million private renters. You have launched a London-wide **Rogue Landlord and Agent Checker** – a public resource which all councils have voluntarily agreed to participate in, which means:

- Renters can check whether their prospective landlord or agent has recently been fined for housing offences by their council or the London Fire Brigade – approximately 70,000 searches have been performed on the database so far;
- Renters can report bad behaviour by landlords or agents using the 'Report A Rogue' tool; and
- Councils can share information to collaborate against rogue landlords across borough borders.

While you welcomed the Government's consultation on longer tenancies, your own proposals to reform the private rented sector in London are more radical. You have called on Government to reform the sector, including by:

- Working with you to modernise tenancies for Londoners, including by giving renters the right to greater security of tenure through a new 'London Model' of tenancy which would allow rent control or stabilisation measures to be considered; and
- Devolving powers to enable you to introduce a simple and fair system of landlord registration and property licensing to help councils to catch more rogue operators.

Extract from GLA Briefing to James Murray

Date: 25 January 2019

Title: Housing in London – briefing for Trade Unions

The Mayor also recently announced a new piece of scoping work to be led by Karen Buck MP on possible models for rent control or stabilisation measures for the private rented sector in London.

*Private Rented Sector Programme Manager (GLA)

Extract of email from [REDACTED] to James Murray

Date: 28 January 2019

Title: Rent control updates

London Renters Union have responded in the Guardian to our rent control announcement. They are a bit scathing in their tone and essentially say that nothing less than rent controls which "sustainably bring down rents, and ensure that they are in line with local incomes" will do. They also say rent controls alone are not enough and ask for better rights for renters. On this we will

have a strong response as that is what the London Model does. [REDACTED] is looking for dates for your late Feb meeting with LRU so I think we should expect some further questions from them at that meeting. <https://www.theguardian.com/commentisfree/2019/jan/25/london-tenants-rights-rent-controls-sadiq-khan>

*Private Rented Sector Programme Manager (GLA)

Extract of email from Justin Bates to [REDACTED], Giles Peaker, Karen Buck, [REDACTED] and Debra Levison

Date: 10 February 2019 (James Murray copied in on 11 February 2019)

Title: Rent control research

Surely any rental increase restriction has to be tied to whatever the increase formula is for welfare benefits? Given that vast number of people who rely on benefits to pay the rent (in whole or part), it would be very dangerous to let them sign up to a tenancy where the rent increased by (say) RPI, but their benefits increased by only CPI.

At the risk of being very pedantic, I don't agree that the Rent Acts 1965-1977 are an example of rents set by a formula. The Rent Officer set the rent by reference to a range of assumptions and disregards, not a formula (see s.70, 1977 Act). There was a formula in the Rent Acts (Maximum Fair Rent) Order 1999, and that may be what you mean, but that operated as a cap, not a formula for increases

*Private Rented Sector Programme Manager (GLA)

Extract of email from [REDACTED] to James Murray

Date: 20 March 2019

Title: Rent control and London Model catch up summary

Rent control next steps

- Joe Beswick has emailed us asking for a call to go over a few things following the Tuesday meeting – I will suggest I have a call with them first to see if we can resolve without needing to take up any of your time, if not I will ask [REDACTED] to schedule the call.
- If you agree them I will circulate the dates below, plus the broad criteria we agreed for the Models we want them to do further detailed work on:
 - o Can't be a purely a market-based model – probably market based with affordability add-ons
 - o Must include between tenancy controls
 - o Should include mitigating factors to deter market flight
 - o Should identify how much bureaucracy (both set-up and ongoing) needed and how simple it can be made

Extract from GLA briefing to James Murray

Date: 16 May 2019

Title: Meeting the housing challenge: London and German cities

Contrary to perceptions in the UK, Voigtländer regards Germany's private rented sector as relatively under-regulated compared to many European countries: "By and large, the private rental housing market in Germany has always been given enough leeway to make it attractive for new investors" while regulated rents tracked market rents fairly closely due to the

comparable rents system ('Mietspiegel' or 'rent mirror') and landlords could pass investment costs onto tenants. Fiscal policy was also quite tenure-neutral, in contrast to the UK's bias towards home ownership.

There is also rising concern about landlords in Berlin using property improvements as a pretext to raise rents as permitted under rent control laws. These improvements may never actually happen, simply being used as a pretext to winkle out long-term tenants who are still paying very low rents. More Berlin neighbourhoods are now banning such improvements altogether.

Berlin also has a subsidy programme to promote the construction of 1000 low-rent dwellings for citizens with low or moderate incomes. The subsidy is provided in the form of interest-free loans under the condition that 20%–33% of the dwellings have an initial rent of EUR 7.50 per m² and stay rent controlled for 20 years.

*Private Rented Sector Programme Manager (GLA)

Extract of email from [REDACTED] to James Murray

Date: 16 May 2019

Title: Summary of catch up this morning and feedback on stats request

I spoke to [REDACTED] about the stats Nick requested:

- **The total HB bill in London has actually fallen in the last 5 years (2013-2018), as a result of the numbers of claimants falling.** This is mostly due to the improving labour market and partly due to welfare reform excluding some claimants. However, **for those households who are still claiming, the average award has gone up, and if it hadn't the saving to the public purse over the last five years would have been approximately £250m.**
- We are not able to disaggregate the reason for the increases in individual awards, but it is likely to be a combination of rents at the 30th percentile increasing and more families living in the PRS.
- At our current average grant rates for a social rented home (London Affordable Rent) **this could have funded the delivery of over 3,500 new social rented homes.**
- **If you're happy with this I can add it into the document and flag it up for use in the press release**

Infographic:

- In terms of putting it together we could attempt something fairly basic within the team as a first step and see how it looks, or we could potentially commission the GLA design team.
- However, finding the right data will be a problem. It's straightforward to come up with a few graphs to show how bad things are right now, but it will be harder to produce robust graphs that show how the Mayor's proposals will improve things. As you know, we haven't actually done any impact assessment of the proposals and there's a risk that an info-graphic will just highlight that. For the London Model it's hard to quantify the benefits as we can't say how much avg tenancy lengths may increase for example. For rent control, we can do a graph showing the stats I've set out above, but it won't be very dramatic/impressive and, as discussed, because we don't have an actual model we can't really show what the Mayor's proposals would do to rents. In light of this, do you still want us to proceed?

Extract of email from [REDACTED] to James Murray

Date: 20 June 2019

Title: Rent control blueprint

Most of your changes are fine – just coming back to you on a couple of points:

You asked about this sentence on why Housing Benefit awards have gone up, and whether we can spell out the reason more clearly. I've reconsidered this paragraph and stat and discussed with [REDACTED] now she's back and I no longer think it's a good idea to use it. Not just because rents increasing does not seem to be responsible for the increase in individual awards, but also because of what [REDACTED] said about how we shouldn't be arguing that housing benefit should decrease. I agree with this – we are campaigning elsewhere for it to increase, so it sounds a bit out of step. Shelter also told me this line about how rent control would save government money on housing benefit played very badly with some focus groups on renting they just did – renters said it sounded like government just trying to save themselves money and line their own pockets. I'd like to take this stat out and just focus on overall affordability and helping to close the gap between rents and LHA as the main benefit of rent control.

Interim measures to address rents in response to [REDACTED]'s point – the final para you added in 4.10. Have discussed this with Debra and [REDACTED]. Agree that this strengthens the proposals as it averts criticisms that the Mayor's solution is too long term. However, I have moved it up a bit and made it into a separate bullet in the 'right approach for London' section as it felt throwaway at the end. I've also made the proposed solution a bit less specific so we're not tied to a particular approach without time to consider impacts.