

Consultation on use of powers in Housing (Scotland) Bill

**Analysis of responses to the consultation
exercise**

Final report

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Introduction

Background

This report presents an analysis of responses to a public consultation on the use of powers in the Housing (Scotland) Bill (the Bill). The consultation sought views on how powers within the Bill could be used: to exempt certain types of properties from rent control; define the circumstances where rents could be increased above the level of any introduced rent cap; and sought views on some of the detail around how new measures for ending joint tenancies in the private sector should operate.

The consultation was launched on 23 April and ran until 18 July 2025. It was brought forward during Stage 2 of the parliamentary process to allow the Scottish Government to give early consideration to the regulations required, with a view to bringing these forward at the earliest possible opportunity after the legislation was passed, and particularly to give more clarity around the operation of the rent control regime.

By the time the consultation closed, the Bill had completed Stage 2 and moved to Stage 3, where MSPs could propose further amendments to be debated. Stage 3 ended on 30 September 2025, with a [final amended version of the Bill](#) being passed by the Scottish Parliament.¹ The Bill received Royal Assent, and became an Act on 6 November 2025.^{2,3} Following this, the details of the matters covered in the consultation would need to be set out in regulations, which would also be subject to parliamentary approval.

An [interim partial analysis](#) (covering Questions 1 to 15) was published on 2 September 2025 to allow for early consideration of responses covering some of the issues that received the most focus when the Bill went through Stage 2 in the Scottish Parliament.

Profile of responses

A total of 4,784 valid responses were received.⁴ Of these, 636 were standard, non-campaign responses submitted primarily through the Scottish Government's Citizen Space portal and 4,148 were responses to a campaign organised by Living Rent. These campaign responses were all submitted through the Citizen Space portal,

¹ Further information on the Bill's passage through Parliament can be found [on the Scottish Parliament's website](#).

² [Housing \(Scotland\) Act 2025](#)

³ To avoid confusion, the legislation is referred to as 'the Bill' throughout this analysis, as this reflects how the questions in the consultation were phrased.

⁴ A small number of blank responses (i.e. responses that had answered no questions and made no comments) were removed prior to the analysis.

and all contained identical answers in response to closed questions and identical comments at open questions.⁵

Of the 636 non-campaign responses, 121 were from groups or organisations and 515 from individual members of the public.⁶

Group respondents were allocated to one of eight groups by the analysis team. A breakdown of the number of responses received by respondent type is set out below, and a full list of group respondents is appended to this report as Annex 1.

'Private landlord, letting agent or their representative bodies' were the largest single group, with 45 respondents. However, analysis of the comments made by the 'Individual' respondents suggests that some private landlords may have submitted their response as an Individual. It is not possible to identify definitively the proportion of individual responses that come from different groups (for example tenants and landlords) as the consultation did not ask for this information. However, around 1 in 5 of the 'Individual' respondents identified themselves as being a private landlord at some point in their response. Overall, therefore, around 1 in 4 of the 636 non-campaign respondents (or 115 'Individual' respondents and most of the 'Private landlord, letting agent or their representative bodies respondents'), are private landlords.

A small number of individuals (14 respondents) identified themselves as being tenants in their qualitative comments.

⁵ There were also some other instances where respondents had shared information and submitted similar or, in a small number of cases, identical responses. This included a small number of Developer and Private landlord and Individual respondents. Given the small numbers, for the purpose of the analysis these are included as non-campaign responses.

⁶ Where permission to publish has been given, these responses will be made available on the Scottish Government's website in due course.

Table 1: Respondents by type

Respondent type	Number
Advice organisation and third sector	13
Developer or investor	17
Local authority	15
Private landlord, letting agent or their representative bodies	45
Professional or representative body	8
Public body	3
Social landlord or their representative bodies	12
Tenant, community group or union	8
Total organisations	121
Individuals	515
All non-campaign respondents	636
Campaign respondents	4148
All respondents	4784

Analysis and reporting

The report presents a question-by-question analysis of answers to both the closed and open questions. At the closed questions, the figures presented use variable bases (i.e. totals and percentages are calculated based on only those respondents who answered the question).

The report also includes summary analysis from online information and consultation sessions with tenants living in Mid-Market and Private Rented Sector homes. These sessions were organised and run on behalf of the Scottish Government by The Tenants Information Service (TIS) and Tenant Participation Advisory Service (Scotland) (TPAS). The consultation sessions gave participants an opportunity to respond to key questions contained in the consultation document, with a specific focus on those relevant to their own tenancy type.

A list of acronyms used in the report is included at Annex 2.

Finally, as with any public consultation exercise, it should be noted that the responses to the consultation cannot be considered to be representative of wider public opinion. Respondents are a self-selecting sample, and people or organisations who have a keen interest in the subject, who hold strong views and who have the capacity to respond are much more likely to take part.

Overarching themes relating to rent controls

Chapter 1 of the consultation focused on possible exemptions from rent control provisions for Mid-Market Rent (MMR) and Build to Rent (BtR) properties (Questions 1-15). Chapter 2 asked a number of questions about the circumstances under which a landlord of a property in a rent control area could increase the rent by more than the level of the rent cap (Questions 16-25). It also asked about the processes that should go along with any modifications that might be introduced (Questions 26-31).

Analysis of respondents' further comments across these questions has identified a number of recurring themes and frequently raised issues, which are summarised below.⁷

General concerns about the use of a modified rent cap or exemptions

Many respondents, including those supporting the Living Rent campaign, raised concerns about the potential impact of any measures which allowed for rents to be increased above the level of any introduced rent cap in rent control areas.

There were calls, including from 'Individual' respondents, for there to be no possible modifications or exemptions and for the same arrangements to apply across all private rented tenancies.⁸ A 'Professional or representative body' respondent was amongst those concluding that there is a risk of undermining the whole purpose of rent control measures if too many homes are subject to flexibilities, an argument that was often associated with issues relating to clarity and simplicity, and also affordability.

There were many calls for any system of rent controls and caps to be clear and straightforward, and these were often associated with having a single, consistently applied approach across rent control areas. This issue tended to be raised by those who disagreed with landlords being allowed to raise the rent by more than the rent cap where significant improvements to the property are undertaken or where a landlord is letting a property to a tenant at a rent significantly below market rates (the focus of Questions 16 to 23).

The connection was frequently made with existing or prospective tenants having a better understanding of any permissible rent increases and, by extension, being better placed to exercise their rights if required.

Affordability was the other frequently raised issue, with references to private rented sector rents already being unaffordable for many. This was again connected to the

⁷ Although this section draws only on comments made at Questions 16-31 regarding rent caps in rent control areas, many of the issues were also raised in relation to MMR and BtR properties and may also have been covered in the analysis of Questions 1-15.

⁸ It was not always clear whether respondents were referring to all tenancies in rent control areas or were calling for a universal system of rent controls.

original intent behind the legislation and the importance of retaining a clear focus on affordability rather than measures that could result in rents that are currently at the more affordable end of the market rising to the full market rate.

Other concerns, particularly from organisational respondents, related to any rent cap modification system being difficult to administer. It was noted that the consultation suggests two possible approaches: requiring individual landlords to apply to increase rent above the cap or allowing landlords to increase rents without applying for permission and relying on tenants to challenge the increase if they think it is not within the rules. Both options were seen as bringing risks.

Requiring individual landlords to apply to increase rent above the cap was seen as likely to lead to a large volume of applications; there was reference to it not being clear which organisation would be responsible for processing these applications or how this would be resourced.

Relying on tenants to challenge an increase raised concerns about whether tenants would be aware of their rights or have the time, skills and confidence to challenge their landlord. It was reported that the current system provides little practical support for tenants seeking to challenge their landlord and that protections against unlawful evictions are weak.

Suggestions relating to how any approach to modifications could be taken forward included that it should be based on: a clear, evidence-based rationale underpinning the decision to apply any modification; fairness, and whether introducing possible modifications or exempting certain properties or property types would create an advantage or disadvantage for some tenants or landlords; clarity, with clear parameters and definitions that can be easily communicated and robustly enforced; and impact on the wider housing sector, including around supply and quality.

General concerns about introducing rent controls

An alternative perspective was that the rent control provisions are ill conceived and should not be introduced. 'Individuals' and 'Private landlords, letting agents or their representative bodies' were amongst those noting their general opposition to the legislation. This was sometimes connected to a view that the market should dictate rent levels and that it is not reasonable to expect private sector businesses to operate at below market rate.

These respondents tended to go on to support the exemptions proposed and the introduction of possible modifications, taking the view that *if* rent controls areas are to be an option, then at the very least there should be circumstances under which the standard rent cap should not apply. Further points made included that to do otherwise could or will lead to private landlords exiting the sector and would also discourage further investment into the sector.

With specific reference to the possible exemptions for MMR or BtR properties, there were also 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents who argued that granting an exemption for (predominantly) large professional landlords operating in one part of the private rented sector will

create a two-tier system that unfairly disadvantages the (often) small private landlords whose properties *would* be subject to rent controls.

Chapter 1: properties exempt from rent control area restrictions

The key purpose of rent control is to stabilise housing costs for tenants in areas where rents have been increasing particularly steeply, helping to make rents more affordable and ensuring that people are not priced out of housing due to rent increases. It is also crucial to balance the property rights of landlords and to recognise the important role that the supply of new rented housing plays in ensuring that rents are affordable. The Scottish Government is keen to build a system of rent control that offers these vital protections to tenants and also values investment in delivering new homes specifically for the rented market. The consultation sought views on some specific types of property which could be exempted from rent controls to ensure the continued flow of investment.

Properties let below market rent – mid-market rent properties

Mid-Market Rent (MMR) homes are aimed at assisting people on low to moderate incomes to access affordable rented accommodation. Tenants generally pay a lower rate than renting privately, but more than for local social housing. Since the introduction of the Private Housing (Tenancies) (Scotland) Act 2016, most MMR properties are let on Private Residential Tenancies (PRTs), meaning that the rent control measures in the Bill would be applicable to those MMR properties.

For MMR homes delivered using Scottish Government support and which count towards the Scottish Government's affordable homes target, there are already restrictions on the tenants the properties can be let to and the rent that can be charged. The consultation paper noted that stakeholders have raised concerns that the potential for imposing further restrictions on rent levels where a rent control area is in force could be harmful to investment in this sector and the growth of this type of housing delivery. It suggested that it could be appropriate to exempt this type of property from rent controls in order to maintain and expand the supply of this type of affordable housing provision.

Question 1: Should mid-market rent properties be exempted from the application of rent controls under the Bill?

A total of 4,651 respondents (or 97% of all respondents) answered the closed element of Question 1. Responses by respondent type are set out in Table 2 below.

Table 2: Question 1

Respondent type	Yes	No	Total
Advice organisation and third sector	6	5	11
Developer or investor	14	1	15
Local authority	13	0	13
Private landlord, letting agent or their representative bodies	26	8	34
Professional or representative body	5	0	5
Public body	2	1	3
Social landlord or their representative bodies	12	0	12
Tenant, community group or union	0	6	6
Total organisations	78	21	99
% of organisations	79%	21%	100%
Individuals	182	222	404
% of individuals	45%	55%	100%
All non-campaign respondents	260	243	503
% of all non-campaign respondents	52%	48%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	260	4391	4651
% of all respondents	6%	94%	100%

A substantial majority of respondents – 94% of those answering the question and including ‘Campaign’ respondents – did not think MMR properties should be exempted from the application of rent controls under the Bill.

However, non-campaign respondents were more evenly divided, with a small majority – 52% of those answering the question – thinking MMR properties should be exempt. This was higher amongst organisations than individuals, at 79% and 45% of those answering respectively.

All ‘Social landlord or their representative bodies’ and ‘Local authority’ respondents thought MMR properties should be exempted. However, all ‘Tenant, community group or union’ respondents did not think they should.

Please explain your answer

Around 390 respondents explained their answer to Question 1. Campaign respondents also provided comments.

Reasons for not agreeing with MMR exemption

In addition to comments relating specifically to MMR, there were general objections to any form of rent control and, in contrast, objections to any form of exemption. These general issues are discussed in the ‘Overarching themes relating to rent

controls' chapter above. The analysis of Questions 1 to 4 focuses specifically on MMR properties.

'Campaign' respondents were amongst those commenting that, while MMR properties should be affordable to people on low incomes, this is increasingly not the case; they suggested that MMR developments should be rent controlled to ensure that they provide affordable housing. It was suggested that people may already struggle to afford the current level of MMR rents, and that exempting these properties may lead to affordability issues for existing tenants and make the sector unaffordable for others.

It was also noted that the proposed Consumer Price Index (CPI)+1% formula already enables MMR landlords to make "above inflation profits". Another frequently raised concern was that there is no accountability mechanism for MMR landlords as, although often subsidiaries of a Registered Social Landlord (RSL), they do not fall directly under the auspices of the Scottish Housing Regulator (SHR).⁹

An associated concern was that, as MMR rents are below market level, exempting MMR properties from rent control would leave MMR tenants without a mechanism to challenge rent increases.

Views from the consultation sessions

Tenant participants thought that, as the aim of the Bill is to protect tenants and ensure they can live in safe, affordable homes that are of a high standard, the rent cap should always remain in place.

Reasons for agreeing with exempting MMR properties

'Developer or investor' and 'Social landlord or their representative bodies' respondents were amongst those highlighting the role of MMR in providing options and choices for those who cannot afford to rent privately in the open market or buy their own home. Respondents gave examples of those benefiting from MMR, including people relocating for work or leaving education and key workers such as teachers, care workers and NHS staff.

There was specific reference to rural areas where housing supply is limited, and it was noted that MMR homes can support local employment and sustainable communities, including by providing an option for younger people who wish to stay in communities where social housing options may be very limited or non-existent.

It was also noted that, while MMR cannot be viewed as a substitute for new social housing development, it can be delivered with lower levels of subsidy than traditional social housing and makes a valuable contribution to the Scottish Government's Affordable Housing Supply Programme. Nevertheless, 'Social landlord or their representative bodies' and 'Developer or investor' respondents were amongst those concerned that introducing an additional layer of rent control

⁹ However, as the parent of the subsidiary, the RSL is regulated by the SHR and is responsible for the subsidiary.

legislation may impact the financial viability of MMR schemes, resulting in uncertainty and creating a challenging environment for investment. This could then feed into reduced new supply, with the potential for an inflationary impact on rental prices. 'Local authority' and 'Social landlord or their representative bodies' respondents commented that any measures that limit the supply of MMR would increase pressure on social housing and the private rented sector, whilst also limiting customer choice.

With specific reference to rent levels and affordability within the MMR sector, it was noted that MMR properties are already subject to affordability criteria and contractual rent limits, with the Local Housing Allowance (LHA) and Broad Rental Market Area (BRMA) levels acting as a form of rent control on MMR tenancies. It was also reported that some RSL subsidiaries are already charging at below the LHA rate, meaning that MMR rents are already below rent cap levels.

Additionally, it was noted that while MMR tenants do not have the same protections as social housing tenants, having a PRT rather than a Scottish Secure Tenancy, they are often living in homes managed by social landlords or their subsidiaries, and may have access to the same tenancy sustainment and support services as social tenants.

Other issues raised included that:

- [The Housing Investment Taskforce report](#) includes a recommendation to exempt MMR properties from rent control provisions
- [The Building Safety Levy Bill](#) also exempts social and affordable housing, including MMR, in the primary legislation
- any changes to planned future investment could also restrict the ability of MMR providers to maintain and improve existing stock

Defining mid-market rent

The consultation paper set out that there is currently no clear definition of MMR, but that it generally means Scottish Government financially supported MMR (e.g. by grant or loan guarantee).

It went on to suggest that a definition for MMR could incorporate some or all of the following criteria:

- i properties provided at mid-market levels, which have binding restrictions on rent levels
- ii including those provided by:
 - subsidiaries of registered social landlords
 - local authority arms-length external organisations
 - other organisations in receipt of Scottish Government financial support to deliver MMR

The consultation paper also noted that exemptions could be applicable while properties meet the specified criteria.

Question 2: We have set out some possible criteria which could be incorporated into a definition of MMR for the purpose of a possible exemption. Do you agree with these criteria?

A total of 4,651 respondents (or 97% of all respondents) answered the closed element of Question 2. Responses by respondent type are set out in Table 3 below.

Table 3: Question 2

Respondent type	Yes	No	Total
Advice organisation and third sector	7	1	8
Developer or investor	3	11	14
Local authority	11	3	14
Private landlord, letting agent or their representative bodies	10	23	33
Professional or representative body	0	3	3
Public body	1	2	3
Social landlord or their representative bodies	10	1	11
Tenant, community group or union	2	1	3
Total organisations	44	45	89
% of organisations	49%	51%	100%
Individuals	141	237	378
% of individuals	37%	63%	100%
All non-campaign respondents	185	282	467
% of all non-campaign respondents	40%	60%	100%
Campaign respondents	4148	0	4148
% of campaign respondents	100%	0%	100%
All respondents	4333	282	4615
% of all respondents	94%	6%	100%

A substantial majority of respondents – 94% of those answering the question and including ‘Campaign’ respondents – agreed with the possible criteria which could be incorporated into a definition of MMR for the purpose of a possible exemption.

However, a majority of non-campaign respondents – 60% of those answering the question – disagreed. Organisations were relatively evenly divided (51% disagreed and 49% agreed) while individuals were more likely to disagree than agree, at 63% and 37% respectively.

Most ‘Social landlord or their representative bodies’ and ‘Local authority’ respondents agreed, while ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents tended to disagree with the proposed criteria.

Please explain your answer

Around 300 non-campaign respondents explained their answer to Question 2. 'Campaign' respondents also made a comment.

Support for the MMR criteria

Points made by respondents who both supported applying an exemption (at Question 1) as well as the possible criteria set out in the consultation paper included that it will be important that not all criteria need to be met for the exemption to apply.

In terms of the types of properties that would be defined as MMR, a 'Local authority' respondent commented that it will be important to take account of community groups, particularly in rural and remote areas, that are delivering local housing solutions and will, in effect, become private landlords.

'Local authority' and 'Social landlord or their representative bodies' respondents were amongst those commenting on the profile of tenants for MMR homes, with suggestions including that the definition should reference the target market of key workers. There was also reference to the eligibility criteria addressing eligibility and affordability to ensure that properties are let to those unlikely to obtain social housing and who would struggle to afford full market rents.

'Local authority' respondents were amongst those suggesting that exemptions for MMR should be reviewed periodically to ensure that the definition is still appropriate and working in the best interests of tenants, particularly in relation to affordability.

Suggested changes to the MMR definition or criteria

The most frequently made comment, including by 'Campaign' respondents, was that while the criteria are good, there needs to be a stricter definition of rent levels; these respondents went on to suggest that 'binding restrictions on rent levels' should mean that MMR rents are equal to or lower than LHA. A 'Tenant, community group or union' respondent called for MMR to be defined precisely, with a link to the policy objectives of delivering affordable homes for people on low to moderate incomes.

In contrast, there were concerns, including from 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents, that the definition of MMR in the consultation paper is too narrow and lacks flexibility. For example, a 'Professional or representative body' was amongst those observing that the focus on subsidiaries of RSLs, arms-length companies related to local authorities and those receiving Scottish Government subsidy excludes others providing rental accommodation at or below LHA rates. In particular, it was seen as overlooking the increasingly important role of private capital and institutional investment in delivering affordable housing.

Suggested changes included that the definition should be expanded to allow for new models and delivery vehicles rather than be limited by provider, investor or

funding source. A 'Professional or representative body' respondent commented that a more inclusive definition would reflect the evolving landscape of affordable housing delivery, particularly in rural areas, where there is growing potential for private capital to contribute to the delivery of MMR homes.

Exemptions for MMR properties

The consultation paper explains that, where MMR is delivered with Scottish Government support, providers accept grant/contractual conditions that the starting rent level for each home (including any service charge) should generally be no more than the relevant LHA rate /30th percentile market rents for the property size in question. It goes on to note that rents must not at any time exceed the mid-point of market rent levels for the property sizes in question in the relevant BRMA (as assessed by the Scottish Government). Alternatively, where agreed in writing, rents must not exceed the midpoint of market rent levels for the property size in question in a particular local market area, where this is demonstrated and accepted as being materially different from the relevant BRMA.

Question 3: If there is an exemption for mid-market rent properties, should this include specific requirements on the level of rent charged, such as a link to Local Housing Allowance rates or to a specified percentile of market rates?

A total of 4,605 respondents (or 96% of all respondents) answered the closed element of Question 3. Responses by respondent type are set out in Table 4 below.

Table 4: Question 3

Respondent type	Yes	No	Total
Advice organisation and third sector	6	3	9
Developer or investor	4	11	15
Local authority	12	1	13
Private landlord, letting agent or their representative bodies	12	19	31
Professional or representative body	0	3	3
Public body	2	0	2
Social landlord or their representative bodies	4	5	9
Tenant, community group or union	4	0	4
Total organisations	44	42	86
% of organisations	51%	49%	100%
Individuals	189	182	371
% of individuals	51%	49%	100%
All non-campaign respondents	233	224	457
% of all non-campaign respondents	51%	49%	100%
Campaign respondents	4148	0	4148
% of campaign respondents	100%	0%	100%
All respondents	4381	224	4605
% of all respondents	95%	5%	100%

A substantial majority of respondents – 95% of those answering the question and including ‘Campaign’ respondents – thought that an exemption for MMR properties should include specific requirements on the level of rent charged.

However, non-campaign respondents were relatively evenly divided on the issue, with 51% thinking there should be a specific requirement and 49% that there should not. Organisations and individuals also divided along the same lines.

‘Social landlord or their representative bodies’ respondents were also relatively evenly divided. While the substantial majority of ‘Local authority’ respondents supported the inclusion of specific requirements, ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents tended to not be supportive.

Please explain your answer

Around 200 non-campaign respondents explained their answer to Question 3. ‘Campaign’ respondents also made a comment.

‘Developer or investor’, ‘Private landlord, letting agent or their representative bodies’, and ‘Local authority’ respondents were amongst those supporting linking MMR rents to benchmarks to ensure that the exemption is targeted, with clear and measurable affordability criteria. However, there was also a view that, although it is reasonable to include specific requirements on rent levels, these should be flexible enough to reflect local market conditions and delivery models.

Points made by those who did not think a specific requirement on the level of rent charged is needed included that they are already in place for Scottish Government-supported MMR.

Other respondents, including ‘Private landlord, letting agent or their representative bodies’, ‘Professional or representative body’ and ‘Social landlord or their representative bodies’ respondents, did not support any specific requirements being placed on the rent charged by exempt providers because requirements are already in place for Scottish Government-supported MMR. There were also concerns, including from ‘Private landlord, letting agent or their representative bodies’ respondents, that additional criteria or benchmarks may add duplication and could act as a disincentive to the creation of new MMR tenancies in Scotland.

Many of the further comments focused on whether or not a link to LHA rates or to a specified percentile of market rates would offer the best way forward.

Linking to LHA rates

‘Local authority’, ‘Social landlord or their representative bodies’ and ‘Campaign’ respondents were among those who thought that exempted MMR properties should be defined as properties where rents are no higher than LHA levels, and that increases should only be permitted where the proposed new rents are equal to or below LHA. LHA was seen as a transparent, well-understood benchmark that

reflects local housing costs, can be easily monitored and ensures that MMR rents are aligned with their original policy intent and purpose.

Others including 'Local authority', 'Social landlord or their representative bodies' and 'Developer or investor' respondents, raised concerns about a focus on LHA, including that it could risk making some MMR developments unviable; it was reported that some rents have been above the LHA and that introducing a link would require them to be lowered. An associated suggestion was that there should be a degree of flexibility, with higher than LHA rates allowed where this can be justified, for example by a market assessment of the Private Rented Sector (PRS) demonstrating that a higher rate than LHA would still be discounted relative to the market rate.

A final concern, raised by a 'Local authority', was that using the LHA as a benchmark would create uncertainty as it is unclear how LHA may be updated in future.

Linking to percentile of market rates

'Developer or investor', 'Private landlord, letting agent or their representative bodies' and 'Social landlord or their representative bodies' were among those making the case for a link to a percentile of market rates.

Reasons why it was seen as a better option included that, unlike the LHA rate which potentially covers a very wide range of properties, it would ensure that homes are affordable relative to comparable properties in the area. However, a 'Public body' respondent noted that the approach would require access to relevant rental data; they suggested that the Scottish Government or local authorities could provide this as part of wider data collection on the rent control regime.

With regard to the specified percentile, suggestions ranged from the 30-40th percentile to between 70 and 85% of local market rates, with room for variation depending on location, property type and whether the scheme is publicly or privately funded.

An 'Advice or third sector' respondent raised concerns that a link to a percentile of market rates could have a negative impact on the affordability of MMR properties, including because market rates are already unaffordable to many households. A suggested variation to address these affordability concerns was that the social rented sector rather than PRS rents could be used as the reference point.

Views from the consultation sessions

Tenant participants considered that to keep MMR relatively affordable, rents should be set at levels closer to those in the social rented sector rather than the PRS.

Other options or implementation suggestions

Alternative suggestions to either a link to LHA rates or to a specified percentile of market rates included allowing rents between the LHA rate and, depending upon the market, 90% of local market rates, again with variation based on location, property type and whether the scheme is publicly or privately funded.

Setting rents based on average local incomes and property values was also proposed. It was suggested that this would ensure rents are positioned in the space between affordable social rents and higher priced private rents, and would also account for differences in rents between areas, something which the broader LHA rate will not.

In terms of the application of any requirements, some 'Local authority' respondents called for regular reviews of rent levels to ensure that they reflect the current situation within each area and to assess whether benchmarks remain suitable and effective in maintaining affordability over time. It was suggested that, where local rents differ significantly from the LHA, local authorities or providers should be given the opportunity to evidence this and set different rates where needed.

'Campaign' respondents were among those highlighting the need for a mechanism for tenants to contest a rent increase, with a clear pathway to seek justice if their landlord does not abide by the law and/or if their tenure is no longer affordable.

Question 4: Should MMR properties only be exempted from rent control areas for the duration of time that they meet the specified criteria?

A total of 4,597 respondents (or 96% of all respondents) answered the closed element of Question 4. Responses by respondent type are set out in Table 5 below.

Table 5: Question 4

Respondent type	Yes	No	Total
Advice organisation and third sector	8	1	9
Developer or investor	13	2	15
Local authority	13	0	13
Private landlord, letting agent or their representative bodies	20	13	33
Professional or representative body	2	0	2
Public body	2	0	2
Social landlord or their representative bodies	5	7	12
Tenant, community group or union	4	0	4
Total organisations	67	23	90
% of organisations	74%	26%	100%
Individuals	188	171	359
% of individuals	52%	48%	100%
All non-campaign respondents	255	194	449
% of all non-campaign respondents	57%	43%	100%
Campaign respondents	4148	0	4148
% of campaign respondents	100%	0%	100%
All respondents	4403	194	4597
% of all respondents	96%	4%	100%

A substantial majority of respondents – 96% of those answering the question and including ‘Campaign’ respondents – thought MMR properties should only be exempted from rent control areas for the duration of time that they meet the specified criteria.

A majority of non-campaign respondents – 57% of those answering the question – also thought so. However, organisations were more likely to support the proposition than individuals, at 74% and 52% respectively.

‘Social landlord or their representative bodies’ respondents were the only group in which the majority did not agree that MMR properties should only be exempted for the duration of time that they meet the specified criteria.

Please explain your answer

Around 270 non-campaign respondents explained their answer to Question 4. Campaign respondents also made a comment.

‘Private landlord, letting agent or their representative bodies’ and ‘Developer or investor’ respondents were among those reiterating points about the need for criteria to allow flexibility and innovation, that the current criteria could exclude private investment models that can deliver mid-market rent without subsidy, and that the criteria should be expanded to include for-profit private sector models that deliver MMR.

Support for exemption from rent control for duration of time meeting criteria

General comments from across a range of respondent groups included that it is crucial to ensure that MMR properties remain affordable to low- and middle-income households, and that ensuring criteria are met prevents landlords from benefiting from an exemption if they no longer operate within the agreed parameters. 'Tenant, community group or union' respondents were among those suggesting that this would protect tenants, maintain fairness in private renting, encourage compliance and support transparency and accountability.

'Local authority' respondents commented that the approach would ensure that the exemptions remain relevant and appropriate, and help prevent MMR properties becoming unaffordable, which could increase the pressure on the social housing sector and decrease housing options for middle-income households.

Respondents who agreed that MMR exempt status should be withdrawn if certain conditions were not met, and that those properties should no longer be exempted from rent control, gave examples of criteria which should be complied with. These included meeting:

- affordability criteria such as binding rent restrictions linked to LHA or local market rates
- use/tenure specific requirements
- funding requirements

Although supporting the overall principle, a 'Developer or investor' suggested that the MMR criteria should be broadened to future-proof the definition, for example covering homes that may be let at qualifying rents beyond the term of any agreement with government, so that these would still fall within the exemption. Other 'Developer or investor' respondents proposed that, if a home moves out of MMR but meets BtR standards, the exemption should still apply.

Concerns about time limited exemptions

'Social landlord or their representative bodies' respondents were amongst those raising concerns about the possibility of MMR exemptions being time limited, including that they would undermine investor and lender confidence and place strain on RSL 30-year financial business planning. A specific concern was that exemptions that do not align to the full life of business plans would make MMR properties unviable for RSLs.

Other reasons for not supporting the proposal included that MMR rents will never increase above the median point of BRMA, so any arbitrary time limits on exemptions would render them ineffective and undermine the intent of exemptions.

A 'Social landlord or their representative bodies' respondent observed that RSL subsidiaries comply with strict governance and reporting requirements through their

association with their main RSL arm, which is regulated by the SHR.¹⁰ They reported that these governance structures give protection against any concerns about profit-making and suggested there is sufficient protection against any 'drift' in RSL subsidiary MMR provision or compliance.

Question 5: Are there any other types of housing provision which should also be considered as part of an exemption for MMR property? In this question we ask you to consider only housing provision let below market rents, with binding restrictions on the level of rent that can be charged, or with restrictions on the types of tenants than can be granted a tenancy.

Around 310 respondents answered Question 5. A number of those responding to this question, including 'Campaign' and 'Individual' respondents, either thought no other types of housing should be exempt or had no suggestions about possible exemptions. Others, including 'Individuals' and 'Private landlord, letting agent or their representative bodies' respondents, suggested that all properties should be exempt.

In addition to giving examples of provision that they felt should be considered for exemption, respondents highlighted the need for clear affordability criteria and restrictions on tenant type. Examples given of occupancy restrictions included key workers (such as nurses and teachers), students, supported housing tenants and veterans.

The other types of housing provision suggested for exemption are summarised below.

'Private landlord, letting agent or their representatives' and 'Developer or investor' respondents provided several suggestions for exemptions. These included BtR developments participating in local affordable housing initiatives that include rent caps or restrict tenancy types, particularly where they are supported by public subsidies or planning agreements. Intermediate Market Rent homes delivered under Section 75 agreements or nomination arrangements with binding rent controls and clear eligibility criteria, providing affordable homes in high-demand areas where social housing alone cannot meet need were also seen as an option.

Other suggestions included:

- any property rented below market rate, including tenancies to long-term tenants which have been let at and remained under market rent (as there is a risk of sale on change of tenancy if the rent cannot be increased)
- any form of voluntarily discounted rent (discounted at similar or higher levels than MMR) or any property below a fixed percentile of the market rate
- any tenancy let under the Agricultural Holdings Act

¹⁰ RSL parent bodies have responsibility and control over any subsidiary and must report (via an Intra Group Agreement) to the SHR.

- tenancies that incorporate provision of electricity, water, heat or other any services
- private sector landlords delivering MMR at LHA levels without subsidy
- key worker housing

‘Social landlord or their representative bodies’, ‘Advice organisation and third sector’ and ‘Local authority’ respondents tended to highlight specialist housing, including supported accommodation for vulnerable groups, where rent controls could undermine financial viability and delivery of essential support services. Examples given included housing for older people, individuals with disabilities, people with mental health conditions, households experiencing homelessness or who have previously been homeless, victims of domestic abuse, ex-offenders and housing for veterans.

Rural and community housing provision (including that delivered by trusts or small charities) was also referenced, and it was suggested that these sub-sectors face uniquely high costs with supply already at risk in some areas. Charitable and community-led housing provided by cooperatives, community land trusts or charitable organisations, was another suggestion. It was noted that these providers will often reinvest surpluses into maintaining affordability, thereby serving a specific community or social need.

Other suggestions included:

- tied accommodation, if offered at MMR levels
- student accommodation provided by universities or non-profit organisations, provided there is no motive to profit from the accommodation
- shared equity schemes and other sub-market rent models as these have binding affordability conditions applied and should not be subject to any further rent restrictions

‘Professional or representative body’ and ‘Developer or investor’ respondents suggested models designed to support tenants in a similar way to MMR and to encourage more delivery targeted at the affordable market. Examples given included homes offered at discounted rents for specific tenant groups, or private schemes such as “rent to buy” with set eligibility rules, or homes built/developed under previous grant schemes such as Rural Empty Property Grant or Rural Homes for Rent.

Purpose-built rental housing – build to rent

The consultation paper set out that BtR is a type of housing that offers purpose-built accommodation for rent. It also reported that engagement with stakeholders has suggested that BtR providers tend to be long-term focused, often pension fund sponsored corporate landlords with a “for-rent only” strategy, which could guarantee both long-term supply of BtR properties as well as the absence of a risk of terminations for personal use. The consultation sought views on whether it would

be appropriate to exempt BtR properties from rent control to support the provision of new-build rental property and the impact that this may have on the sector.

Question 6: Should build to rent properties be exempted from the application of rent controls under the Bill?

A total of 4,600 respondents (or 96% of all respondents) answered the closed element of Question 6. Responses by respondent type are set out in Table 6 below.

Table 6: Question 6

Respondent type	Yes	No	Total
Advice organisation and third sector	3	6	9
Developer or investor	16	1	17
Local authority	6	8	14
Private landlord, letting agent or their representative bodies	21	11	32
Professional or representative body	3	0	3
Public body	0	1	1
Social landlord or their representative bodies	4	0	4
Tenant, community group or union	0	8	8
Total organisations	53	35	88
% of organisations	60%	40%	100%
Individuals	82	282	364
% of individuals	23%	77%	100%
All non-campaign respondents	135	317	452
% of all non-campaign respondents	30%	70%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	135	4465	4600
% of all respondents	3%	97%	100%

A substantial majority of respondents – 97% of those answering the question and including ‘Campaign’ respondents – did not think that BtR properties should be exempted from the application of rent controls under the Bill.

Among non-campaign responses, a smaller majority – 70% of those answering the question – did not think BtR should be exempt, rising to 77% of individual respondents. In contrast, a majority of organisations, 60% of those answering the question, did think BtR properties should be exempted from the application of rent controls.

‘Developer or investor’, ‘Social landlord or their representative bodies’ and ‘Professional or representative body’ respondents were almost entirely in favour of an exemption, while ‘Tenant, community group or union’ respondents were all opposed. Although a majority of ‘Private landlord, letting agent or their representative bodies’ respondents agreed, a substantial minority disagreed.

Please explain your answer

Around 370 non-campaign respondents explained their answer to Question 6, and 'Campaign' respondents also commented. This included respondents who argued against the introduction of any rent control measures or, alternatively, that no exemptions should apply. These broader arguments have been covered in the 'Overarching themes relating to rent controls' chapter (above). The focus of the analysis presented at Questions 6 to 10 is on the BtR sector.

Reasons for opposing an exemption for BtR properties

A frequently made point, including by 'Campaign' and 'Tenant, community group or union' respondents, was that rent controls should be applied consistently across all types of privately rented property, including BtR. Points made in relation to BtR specifically included that some tenants might not know they are renting in a BtR property and, by extension, that they would not be protected by any local rent cap that might apply.

'Local authority' respondents were among those raising concerns in relation to the affordability of rental properties in the BtR sector, with reports that rents are already high, and that BtR rents above average can impact BRMA and LHA levels.

There was also a view that an exemption could encourage developers to prioritise the luxury end of the market, especially in urban areas, at a time when many BtR properties are already unaffordable for people on low incomes, including older people. It was argued that rents in the BtR sector should be brought down rather than introducing measures that could have the opposite effect.

The potential impact of any exemption for BtR on students living in Purpose Built Student Accommodation (PBSA) was also highlighted. The growth of PBSA in Glasgow was noted in particular, with an associated concern that because of limited availability of other accommodation, students may have no choice but to rent in PBSA where rents are already higher than those elsewhere in the PRS – a trend which may increase if PBSA is exempt from rent control.

There was also a view that, as the interests of BtR providers have informed the current approach of setting maximum rent rises in rent control areas as CPI+1% up to a maximum of 6%, there is no justification for exempting the sector from rent control, and it was argued that the agreed formula enables BtR landlords to make "above inflation profits".

A different perspective, expressed particularly by 'Private landlord, letting agent or their representative bodies' and 'Individual' respondents, was that granting an exemption for (predominantly) large professional BtR landlords operating in one part of the private rented sector will create a two-tier system that unfairly disadvantages the (often) small private landlords whose properties *would be* subject to rent controls. This was also expressed as giving new build BtR an unfair advantage over existing rental stock and was linked to an argument that an exemption for BtR could encourage private landlords to divest existing stock and

invest in new BtR properties. Suggestions to address the perceived advantage that an exemption would give BtR providers included:

- removing the 8% Additional Dwelling Supplement under Land and Buildings Transaction Tax for purchasing of property to rent by registered private landlords
- allowing non BtR (and MMR) landlords to raise rent to market value between tenancies when the current rent is more than 10% below market value

Reasons for agreeing with an exemption for BtR properties

The most frequent reason given for supporting an exemption for BtR properties was the need to encourage (or to avoid further discouraging) BtR development in Scotland. There were calls for primary legislation to send a clear signal that BtR will be exempted from rent control, even if the detail will be provided in secondary legislation.

Arguments in support of an exemption were made primarily by ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents, although there was also support from some ‘Local authority’, ‘Professional or representative body’, ‘Social landlord or their representative bodies’ and ‘Individual’ respondents. Reasons given included that the BtR sector has the potential to deliver new homes at scale to help address unmet demand for housing. It was also suggested that BtR developments typically provide high quality, professionally managed homes on longer tenancies, often with on-site services that benefit tenants, and that the model provides choice for tenants and depends on resident satisfaction, rather than short-term profit.

It was noted that, being capital intensive, BtR developments are often financed by large institutional investors (such as pension funds) seeking predictable, long-term returns, and it was reported that the prospect of rent control in the BtR sector has caused loss of confidence on the part of such investors, with existing developments cancelled or put on hold and a lack of new funding for large scale BtR projects. Respondents gave examples of stalled developments in Glasgow and Edinburgh and of sites where projects are being switched to PBSA, and it was argued that, without an exemption for BtR property in Scotland, institutional investors will go elsewhere in the UK or Europe where they can make higher returns with lower risk.

The duty on institutional investors to manage pension and insurance funds in the best interests of beneficiaries (including earning secure, inflation-linked returns on invested capital) was emphasised, including a view that the proposed limit on rent increases in a rent control area (to CPI+1% or 6%) will threaten the profitability of BtR schemes during periods when CPI exceeds 6%, as happened during much of 2022 and 2023. Other factors highlighted as impacting the viability of BtR development in Scotland included the emphasis that planning policy places on delivering family-sized homes in BtR developments: it was reported that as Houses in Multiple Occupation (HMO) licensing rules prevent 3 bed properties being used by more than two unrelated adults, these units are often under-occupied, undermining financial viability.

Loss of the economic benefits and jobs associated with BtR developments were cited as additional reasons for the Scottish Government to exempt this sector from rent control, as was the recommendation for an exemption in the [Housing Investment Taskforce report](#).

Specific concerns were raised around the viability of BtR in rural areas where, it was reported, potential returns on investment are lower, but development can be important to sustain communities and reverse depopulation. Single family rental BtR models were highlighted as having the potential to bring new housing supply to rural and suburban rental markets where options are limited. One 'Local authority' respondent from a predominantly rural area noted that they regard encouraging investment opportunities in BtR as a key priority.

Potential conditions on exemption

'Local authority' and 'Advice organisation and third sector' respondents were among those who noted additional conditions that they would like to see imposed, primarily in relation to affordability. These included limits with respect to rent levels, for example with exemptions offered only to BtR properties which are offered at MMR levels or exemptions only available if a proportion of units are let at affordable levels. A specific suggestion was that local authorities should be able to ensure that BtR developments provide an affordable housing contribution through their planning authority's Affordable Housing Policy.

Other proposed limits included that exemptions should be time-limited, conditional on tenant safeguards and covered by a compliance framework to prevent misuse – for example by planning consent being specifically for BtR, and further planning consent being required for subsequent change of use.

Defining BtR

The consultation paper set out that BtR is not currently legally defined or categorised under planning legislation. It went on to suggest that BtR could be defined to incorporate some of the following criteria:

- new homes built at scale and offered exclusively for rent (apartments and/or houses)
- new homes provided at scale through conversion of non-residential properties
- on a single site or related sites
- in single ownership
- with management services provided by a single legal entity via a management regime and a single site wide building insurance structure

Question 7: We have set out some criteria which could be incorporated into a definition of BtR for the purpose of a possible exemption. Do you agree with these criteria?

A total of 4,554 respondents (or 95% of all respondents) answered the closed element of Question 7. Responses by respondent type are set out in Table 7 below.

Table 7: Question 7

Respondent type	Yes	No	Total
Advice organisation and third sector	4	3	7
Developer or investor	6	10	16
Local authority	8	4	12
Private landlord, letting agent or their representative bodies	11	20	31
Professional or representative body	1	2	3
Public body	0	0	0
Social landlord or their representative bodies	3	0	3
Tenant, community group or union	1	5	6
Total organisations	34	44	78
% of organisations	44%	56%	100%
Individuals	110	218	328
% of individuals	34%	66%	100%
All non-campaign respondents	144	262	406
% of all non-campaign respondents	35%	65%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	144	4410	4554
% of all respondents	3%	97%	100%

A substantial majority of respondents – 97% of those answering the question, including ‘Campaign’ respondents – did not agree with the criteria set out for possible incorporation into a definition of BtR for the purpose of a possible exemption.

Among non-campaign respondents, this fell to 65% of those answering the question, with 66% of individuals and 56% of organisations not agreeing with the criteria.

A majority of ‘Local authority’, ‘Social landlord or their representative bodies’ and ‘Advice organisation and third sector’ respondents agreed. ‘Tenant, community group or union’ respondents were particularly likely to disagree.

Please explain your answer

Around 320 non-campaign respondents explained their answer to Question 7, and Campaign respondents also commented.

Concerns about the criteria as set out

While in some cases broadly agreeing with the proposed criteria, ‘Developer or investor’, ‘Private landlord, letting agent or their representative bodies’ and ‘Individual’ respondents were among those arguing that they are too narrow, need to be more flexible to reflect how BtR is delivered in practice, and need to allow the model to evolve. The associated concern was that, as currently set out, the criteria could discourage investment, particularly in innovative schemes including those encompassing retrofit and adaptive reuse, or schemes that meet the spirit of BtR but not all technical requirements.

There was also a suggestion that the proposed criteria needs further clarification, and an expectation that a definition of BtR for the purposes of an exemption would be subject to future consultation.

Support for the criteria as set out

General comments from those who agreed with the criteria included that they seem reasonable and appropriate to reflect the characteristics of BtR, or to distinguish BtR from the wider PRS. There was also a suggestion that additional criteria would not be conducive to the delivery of BtR.

However, there were also a number of suggestions for alternative or additional criteria. These are covered at Question 8, with the analysis below focusing on the criteria proposed in the consultation paper.

View on the specific criteria

i) New homes built at scale and offered exclusively for rent (apartments and/or houses)

What would be considered ‘new’ was thought to require clarification with a ‘Local authority’ respondent querying whether projects completed prior to the publication of the relevant regulations would be eligible for any exemption.

Many respondents, including ‘Tenant, community group or union’, ‘Individual’ and ‘Campaign’ respondents, argued that if an exemption is granted it should be limited to a period of two years after completion. A very different view, expressed by ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents, was that all existing BtR property should be exempt or that a cut-off date no earlier than 2010 would take account of the introduction of the BtR sector in the UK.

What is covered by ‘built at scale’ was also thought to need clarification, with particular concern around the application of this requirement in a rural context, where the scale of development is likely to be small relative to urban areas but where even a relatively small number of properties can have significant positive impacts for local communities. It was suggested that the definition should take account of the likely scale of BtR development in rural areas and should clearly extend to developments of single family rental houses as well as flats. There were suggestions both that a minimum scale might be set at 10 units or more or

at 50+ units to allow for smaller rural schemes, or that any rural property built exclusively to be let under a relevant tenancy should be included.

Other queries on scale related to the status of private, non-institutional BtR properties, for example whether a small number of units with genuinely affordable rents created by a third sector organisation would be covered.

With respect to being 'offered exclusively for rent' it was suggested that a requirement for a single tenure runs counter to the aim of mixed and balanced communities and that projects could offer multi-tenure accommodation on the same site.

ii) New homes provided at scale through conversion of non-residential properties

The importance of including schemes that involve the conversion of existing buildings for residential purposes was emphasised. Flexibility with respect to scale was also suggested in this context, both in view of the environmental benefits of using brownfield sites and the impact that a relatively small number of additional rental properties have on the centre of a small town.

iii) On a single site or related sites

Potential difficulties in defining 'a single site or related sites' were also suggested, including that provision on related sites could mean that some parts of a BtR development are within a rent control area while others are not. There was a view that this requires careful consideration as, particularly for single family rental homes, the number of units on individual sites may be small but can be viable because of geographical proximity to other sites in the same ownership or as part of a wider business plan.

iv) In single ownership

Points in relation to the requirement for single ownership included that joint venture development is common in the BtR market with a request for clarity on whether a housebuilder involved in ventures with different partners would count involvement in each joint venture as single ownership.

There was also a concern that a landlord could be restricted if wishing to sell an interest in a BtR property.

'Developer and investor' respondents were among those who suggested the requirement should be for homes to be held in either single ownership or a co-ordinated ownership.

v) With management services provided by a single legal entity via a management regime and a single site wide building insurance structure

While a 'Local authority' respondent expected that a requirement for a property factor or management company might be included under Landlord Registration regulations, others saw this criterion as potentially confusing, unnecessary or lacking flexibility – the latter potentially important in relation to delivery in a rural

context. While site-wide insurance was described as overly prescriptive, there was also a view that site-wide building insurance structure and centralised governance is a characteristic of BtR schemes.

Question 8: Are there any other criteria that should be considered as part of a definition of BtR for the purpose of a possible exemption?

Around 320 non-campaign respondents answered Question 8, and Campaign respondents also made a comment.

Additional criteria proposed

i) Affordability

Reflecting comments at earlier questions, 'Local authority' and 'Individual' respondents in particular highlighted concerns around affordability and protecting tenants from excessive rent increases. Suggestions included criteria relating to: an intention to offer properties initially to the open market as 'affordable housing'; providing a proportion of rents at LHA or lower; or encouraging alignment of rent to MMR levels. A limit on the number of rent increases in exempt properties and the right for tenants to contest increases through Rent Service Scotland, using other rents in the area not just those from a BtR landlord, were also proposed.

A 'Local authority' respondent suggested that the cost of the development should be considered when determining the baseline rent level, to ensure that developers and investors are supported while also reflecting affordability for residents.

ii) Long-term investment

'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents were amongst those suggesting that the criteria should include intent for long-term investment, which was seen as important in distinguishing BtR from short-term rental models.

iii) Long term tenancies

While some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents saw long-term investment and ownership as providing stability for residents, others, including a 'Tenant, community group or union' respondent, suggested that availability of long-term tenancies should be a criterion in the definition of BtR.

iv) Professional management and service standards

Professional management and service standards were also suggested as criteria by 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents, who saw high-quality, consistent property management and a customer-focused service ethos as a defining feature of BtR. Availability of on-site facilities and amenities was also suggested as a criterion by a 'Private landlord, letting agent or their representative bodies' respondent.

A 'Tenant, community group or union' respondent suggested that high standards of tenant service should be accompanied by ongoing monitoring through a formal registration or oversight mechanism. Connected to a requirement for monitoring and enforcement to ensure compliance with the terms of an exemption, a 'Local authority' respondent proposed giving local authorities oversight of BtR developments to assess whether they meet the needs of the local population in the context of housing need and demand.

v) **Origin of stock**

Some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents also thought it important that the criteria allow for schemes that were originally intended for sale or not explicitly foreseen as BtR but are subsequently funded/acquired and operated as BtR and meet core ownership, scale and management criteria. Developments delivered through planning agreements or in partnership with public sector bodies, where the operational model aligns with BtR principles, were also referenced.

For some, the suggested flexibility on origin of stock should go further, for example with the definition capturing: all homes presented in a compliant condition to the rental market with professional management in place; all forms of housing developed exclusively for private rental; or any property purpose-built for rent (secured in planning).

Other suggestions included conversion/upgrading of derelict residential properties for rent and specifically property that has been vacant for a decade and renovation/improvement of any existing property.

vi) **Property type and scale**

Reflecting comments on scale at the previous question, 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents were among those arguing that the criteria should clearly include both multi-family and single-family housing. In some cases, this was particularly connected to the delivery of smaller or medium sized BtR schemes in suburban and rural areas or to portfolios of dispersed single-family homes managed to BtR standards.

vii) **Other**

Other issues raised for consideration as potential criteria in the definition of BtR included meeting local strategic priorities (for example, bringing empty properties back into use for private rent or supporting investment that safeguards local built heritage) and meeting energy efficiency standards. A commitment to maintain rental supply to ensure continued investment in the sector was also proposed.

There were also suggestions in respect of student accommodation, and specifically PBSA, both that it should be defined as BtR and exempt from rent control and that it should not. This is discussed further at Question 10.

Exemptions for BtR properties

Exemptions for BtR properties could end when the properties no longer meet these specified criteria.

Question 9: Should BtR properties only be exempted from rent controls for the timeframe that they meet the specified criteria?

A total of 4,534 respondents (or 95% of all respondents) answered the closed element of Question 9. Responses by respondent type are set out in Table 8 below.

Table 8: Question 9

Respondent type	Yes	No	Total
Advice organisation and third sector	5	1	6
Developer or investor	12	3	15
Local authority	11	0	11
Private landlord, letting agent or their representative bodies	20	9	29
Professional or representative body	2	0	2
Public body	1	0	1
Social landlord or their representative bodies	3	0	3
Tenant, community group or union	5	2	7
Total organisations	59	15	74
% of organisations	80%	20%	100%
Individuals	116	196	312
% of individuals	37%	63%	100%
All non-campaign respondents	175	211	386
% of all non-campaign respondents	45%	55%	100%
Campaign respondents	4148	0	4148
% of campaign respondents	100%	0%	100%
All respondents	4323	211	4534
% of all respondents	95%	5%	100%

A substantial majority of respondents – 95% of those who answered the question, including ‘Campaign’ respondents – thought that BtR properties should only be exempted from rent controls for the timeframe that they meet the specified criteria.

Among non-campaign respondents, a small majority – 55% of those answering the question – did not think that the exemption should be limited in this way, with Individuals and organisations taking differing positions. While 80% of organisations thought the exemption should be limited to the timeframe that the specified criteria are met, only 37% of individuals took this view.

Across all organisation types, a majority of those answering supported the timeframe being limited.

Please explain your answer

Around 260 non-campaign respondents explained their answer to Question 9. 'Campaign' respondents also made a comment.

As at earlier questions, concerns were raised about rent controls overall, and about any special treatment for BtR landlords relative to those operating in the rest of the sector, whilst others favoured rent control applying to all property types. These respondents sometimes noted that, if there is an exemption, it should be limited to the timeframe when the criteria are met.

Reasons for supporting an exemption from rent controls only for the timeframe that properties meet the specified criteria

The proposed requirement for meeting the specified criteria was seen as ensuring that any properties being given an exemption are delivering the intended benefits in increasing the supply of property for rent. 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents were among those citing the importance of protecting the integrity of the exemption, such that it applies only to developments that deliver policy benefits in terms of long-term ownership, professional management and enhanced service standards. It was also argued that such features of a development are more important than its history or origin.

Benefits were also predicted with respect to:

- providing clarity for BtR investors who are committed to maintaining the required standards and an incentive for developers and landlords to uphold the quality of accommodation
- maintaining common standards in all BtR homes
- upholding fairness in the rental market by ensuring that developments benefiting from exemptions are genuinely operating under the BtR model
- safeguarding the interests of tenants
- avoiding fragmentation of ownership or management

Conditional criteria were also seen as providing a mechanism for enforcement, with suggested circumstances where the exemption should be withdrawn including:

- change in tenure
- fragmentation of ownership/management
- failing to provide professional management
- falling below a minimum scale threshold

Reasons for opposing exemption from rent controls only for the timeframe that properties meet the specified criteria

Reasons for opposing a limited exemption included views that:

- this might reduce appetite for investment and that homes for long-term rent should be supported by an appropriate policy environment
- there should be an exemption as long as rent control is in place rather than in relation to the specified criteria

Question 10: Are there any other types of new rental housing provision which should be considered as part of this category of exemption?

Around 280 non-campaign respondents answered Question 10. Campaign respondents also made a comment.

‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents who did suggest additional types of housing that should be included sometimes argued that an exemption should be available to other types of provision that shares the central characteristics of BtR, and where there would be a similar concern around viability if blanket rent control measures were to be applied. Specific suggestions, made predominantly by these respondent groups and individual respondents, included:

- co-living or managed shared living – developments that typically combine private apartments with shared kitchens, lounges and other amenity spaces, managed by a single, professional operator
- later living or senior living – self-contained homes, often with on-site support services, communal facilities and a strong emphasis on accessibility, wellbeing and social connection
- assisted living – potentially offering care services to support residents with increasing needs to avoid early entry into residential care
- the rental element of shared ownership properties
- RSL PRT acquisitions
- new rental homes acquired by institutional investors under single ownership providing management services across a portfolio of rental homes, in multiple locations or conversions of existing residential property into the ownership and management of a BtR provider
- single family rental
- the rural residential sector, with calls to support delivery of new rental homes in rural communities irrespective of scale

The status of PBSA was also raised. It was argued that this provides a form of accommodation distinct from the wider PRS, being delivered at scale and operated by professional providers or university partnerships, with fixed leases structured around the academic calendar. A particular concern was that amendments passed at the meeting of the Local Government, Housing and Planning Committee on 6

May have brought PBSA into the scope of rent control¹¹ when, in the view of some respondents, it should not be.

Other suggestions for new rental housing provision which should be considered as part of a BtR exemption focused on commitments to affordability, length of tenancies, transparency or specific tenant eligibility criteria. 'Local authority', 'Tenant, community group or union' and 'Individual' respondents in particular suggested exemptions including for:

- any affordable housing provision, particularly if supported by public funding or planning obligations
- affordable PRS properties – privately delivered homes (not owned by RSLs or local authorities but often delivered via Section 75 agreements or with some public subsidy) that are let at a discount to market rents
- RSL and third sector landlords
- public-private ventures designed for long-term rental
- community-led housing or housing cooperatives, where tenants have a collective ownership or governance stake in the property
- specialist supported housing for people with additional needs
- employer-provided housing and key worker housing
- student-to-residential conversions

Other circumstances where exemptions would be appropriate

The powers set out in section 13 of the Bill, as introduced, allow Scottish Ministers to define what is an exempt property with reference to the landlord or tenant of the property, or the type of property. The consultation paper notes that two areas where such powers could be used are exempting MMR and BtR properties from rent controls. However, it is recognised that there are a wide variety of different types of property in the PRS which could be impacted by rent controls in different ways. The consultation sought views on any other types of property that should be considered for exemption from rent control where a rent control area is in force.

Question 11: Excluding mid-market rent and build to rent/purpose built private rented accommodation, are there other categories of housing provision that should be exempted from rent controls?

¹¹The Housing (Scotland) Bill, as introduced, applied rent control provisions to PRTs only. As PBSA (and university owned halls of residence) are excluded from being PRTs, they were not included in the rent control provisions in the Bill. During its consideration of the Bill at Stage 2, the Committee agreed to amendments that would extend some elements of the rent control regime to student tenancies. Although the amendments did not extend restrictions on rent increases to student tenancies, this raised concerns that further amendments could come forward at Stage 3 that would do so. After this consultation closed, amendments were passed by the Scottish Parliament at Stage 3 of the Bill process to remove the references to student tenancies that were added at Stage 2 from the rent control measures in the Bill. The [final form of the Bill](#), as passed by the Scottish Parliament on 30 September 2025, does not extend the rent control measures to student tenancies.

A total of 4,607 respondents (or 96% of all respondents) answered the closed element of Question 11. Responses by respondent type are set out in Table 9 below.

Table 9: Question 11

Respondent type	Yes	No	Total
Advice organisation and third sector	5	4	9
Developer or investor	10	3	13
Local authority	7	7	14
Private landlord, letting agent or their representative bodies	30	6	36
Professional or representative body	3	0	3
Public body	1	0	1
Social landlord or their representative bodies	5	2	7
Tenant, community group or union	1	7	8
Total organisations	62	29	91
% of organisations	68%	32%	100%
Individuals	194	174	368
% of individuals	53%	47%	100%
All non-campaign respondents	256	203	459
% of all non-campaign respondents	56%	44%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	256	4351	4607
% of all respondents	6%	94%	100%

A substantial majority of respondents – 94% of those who answered the question, including ‘Campaign’ respondents – did not think that there are other categories of housing provision that should be exempted from rent controls.

In contrast, among non-campaign respondents a small majority – 56% of those who answered the question – thought that there are other categories that should be exempted from rent control. Among individuals, 53% of those answering thought so, rising to 68% of the organisations that answered the question.

‘Tenant, community group or union’ respondents were the only type of organisation in which the majority did not think there are any other categories of housing provision that should be exempted from rent controls, although ‘Local authority’ respondents were evenly divided on the issue.

Please explain your answer

Around 380 non-campaign respondents explained their answer to Question 11, with comments frequently reiterating points and suggestions made at earlier questions.

Reasons there should not be further exemptions

In many cases, respondents (including 'Campaign' respondents) who did not think there should be further exemptions did not think there should be any exemptions at all, often seeing exemptions as creating uncertainty, instability and unequal rights among tenants. Others disagreed with the introduction of any rent control or argued that, if applied at all, it should be done consistently across the PRS.

A 'Local authority' respondent who felt that exemptions should be kept to a minimum suggested that further exemptions could both create inconsistency and increase opportunities for legal challenge.

Suggestions for further exemptions

Respondents who opposed the principle of rent control sometimes called for all rental property to be exempt. Otherwise, the most frequent suggestions for additional categories of housing provision that should be exempted from rent control were:

- properties that are or have been let at below market values
- properties that have been upgraded, including work required to improve energy efficiency or adaptations to meet the needs of a disabled tenant

With regard to properties that are or have been let at below market values, some respondents gave examples of circumstances where rent increases for sitting tenants might be minimised, leaving a property at well below market rent when a tenancy ends.

With reference to properties that have been upgraded, while some respondents highlighted refurbishment between tenancies, it was also noted that an exemption only in respect of work between tenancies could discourage improvements during a tenancy.

Fewer respondents argued in support of exemptions for:

- property owned by small-scale PRS landlords
- PBSA
- supported housing for vulnerable or priority groups, for example where rent can include care costs or other service provision
- properties associated with employment or provided for key workers
- properties in rural areas

As with earlier questions, some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents argued for more consideration of rental housing in rural communities or for rural BtR development at any scale to be exempt from rent control. Viability challenges relating to low volumes, high costs and fragile delivery pipelines were noted.

Some issues relating to rural properties were also linked with employment and with properties let at below market rates, including in relation to tied accommodation and

agricultural tenancies. A general point made was that the nature or length of the tenancies involved is likely to mean a property returning to the private residential market does so at a rental value well below the market rate. Specific property types and situations where it was suggested that an exemption should apply included:

- tied housing
- property resumed from tied housing
- accommodation returning to market after use by a retired employee
- any tenancy where a restriction on the occupation of the house has reduced the rental value, for example where a tenant has had a full repairing tenancy, and the repairing obligations are reverting to the landlord
- properties let for the first time after converting to a PRT after a long-term lease under a Short Assured Tenancy or a Protected/Regulated Tenancy where rents will typically be below current market levels
- any tenancy previously let under the Agricultural Holdings Act

In relation to tenancies previously let under the Agricultural Holdings Act, it was also argued that where the rent for such rural property covers the provision of services (heat, water, electricity or sewerage) this element should not be subject to rent control.

Other categories of provision where relatively small numbers of respondents proposed exemptions included traditional buildings or listed buildings which have higher repair and maintenance costs. A 'Private landlord' respondent noted their own responsibility for care of a number of historic residential properties that are often leased to staff who work in them, with rents going towards maintenance and upkeep. Other suggestions were:

- any previously derelict property brought back into use, including houses not lived in for more than 10 years
- conversions of existing residential property into the ownership and management of a BtR provider
- RSL PRT acquisitions
- any new build projects supported by Scottish Government or local authority funding
- co-living, later living or assisted living developments
- the rental element of shared ownership
- short term rents, for example for seasonal workers or workers on national infrastructure projects
- furnished properties
- HMOs that are specifically reserved for students
- affordable housing with conditional exemption – for example linked to LHA affordability criteria and reviewed regularly

- community led housing / cooperative rental homes, which often have government funding

Consultation with community trusts and similar agencies on whether an exemption would be appropriate for remote rural housing was also suggested.

Demonstrating eligibility for an exemption

The consultation paper notes that to ensure that tenants can exercise their rights they need to have information. The Bill sets out requirements for information that prospective landlords in rent control areas must provide to tenants. The Bill also includes routes for tenants to verify whether a proposed rent increase is above the level of the rent cap or to apply for a determination of whether the rent set at the start of a new tenancy was set in accordance with the statutory requirements. However, should a certain category of property in a rent control area be exempted from rent control (for example MMR or BtR properties), these requirements would not apply.

Question 12: What information would you consider would be acceptable to demonstrate that a property is eligible for the types of exemptions referred to in the previous sections in this chapter?

Around 375 non-campaign respondents answered Question 12, and ‘Campaign’ respondents also made a comment.

General issues raised

While some comments referred to eligibility for exemption as either MMR or BtR (as set out below), others were not specific about the grounds on which an exemption was sought, although in some cases these apparently concerned potential further exemptions the respondent had proposed at Question 11.

General points on the nature of the process included that:

- requirements should be as simple as possible for both landlords and regulating authorities
- there should be a requirement to submit documentation to evidence eligibility
- self-declaration on the Landlord Register could be accompanied by a requirement to submit evidence only if subject to inspection
- both the type of exemption and evidence that it is met should be recorded on the Landlord Register

Demonstrating BtR status

With respect to BtR status, ‘Developer or investor’ respondents in particular argued that, rather than a formal approval process, operators should be able to self-certify against clearly defined criteria, providing supporting documentation for retrospective validation if necessary. Justification for such an approach included the need to provide potential investors with certainty that a development will be eligible for BtR status at an early stage and, specifically, prior to a planning application.

Providing this certainty and avoiding both administrative burdens and procedural barriers that could derail or delay a development were seen as essential. Specifically, it was argued that there should be no requirement to seek approval or confirmation prior to operation.

Suggestions with respect to suitable evidence of BtR status included:

- description of the development – for example in planning or design statements outlining the rental model
- investment and funding documentation showing reliance on rental income rather than sales
- planning consent documents confirming BtR as the intended use, including references to long-term rental tenure and unified ownership
- an operating statement on how the building will be run and details of the professional management that will deliver and maintain the rental model

A self-declaration of eligibility, subject to annual renewal, was also suggested.

If further evidence were to be required, it was noted that information – for example relating to tenancy types, rent levels and occupancy – could be collected across developments using a system similar to the SmartSurvey Data Collection system used for MMR. This was seen as providing a light touch compliance mechanism that could allow local authorities to monitor trends and anomalies.

One ‘Professional or representative body respondent’ was clear that, in addition to new build BtR, similar principles should apply to large-scale conversions, and homes originally intended for sale but subsequently acquired under a single ownership and made available for rent, and to both single family rental properties and flats. Another noted that demonstrating eligibility for homes acquired by a BtR provider could be more difficult to evidence, but also that the question is difficult to answer until the defining criteria of BtR are established.

For ‘Local authority’ respondents, evidence of BtR status could include:

- relevant planning applications and building warrants that specify rental use only
- long term tenancy and site management agreements
- correspondence relating to any government support for the project

Some ‘Local authority’ respondents expected that a landlord would need to submit evidence to demonstrate that they meet qualifying criteria to a body that oversees the process or determines exemptions. Suggestions with respect to a body confirming compliance included both the local authority and, specifically for BtR, the Housing and Property Chamber of the First Tier Tribunal (FTT).

Other points specific to BtR were limited. A ‘Private landlord, letting agent or their representative bodies’ respondent suggested that compliance with criteria for BtR (and indeed MMR) developments should be monitored, with enforceable penalties in respect of properties that are at fault. A ‘Tenant, community group or union’

argued that any exemption for BtR should be limited to two years, and that the operator should use the certificate of completion to demonstrate the eligible period.

Demonstrating MMR status

‘Tenant, community group or union’ respondents were among those commenting that, if exemptions are granted for MMR properties, then providing a consistent definition of MMR will be important. They also argued that MMR landlords should apply to the FTT for exemption. In contrast, some ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents suggested that the same principles of self-certification against defined criteria and types of evidence that they outlined in relation to BtR should also apply to MMR, albeit with additional evidence required.

‘Social landlord or their representative bodies’ respondents were among those who noted that, if exemption criteria are linked to organisational structure definitions, RSL subsidiary landlords have an SHR registered parent body and could provide their registration number and proof of this status to tenants to demonstrate eligibility.¹² Other MMR landlords would also have a landlord registration number to which the exempt status could be linked.

Other suggestions with respect to information acceptable to demonstrate MMR status included:

- agreements with local authorities or RSLs
- social care commissioning documentation
- audits and published annual reports
- participation in public funding programmes, grant agreements or contracts with statutory bodies and correspondence relating to any government support for the project
- Section 75 agreements or planning conditions confirming rent restrictions
- allocation or eligibility policies demonstrating affordability, particularly linked to LHA
- criteria attached to funding stating that rent must be linked to methods that ensure rent levels remain affordable
- copies of tenancy agreements reflecting protected terms
- evidence the rent is between social and open market levels in the area

Other types of rental housing provision

With respect to demonstrating eligibility for exemption of other rental models, suggestions – made predominantly by ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents – included:

¹² RSL parent bodies have responsibility and control over any subsidiary and must report (via an Intra Group Agreement) to the SHR.

- tenancy structures that mirror academic terms, affiliation with educational institutions and block management for PBSA
- licensing structures, service-level agreements or housing support arrangements for supported or specialist housing
- confirmation of funding or delivery via community-led partnerships, rural housing initiatives or similar vehicles for rural or community-led schemes

A 'Private landlord, letting agent or their representative bodies' respondent thought that planning criteria around occupation would provide evidence in relation to later living development, while criteria for BtR would apply to co-living.

'Private landlord, letting agent or their representative bodies' and 'Individual' respondents in particular made suggestions with respect to evidence to support potential exemptions in relation to properties let at below market values and properties that have been upgraded. Suggested evidence for the former included: up-to-date tenancy agreements; current rent; rent levels over a defined period of months or years; and the relative cost of similar properties in the same area – for example from a surveyor's reports or property listing. With respect to improvements to a property, evidence might include documentation to illustrate: a requirement to improve energy efficiency; a tenant's disability requiring an adaptation; planning/building control submissions; forecasted costs for work; invoices detailing the cost of work done; and before and after photographs of work carried out.

Question 13: What steps should a landlord need to take to confirm that their property is eligible for such an exemption?

Around 340 non-campaign respondents answered Question 13, as did Campaign respondents.

General points included both that any requirements should be simple and light-touch (including because of concerns around local authority resources) and that there should be a structured process.

Suggested steps for a landlord to take included:

- reviewing the relevant clauses in the legislation to establish that criteria for exemption are met, potentially using a self-assessment checklist
- keeping appropriate evidence/documentation

Thereafter, three different courses of action were anticipated, including submitting an application for exemption with supporting evidence. There were varying expectations that this would be to the local authority, the Landlord Register, Rent Service Scotland and the FTT.

A second suggestion was completing a self-certification or declaration, potentially on the Landlord Register, affirming that relevant criteria are met, but with no (or minimal) requirement for any documentation, or for re-certification unless circumstances change. It was suggested that compliance would need to be demonstrated if requested, or if subject to audit.

The third suggestion was that there should be no registration, certification or approval, with a requirement to demonstrate eligibility only on appeal, if a rent increase is challenged.

BtR properties

As with the previous question, ‘Developer or investor’ respondents were among those who suggested a process whereby exemption for BtR properties would be conferred by planning consent, based on the nature of the development, and its funding / professional management arrangements.

MMR properties

There were expectations, primarily from ‘Social landlord or their representative bodies’ respondents, that a confirmation process for RSL and RSL subsidiary landlords could be limited to providing their name and registration number, which might be added to a field on the Landlord Register. It was also suggested that a similar arrangement could apply if a landlord had charity/social enterprise status and appropriate social purpose controls.

In contrast, ‘Tenant, community group or union’ and ‘Individual’ respondents were amongst those arguing that MMR landlords should be required to apply to the FTT for exemption, and that any exemptions should be time limited. There were also references to the landlord being required to notify the authorities promptly if circumstances change.

Question 14: Should a landlord of an exempt property be required to communicate to tenants and prospective tenants about the exemption?

A total of 4,577 respondents (or 96% of all respondents) answered the closed element of Question 14. Responses by respondent type are set out in Table 10 below.

Table 10: Question 14

Respondent type	Yes	No	Total
Advice organisation and third sector	9	0	9
Developer or investor	13	1	14
Local authority	14	0	14
Private landlord, letting agent or their representative bodies	26	11	37
Professional or representative body	3	0	3
Public body	3	0	3
Social landlord or their representative bodies	10	1	11
Tenant, community group or union	6	0	6
Total organisations	84	13	97
% of organisations	87%	13%	100%
Individuals	229	103	332
% of individuals	69%	31%	100%
All non-campaign respondents	313	116	429
% of all non-campaign respondents	73%	27%	100%
Campaign respondents	4148	0	4148
% of campaign respondents	100%	0%	100%
All respondents	4461	116	4577
% of all respondents	97%	3%	100%

A substantial majority of respondents – 97% of those who answered the question, including ‘Campaign’ respondents – thought the landlord of an exempt property should be required to communicate to tenants and prospective tenants about the exemption.

Among non-campaign respondents, 73% of those answering agreed. The proportion of organisations that thought the landlord should be required to communicate with tenants and prospective tenants was higher than for individual respondents, at 87% and 69% respectively.

Among the organisations, ‘Private landlord, letting agent or their representative bodies’ were the only group where a significant number of respondents did not think the landlord should be required to communicate with tenants and prospective tenants about the exemption.

Please explain your answer

Around 305 non-campaign respondents explained their answer to Question 14, and ‘Campaign’ respondents also made a comment.

Reasons the landlord should be required to inform tenants/ prospective tenants

Transparency and fairness were the most frequently given reasons for requiring communicating with tenants and prospective tenants about an exemption. While some respondents saw the requirement as reasonable, others thought it obvious, with some surprised that the question would even be asked. Related views included that a tenant or prospective tenant needs, or has a right, to know if the property would not be covered by any local rent cap, allowing them to make an informed choice. It was also noted that MMR tenants are likely to consider the affordability of their rent very important and that the likely publicity if rent controls are implemented means it will be important for any tenants in exempt properties to know that their rent will not be capped. Potential benefits in avoiding misunderstandings, future disputes and referrals to the FTT were also suggested.

Reasons the landlord should not be required to inform tenants/ prospective tenants

Among respondents who argued against a requirement to inform tenants or prospective tenants, the additional regulatory burden placed on landlords was the most frequent reason. Related points included that tenants would be able to access the information on the Landlord Register if they chose to do so, and that the existence of an exemption might deter a prospective tenant when, in fact, it might have no practical impact on their experience or rent level.

Method of communication

With respect to how and when information about the exemption might be communicated, 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents were among those concerned that the requirement should not be burdensome for landlords. They suggested that a statement could be added to the tenancy agreement, although there was also a view that the PRT is already long and that many prospective tenants do not read it fully. A 'Tenant, community group or union' respondent suggested it would be helpful if relevant information was placed near to the beginning of the tenancy agreement – for example in section 5 of the Model Tenancy agreement.

Other suggestions with respect to how and when information should be communicated included that it should be:

- proactive and accessible
- in writing
- via email or a management app used by most MMR landlords
- included with the standard rent increase notice
- in advertising/marketing materials or at the viewing/application stage
- in pre-tenancy materials or before a rental agreement is signed

Views from the consultation sessions

Tenant participants considered that landlords should be required to inform prospective tenants about any exemption and also inform tenants of any potential increase several months before it is applied.

In terms of content, it was suggested that a standard template issued by the Scottish Government could ensure consistency of approach. Proposed elements for communication to tenants included:

- both the length and nature of the exemption
- how to check whether restrictions regarding MMR properties are respected in rent levels
- how to challenge an exemption or appeal against a rent increase

Other suggested requirements for landlords of exempt properties included restating the exemption well in advance of any rent increase and explaining the reasons for any rent increase. Free independent advice for both tenants and landlords was also proposed.

Question 15: What could the process be for tenants to verify that a property is exempt?

Around 350 non-campaign respondents answered Question 15, and 'Campaign' respondents also made a comment.

General points included that any process should be simple and transparent with specific suggestions including that a tenant could:

- receive a landlord declaration at start of tenancy
- check their tenancy agreement
- ask the landlord or letting agency to provide supporting documentation, such as an exemption certificate
- consult a central, publicly accessible online register of exempt properties or, more specifically, the Landlord Register

Less frequent suggestions included referring to the body that agreed the exemption. With respect to MMR exemptions, it was suggested that the Landlord Register could be adapted to provide an MMR section, or a separate register could be created listing relevant MMR properties or RSL subsidiary landlords and other exempt bodies. MMR operators' websites could also publish details of the exemption.

Respondents also considered a potential process to deal with further queries or disputes, with suggestions that these could be handled by Rent Service Scotland, the relevant local authority or the FTT. Access to an independent review process to challenge incorrect exemptions was seen as important, and 'Local authority'

respondents were among those who suggested that there should be a facility for tenants to report potential misuse of the system.

Views from the consultation sessions

Tenant participants suggested that landlords should keep a register of exempted properties on their website.

Chapter 2: Properties subject to modified rent control area restrictions

The Bill includes a provision that would enable Scottish Ministers to specify the circumstances in which a landlord of a property in a rent control area could increase the rent by more than the level of the rent cap. This would be done through regulations, and those regulations could also specify whether a landlord would be required to obtain approval for such an increase, and any approval process. The purpose of this power is to ensure that the individual circumstances of landlords who may be disproportionately impacted by rent control can be taken into account, balancing the interests of tenants with the property rights of landlords.

The consultation paper noted two specific circumstances where it may be appropriate for landlords to be allowed to raise the rent for a property in a rent control area by more than the rent cap:

- where significant improvements to the property are undertaken
- where a landlord is letting a property to a tenant at a rent significantly below market rates

There was also an opportunity for respondents to highlight other circumstances where a modified rent cap might be appropriate.

Landlords who charge rent significantly below advertised rates

The consultation paper reported that engagement with stakeholders has highlighted that landlords can choose not to increase rents for sitting tenants every year or choose to only increase rents by a small amount, even though market changes would allow them to increase rents at a higher rate. It went on to note that landlords who have historically charged a rent significantly lower than that for similar properties in the area could be disadvantaged relative to those landlords who are already charging market rent when a rent control area is put in place. Knowing that this could happen might make landlords less willing to charge a rent below market rent in future, or more likely to increase rents regularly during a tenancy, where they would not have done so before.

The consultation sought views on allowing landlords to increase the rent above the level of the rent cap between tenancies, in cases where the rent for their property is significantly below the advertised rents for similar properties in the same area.

Question 16: Should landlords be able to increase their rent by more than the level of the rent cap at the beginning of a new tenancy, where the previous tenancy was let significantly below market rates?

A total of 4,683 respondents (or 98% of all respondents) answered the closed element of Question 16. Responses by respondent type are set out in Table 11 below.

Table 11: Question 16

Respondent type	Yes	No	Total
Advice organisation and third sector	5	5	10
Developer or investor	15	0	15
Local authority	12	1	13
Private landlord, letting agent or their representative bodies	40	0	40
Professional or representative body	3	0	3
Public body	2	0	2
Social landlord or their representative bodies	5	2	7
Tenant, community group or union	3	3	6
Total organisations	85	11	96
% of organisations	89%	11%	100%
Individuals	353	86	439
% of individuals	80%	20%	100%
All non-campaign respondents	438	97	535
% of all non-campaign respondents	82%	18%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	438	4245	4683
% of all respondents	9%	91%	100%

A substantial majority of respondents – 91% of those answering the question, including ‘Campaign’ respondents – did not think landlords should be able to increase their rent by more than the level of the rent cap at the beginning of a new tenancy, where the previous tenancy was let significantly below market rates.

However, a clear majority of non-campaign respondents – 82% of those answering the question – supported landlords being able to increase the rent. This rose to 89% of organisation respondents but fell to 80% of individuals answering the question.

All of the ‘Private landlord, letting agent or their representative bodies’ and ‘Developer or investor’ respondents supported a modification, as did the clear majority of ‘Local authority’ respondents. ‘Advice organisation and third sector’ and ‘Tenant, community group or union’ respondents were evenly divided on the possible modification.

Please explain your answer

Around 480 non-campaign respondents explained their answer at Question 16. ‘Campaign’ respondents also made a comment.

Concerns about application of a modified rent cap in relation to below-market rent at the beginning of a new tenancy

Those who did not agree that landlords should be able to increase their rent by more than the level of the rent cap at the beginning of a new tenancy were most likely to raise concerns about undermining the overall efficacy of rent controls, with the suggestion that introducing modifications to the rent cap in general, and this modification in particular, would lead to complexity, particularly for tenants, and an overall approach that is neither clear nor consistent. Associated points included that modifications would make:

- enforcement of regulations difficult, including because of the potential for loopholes to be created
- it more difficult for tenants to understand and potentially exercise their rights

‘Campaign’ respondents, ‘Individuals’ and ‘Tenant, community group and union’ respondents were among those highlighting these issues, with further points raised including that individualised modifications would lead to a system that is a repeat of the rent adjudication system, which was described as promoting higher ‘new market rent’ levels.

Other frequently made points also related to market conditions and affordability and included that landlords are businesses and have had ample opportunity to make business decisions to increase their rents. It was also suggested that:

- in a rent control area, the CPI +1% formula will already enable landlords to make “above inflation profits”
- if a landlord is struggling to make a profit, they have the option to sell

There was a view that, at a point when market rates are already unaffordable, the introduction of the new tenancy modification would result in rent inflation, which would affect low-income renters in particular. This potential to result in increases in rental values was seen as directly contrary to the intended purpose of the legislation, and it was suggested that the aim should not be to allow all rents to rise to a ‘market rate’ that is already unaffordable to most.

Finally, there was a concern that permitting landlords to increase rent by more than the level of the rent cap at the beginning of a new tenancy could result in landlords seeking to evict tenants in favour of starting a new tenancy at a higher rate. An ‘Advice organisation or third sector’ respondent amongst those raising this possibility reported that they had seen this type of practice when the temporary rent cap brought in by the Cost of Living (Tenant Protection) Act 2022 was in place.

Views from the consultation sessions

Tenant participants thought that, if this modification were to be permitted, the rules around eviction would need to be tightened. They were concerned that otherwise it could create an opportunity or loophole for landlords to force the end of tenancies to increase the rent.

Reasons for supporting the proposal

In their comments in support of the proposals, a number of respondents echoed the suggestions set out in the consultation paper that landlords should be able to raise the rent by more than the rent cap where significant improvements have been undertaken or if they have been letting a property at a rent significantly below market rates. The approach was described as fair or reasonable, and sometimes simply linked to landlords being able to ask for market level rent if they so choose.

Further comments tended to address the circumstances set out in the consultation paper, namely that significant improvements to the property may have been undertaken or that the landlord may have been letting a property at a rent significantly below market rates. In relation to improvements, it was noted that landlords will often carry out major improvements between tenancies, with a view that this should be encouraged rather than disincentivised. It was also noted that these works may be connected to meeting new regulatory standards for the sector, for example relating to Energy Performance Certificates (EPCs). The relationship between improvement works and rent levels is covered in greater detail at Questions 18 - 21.

Points raised in relation to having been renting at below market rates included that it is fundamentally unreasonable and unfair to penalise a landlord because they have been, and have continued to, rent to an existing tenant at below market rate. It was suggested that this would equate to penalising the good practice of landlords who have been doing their best to support existing tenants by not bringing in rent increases, with 'Private landlord, letting agent or their representative bodies' respondents amongst those reporting that this is not unusual practice. This included respondents who identified themselves as private landlords reporting that they have done, or continue to do, this themselves.

Examples of when below market rent may be charged included for long-standing tenants. A specific example given was of a rural landlord charging a retired tenant a lower rent because they know them personally and wish to help them. There were also references to:

- when renting to family or friends
- employment-linked housing and properties resumed from agricultural tenancies or that have been let under a protected tenancy (as at Question 11 above)
- when making properties available to people seeking refuge, for example through the Homes for Ukraine scheme

However, it was also noted that charging a below market rent might only be affordable for the landlord for a certain period. In terms of the potential implications of not bringing in a provision which allows them to increase the rent between tenancies, there was reference to the potential to create a two-tier market where properties newer to the market have rents roughly aligned with market levels and others which have been let long-term, particularly where the landlord has not been

proactive with annual rent increases, have rents well below market levels. Other concerns related to:

- undermining financial viability, with landlords potentially leaving the sector, and investors choosing not to enter, or increase their exposure to, the sector
- encouraging or essentially forcing landlords to raise rents at every other opportunity, including in advance of the Housing Bill provisions coming into force

This latter point was linked to the potential to drive, rather than limit, rent inflation.

Question 17: Should the rent be a certain amount below advertised rents for similar properties for this allowance to apply?

A total of 4,638 respondents (or 97% of all respondents) answered the closed element of Question 17. Responses by respondent type are set out in Table 12 below.

Table 12: Question 17

Respondent type	Yes	No	Total
Advice organisation and third sector	3	5	8
Developer or investor	9	6	15
Local authority	7	5	12
Private landlord, letting agent or their representative bodies	9	30	39
Professional or representative body	0	2	2
Public body	0	0	0
Social landlord or their representative bodies	4	3	7
Tenant, community group or union	2	4	6
Total organisations	34	55	89
% of organisations	38%	62%	100%
Individuals	105	296	401
% of individuals	26%	74%	100%
All non-campaign respondents	139	351	490
% of all non-campaign respondents	28%	72%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	139	4499	4638
% of all respondents	3%	97%	100%

A substantial majority of respondents – 97% of those answering the question, including ‘Campaign’ respondents – answered no to this question. Further comments suggested that for many of these respondents, including ‘Campaign’ respondents, their opposition was to there being a modification (as at Question 16), rather than the circumstances under which a modification might be an option.

A majority of non-campaign respondents – 72% of those answering the question – did not think the rent should be a certain amount below advertised rents for similar properties for this allowance to apply. This rose to 74% of individuals but fell to 62% of organisations.

‘Developer or investor’, ‘Local authority’ and ‘Social landlord or their representative bodies’ were the only groups of respondents in which the majority agreed that the rent should be a certain amount below advertised rents for similar properties for any modification to be available.

Please explain your answer. If yes, what amount or percentage below the advertised rent for similar properties should a rent be before this should be allowed, and why?

Around 410 non-campaign respondents explained their answer to Question 17. ‘Campaign respondents’ also made a comment.

Most of those who did not agree with the proposal in this question, including ‘Campaign’ respondents, did so because they did not think there should be any potential modifications to rent control arrangements. Further comments very much reflected the arguments set out in the [‘Overarching themes relating to rent controls’](#) chapter (above), including in relation to clarity and affordability. Other points included that there is no clear definition of market rent, and it was also suggested that the lack of reliable rent data creates problems and inconsistencies with [Rent Service Scotland’s](#) assessments.

Reasons for disagreeing with a set amount or percentage

An alternative perspective, but again very much reflecting issues set out in the ‘Overarching themes relating to rent controls’ chapter, was that there should be no rent controls and/or that market circumstances should determine the rent. Others who had not agreed that the rent should be a certain amount below advertised rents were disagreeing with the suggestion that an amount or percentage below market rent should apply; it was noted that a rent is either below market level, or it is not. ‘Individual’ and ‘Private landlord, letting agent or their representative bodies’ were amongst those making these points.

There were also some concerns about the practicality and/or bureaucratic burden associated with setting a fixed threshold. Potential challenges identified included the lack of market evidence in some places, and that advertised rents may not always reflect actual agreed rents. It was reported that platforms often show aspirational pricing rather than settled market values.

The inherent variability in market rents was also highlighted, and it was noted that they can reflect the characteristics of individual properties as well as a range of localised factors such as street-level desirability and proximity to amenities; it was reported that two properties in the same postcode can command very different rents.

Issues such as these were seen as suggesting that a more flexible, alternative approach to a set amount or percentage could work better, with possible approaches including allowing landlords to provide evidence that the previous rent was significantly below comparable properties in the immediate area, using a range of sources (e.g. letting agent data, rental listings, or valuation reports). It was suggested that the Scottish Government, potentially with input from local authorities or independent valuation bodies, should develop guidance or a framework for determining when a property is being rented at under possible value.

Amount or percentage options

Respondents who did support an amount or percentage approach were most likely to suggest that 10% below market level would seem to be a reasonable benchmark. The 10% level was described as fair, significant or impactful, demonstrable with reasonable ease, easy to understand and apply, and measurable. It was also suggested that this level of increase should help support the financial viability of well-meaning landlords, and that a figure below 10% risks disadvantaging well-meaning landlords and causing them financial difficulty.

A range of other options were also proposed, including:

- a figure of 20% below market value
- related to, or the same as the allowance for rent increases i.e. CPI +1% or 6%, whichever is the lower
- a figure of 5% or more below market rent
- below local median, reflecting the criteria as is already applied to MMR, i.e. rent charged should be no higher than the median rent for the private rented sector at BRMA

An alternative suggestion was that two or more years of no rent increase could be an appropriate threshold.

Views from the consultation sessions

Tenant participants thought that any set percentage for rent should be significantly below similar properties, at around 25 – 30%.

They also called for any approach to be tightly regulated.

Landlords who make improvements to their property

The consultation paper noted that private landlords are already required to ensure that any property they rent to tenants meets the repairing standard, and it is not anticipated that landlords would be able to increase rents above the level of the rent cap:

- to reflect the cost of meeting these minimum standards
- for meeting the cost of ongoing regular maintenance of a property
- where improvements have been fully paid for by grant funding

- where the tenant has paid for the improvement themselves

However, the consultation paper also noted that the Scottish Government does want to incentivise landlords to go beyond minimum standards and make improvements that bring additional value to the property, and which have the potential to bring additional benefit to the tenant.

The consultation sought views on whether landlords in rent control areas should be allowed to increase rent by more than the rent cap, where certain types of improvement have been undertaken and after the work has been completed.

Question 18: Should landlords be able to increase rents by more than the level of the rent cap to recover costs, where they have undertaken certain improvements which may enhance the rental value or bring additional benefit to the tenant?

A total of 4,682 respondents (or 98% of all respondents) answered the closed element of Question 18. Responses by respondent type are set out in Table 13 below.

Table 13: Question 18

Respondent type	Yes	No	Total
Advice organisation and third sector	5	5	10
Developer or investor	15	0	15
Local authority	6	6	12
Private landlord, letting agent or their representative bodies	39	1	40
Professional or representative body	3	0	3
Public body	2	0	2
Social landlord or their representative bodies	6	1	7
Tenant, community group or union	1	7	8
Total organisations	77	20	97
% of organisations	79%	21%	100%
Individuals	343	94	437
% of individuals	78%	22%	100%
All non-campaign respondents	420	114	534
% of all non-campaign respondents	79%	21%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	420	4262	4682
% of all respondents	9%	91%	100%

A substantial majority of respondents – 91% of those answering the question, including ‘Campaign’ respondents – did not think landlords should be able to increase rents by more than the level of the rent cap to recover costs, where they

have undertaken certain improvements which may enhance the rental value or bring additional benefit to the tenant.

However, a clear majority of non-campaign respondents – 79% of those answering the question – supported landlords being able to increase the rent. Organisations and individuals were in accord on this issue, with 79% of organisations and 78% of individuals agreeing.

All of the ‘Developer or investor’, ‘Professional or representative body’ and ‘Public body’ respondents supported the potential for modifications, as did the considerable majority of ‘Private landlord, letting agent or their representative bodies’ and ‘Social landlord or their representative bodies’ respondents. ‘Advice organisation and third sector’ and ‘Local authority’ respondents were evenly divided, and a clear majority of ‘Tenant, community group or union’ respondents did not support the modification option.

Please explain your answer.

Around 490 non-campaign respondents explained their answer to Question 18. Campaign respondents also made a comment.

Concerns about the application of a modified rent cap in relation to improvements

As with the new tenancy modification, frequent concerns (particularly from ‘Campaign’ respondents) included that modifications will lead to a patchy system, with little protections for tenants and unequal and unclear rights.

There was also a view that quality issues should be addressed through universal standards, rather than potential modifications to the application of rent controls, with ‘Local authority’ respondents amongst those commenting that landlords should be carrying out routine maintenance and repairs as standard, or that there are already obligations in place to bring rented properties to certain standards in relation to net zero and energy efficiency, with set timescales for improvements to be carried out. It was also noted that landlords will still be able to increase rents by CPI +1% up to a maximum of 6% every year, with a view that this should allow them to make necessary upgrades. There was also reference to many improvements, especially in older rural stock, that are being supported by grants and advice.

With specific reference to being able to increase rents to recover the cost of improvements, concerns or problems highlighted included that:

- there is no data on the conditions of individual properties and hence no starting point for an evaluation of improvements
- there is a risk that the modification could result in ‘renovictions’, whereby landlords use a modification to increase the rent beyond what is affordable, and tenants have to move out as they can no longer afford the rent
- any improvement will increase the value of the property and is essentially an investment which will be ‘paid off’ if and when it is sold

- tenants could be left to police the system but may not feel able to risk doing so, because of a fear of eviction or retaliation from their landlord

A ‘Local authority’ respondent confirmed that the modification would be difficult for local authorities to monitor and would need additional resources.

It was also noted that the proposed rent control formula does not take quality of housing into account in the calculation of the cap; the associated concern was that landlords currently providing poor quality housing would effectively be rewarded – via a modification – for bringing properties up to a better standard.

Views from the consultation sessions

Tenant participants considered that private landlords should not be able to recoup the costs of improvements as, if they lived in the property, they would be expected to take on the costs.

Reasons for supporting application of a modified rent cap in relation to improvements

Along with general comments that the approach seems fair and reasonable there were concerns that not taking this approach may result in some landlords leaving the sector, including because their businesses are no longer viable.

The most frequently made case for a potential modification was that it would encourage investment, and that landlords might not choose or be able to make improvements if it is not in place. ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents were among those highlighting this issue. They suggested that landlords might otherwise restrict property work to essential repairs only and that, over time, this will lead to a deterioration in the condition of the PRS housing stock. Reflecting this wider concern, a respondent who had identified themselves as a private landlord commented that they buy tenement flats that have not been well looked after and carry out significant improvements but would not be able to do so unless this could be reflected in the rent.

‘Social landlord or their representative bodies’ respondents noted a potential impact on mixed ownership blocks, highlighting the already considerable difficulties in gaining consents for repairs and maintenance in mixed tenure tenements. While work is underway through the Tenement Maintenance Working Group to resolve some of these challenges, restrictions on rent increases could result in private landlords being less likely to agree to funding communal ‘improvement’ measures. It was noted that this would create barriers for RSLs who own properties in the same block.

With specific reference to the rural housing stock, it was noted that tenancies are often long term, with properties often needing significant upgrades between tenancies. A ‘Professional or representative body respondent’ reported that it is not uncommon for costs to exceed £40,000 (upgrades to kitchens, bathrooms,

connectivity etc), and that when energy efficiency upgrades are included, renovation costs can easily reach upwards of £70,000.

More generally, it was suggested that property improvements simply increase the rental value of the property and landlords should be permitted to increase their rents in line with market values. Supporting arguments included that improvements may:

- provide tangible benefits to the tenant, including through modernising kitchens or bathrooms or adding new amenities
- help reduce energy costs and mitigate fuel poverty in the case of energy efficiency improvements

It was also noted that improvements, including energy efficiency-related works, may be required to meet new regulatory requirements, including the forthcoming PRS Minimum Energy Efficiency Standard, and may also support the delivery of national policy objectives, for example in relation to Net Zero. However, it was also observed that any modification should not apply to works that simply relate to meeting the Repairing Standard.

Conditions in the event of the modification being an option

In terms of how any possible modification should be framed, ‘Developer or investor’ and ‘Local authority’ respondents were among those calling for a clear definition of what constitutes an improvement and when the increase can be applied. They were looking for clear criteria set out in guidance, such as requiring that the improvements are properly documented, and are demonstrably above and beyond the minimum standard set out in the Repairing Standard. It was suggested that this would prevent abuse while still rewarding responsible investment.

Other comments and suggestions included that:

- any rent increases should be justifiable, proportionate, transparent, and not result in displacement or financial hardship for tenants
- where there is a sitting tenant, tenant consent should be required, and improvements should only be made upon their request or with their explicit approval
- tenants should be provided with information about any increase to the rent
- landlords should be able to demonstrate that they have not accessed support to cover costs of improvements from a public funding scheme
- the application or notification process should avoid unnecessary bureaucracy whilst still providing transparency

There was also reference to rent increases being subject to local authority approval, and to challenges from tenants being submitted to the Rent Officer.

Question 19: Should landlords who make improvements to a property which improve energy efficiency (for example by making specific improvements which improve the Energy Performance Certificate (EPC) rating of the property, or by installing an upgraded heating system) be allowed to raise the rent above the level of the rent cap?

A total of 4,663 respondents (or 97% of all respondents) answered the closed element of Question 19. Responses by respondent type are set out in Table 14 below.

Table 14: Question 19

Respondent type	Yes	No	Total
Advice organisation and third sector	5	5	10
Developer or investor	15	0	15
Local authority	7	4	11
Private landlord, letting agent or their representative bodies	39	1	40
Professional or representative body	2	0	2
Public body	2	0	2
Social landlord or their representative bodies	4	1	5
Tenant, community group or union	2	5	7
Total organisations	76	16	92
% of organisations	83%	17%	100%
Individuals	332	91	423
% of individuals	78%	22%	100%
All non-campaign respondents	408	107	515
% of all non-campaign respondents	79%	21%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	408	4255	4663
% of all respondents	9%	91%	100%

In line with responses to the previous question, a substantial majority of respondents – 91% of those answering the question, including ‘Campaign’ respondents – did not think landlords who make energy efficient-related improvements to a property should be allowed to raise the rent above the level of the rent cap.

However, a clear majority of non-campaign respondents – 79% of all those answering the question and 83% of organisation respondents – supported landlords being able to increase the rent. This fell slightly to 78% of individuals.

All of the ‘Developer or investor’, ‘Professional or representative body’ and ‘Public body’ respondents supported the potential modification, as did the considerable majority of ‘Private landlord, letting agent or their representative bodies’ and ‘Social

landlord or their representative bodies' respondents, along with most 'Local authority' respondents. 'Advice organisation and third sector' respondents were evenly divided, and a majority of 'Tenant, community group or union' respondents did not support the potential modification.

Please explain your answer

Around 450 non-campaign respondents explained their answer to Question 19. Campaign respondents also made a comment.

The issues raised were very much in line with those at the previous question (in relation to improvements more generally). The analysis presented below focuses only on specific issues relating to energy efficiency-related improvements.

Concerns about application of a modified rent cap in relation to energy efficiency improvements

Points raised by those who did not support a possible modification included that the type of works described (relating to EPCs and heating systems) are a core cost of operating a landlord business, with minimum energy efficiency standards and timescales already in place. The associated view was that any costs to landlords to ensure they continue to meet or exceed energy or quality standards should be incorporated into their rent structure as part of a fully transparent process.

There was also reference to grant assistance often being available, and that this may be connected with the tenant's eligibility. It was suggested that, where public money has been used to finance some or all of the improvement work, landlords should not be able to raise the rent by more than the cap, to make sure that public money benefits tenants, allowing them to enjoy warmer and cheaper homes.

Views from the consultation sessions

Tenant participants considered that any modification should only apply to improvements that benefit tenants in terms of comfort and reductions to their energy bills.

It was also noted that any improvements, for example to an EPC rating, would help to add value to a property, and by extension that the landlord also benefits, but also that the Scottish Government needs to consider how it can support and incentivise private landlords to make energy efficiency improvements.

Reasons for supporting application of a modified rent cap in relation to energy efficiency improvements

As at the previous question, those who supported a modification being an option when energy efficiency-related improvements have been made often referred to the potential for the works to benefit the tenant, including through lower energy bills. There was also a view, including from a 'Public body' respondent, that landlords should only be able to raise the rent where the upgrades result in a corresponding reduction in the tenant's energy bills, and that the financial benefits should be

shared between the tenant and the landlord. For example, it was suggested that the tenant's overall housing or living cost should remain cost neutral as a minimum and, ideally, be improved.

The importance of incentivising landlords to carry out energy efficiency-related work was also a frequently raised issue. It was noted that the national policy is now looking to EPC C (as reformed) for new PRS tenants in 2028, and for the market as a whole by 2033. 'Private landlord, letting agent or their representative bodies' respondents were amongst those suggesting that the rent control modification will be critical to incentivising landlords to improve properties and, by extension, enabling national EPC targets to be met. It was also seen as simply unfair to treat a landlord who has invested in energy-saving measures the same as one who has not.

A 'Professional or representative body' respondent reported that the level of investment required to achieve EPC C for a typical traditional cottage may be £100,000 or more;¹³ they went on to comment that, in many cases, it will simply not be feasible to carry out improvements if this cannot be reflected in the rent and that this will potentially leave many rural houses uninhabitable in future.

With regard to ensuring that private landlords are in a position to make improvements, the connection was again made to mixed ownership tenements and, in this instance, the forthcoming Social Housing Net Zero Standard and Heat in Buildings Bill. There were calls for the Scottish Government to consider whether allowing further flexibility for private landlords would help to progress communal solutions or whether alternative routes such as Area Based Schemes, Private Rented Sector Landlord Loans, and Energy Company Obligations, could be used more effectively to incentivise private landlords to participate in retrofit projects.

Question 20: Are there any other types of improvements that should potentially qualify for this kind of increase above the level of the cap?

A total of 4,623 respondents (or 97% of all respondents) answered the closed element of Question 20. Responses by respondent type are set out in Table 15 below.

¹³ The consultation on the [Draft Energy Efficiency \(Domestic Private Rented Property\) \(Scotland\) Regulations](#) sought views on proposals to make available a cost cap exemption. The consultation closed on 29 August 2025.

Table 15: Question 20

Respondent type	Yes	No	Total
Advice organisation and third sector	5	4	9
Developer or investor	11	1	12
Local authority	6	8	14
Private landlord, letting agent or their representative bodies	33	6	39
Professional or representative body	2	0	2
Public body	1	0	1
Social landlord or their representative bodies	3	2	5
Tenant, community group or union	1	6	7
Total organisations	62	27	89
% of organisations	70%	30%	100%
Individuals	265	121	386
% of individuals	69%	31%	100%
All non-campaign respondents	327	148	475
% of all non-campaign respondents	69%	31%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	327	4296	4623
% of all respondents	7%	93%	100%

A substantial majority of respondents – 93% of those answering the question, including ‘Campaign’ respondents – did not think that there are any other types of improvements that should potentially qualify for the kind of increase above the level of the cap set out in the consultation paper.

However, a majority of non-campaign respondents – 69% of all those answering the question – thought there are other types of improvements that should be included. Organisations and individuals were in accord on this issue, with 70% of organisations and 69% of individuals agreeing that other types of improvements should potentially qualify.

‘Tenant, community group or union’ and ‘Local authority’ respondents were the only types of organisations where a majority did not think there were any other types of improvements that should potentially qualify for this kind of increase above the level of the cap.

Please explain your answer

Around 420 non-campaign respondents explained their answer to Question 20. ‘Campaign’ respondents also made a comment. Many of the comments simply reiterated opposition to either potential modifications or to the introduction of any rent caps. The analysis presented below focuses only on other types of

improvements that could or should qualify for an increase above the level of the rent cap.

General comments included both that it would be unhelpful to be too prescriptive about types of improvements, including because it could disincentivise landlords from carrying out improvements not on the list, but also that there should be a clear definition as to what constitutes an improvement.

There was a view, including from a number of 'Private landlord, letting agent or their representative bodies' respondents, that any definition or list should cover all general works that fall outwith routine property maintenance. Examples given included significant energy efficiency works, major refurbishments, or the addition of new amenities or space.

In addition to the works listed in the consultation paper, specific suggestions included:

- accessibility-related improvements, and adaptations to meet the needs of a disabled resident
- extensive redecoration, replacement of flooring, rewiring or replumbing work
- significant upgrades to the fabric of the building, like a replacement roof/harling/cladding
- extension to the space and size of property, for example through a loft conversion
- common repairs, such as roof repairs or repairs to door entry systems, and improvements to common areas, such as soundproofing or landscaping
- improvement to access roads and outside spaces
- addition of or improvement to outbuildings and storage facilities
- replacement of garden walls or fences
- investment in, and improvements to, private water supplies and private sewerage
- upgrading of security features or systems
- provision of (additional) parking areas or of Electric Vehicle charging points
- investments in (additional) flood prevention measures (or other measures) to satisfy insurers
- improvements to digital infrastructure, including upgrades to broadband speeds/infrastructure (if their cost is included in the rent)

Views from the consultation sessions

Tenant participants considered that the only type of improvement that should potentially qualify would be if the improvements are requested by the tenant and are beyond the scope of the lettable standards and expectations of the tenancy agreement.

Question 21: How do you think improvements that might qualify for this increase above the level of the cap should be distinguished from work that would be expected as part of routine property maintenance?

Around 460 non-campaign respondents answered Question 21. ‘Campaign’ respondents also answered the question, albeit by simply commenting that there should be no improvements that lead to above rent cap increases. Others, including ‘Tenant, community group or union’ respondents reiterated their concerns about any improvements enabling landlords to bring in above rent cap increases, including the lack of data to evaluate whether an improvement qualifies for an increase or not.

Views from the consultation sessions

Tenant participants commented that they expect repairs and maintenance to be undertaken when required to ensure tenants live in warm, safe, affordable homes.

They suggested that any additional qualifying improvements should be made according to legislative or regulatory requirements. They also suggested that a review of what is included in legislative and regulatory requirements should be undertaken.

In terms of distinguishing improvements from work that would be expected as part of routine property maintenance, some ‘Local authority’ respondents were among those noting that the distinction between a repair and an improvement is already established in law, and also that other landlords, including local authorities, separate out revenue and capital spend.

However, other ‘Local authority’ respondents were among those calling for a clear distinction, including a definition of improvements, to be set out in guidance for both tenants and landlords. It was suggested that the guidance should clearly state which measures will qualify, as well as measures that would not qualify.

Suggestions with respect to how improvements could be defined included:

- as significant refurbishments that have meaningfully changed the quality of the home, or which reduce tenants’ utility costs
- if carried out at the tenant’s request, including to meet their evolving needs
- if classed as capital expenditure as defined by HMRC, or using the accounting definition of capital expenditure
- through measurable metrics, such as uplift in EPC or demonstrable carbon savings
- based on an expenditure threshold

In terms of an expenditure threshold, specific suggestions included £1,000 or more on any one improvement, or works in excess of £2,000. There was also a suggestion that the threshold could be set at the discretion of local authorities to

reflect their particular level of concern about the quality of local housing stock, and to reflect local labour and material costs.

There were also suggestions about what should not be considered an improvement, including like-for-like replacements, and it was suggested that routine maintenance should be defined by reference to low cost works which do not increase the market value of the property.

Other comments addressed possible approaches to identifying or evidencing that improvements have been undertaken, with points including that:

- EPCs provide a record of performance enhancements
- all claims should be subject to independent verification and local authority scrutiny
- the tenant should be entitled to make submissions against an increase
- a schedule of condition could include notable improvements

An associated suggestion was that every landlord should be required to have a schedule of condition, which in turn would allow for monitoring of progress across the rental market.

Question 22: Do you think that a rent increase above the cap should be calculated by:

- improved rental value basis
- cost recovery basis
- other

A total of 4,607 respondents (or 96% of all respondents) answered the closed element of Question 22. Responses by respondent type are set out in Table 16 below.

Table 16: Question 22

Respondent type	Improved rental value basis	Cost recovery basis	Other	Total
Advice organisation and third sector	1	2	2	5
Developer or investor	8	3	1	12
Local authority	3	5	2	10
Private landlord, letting agent or their representative bodies	18	7	12	37
Professional or representative body	0	0	2	2
Public body	0	1	0	1
Social landlord or their representative bodies	1	3	1	5
Tenant, community group or union	1	1	3	5
Total organisations	32	22	23	77
% of organisations	42%	29%	30%	100%
Individuals	170	77	135	382
% of individuals	45%	20%	35%	100%
All non-campaign respondents	202	99	158	459
% of all non-campaign respondents	44%	22%	34%	100%
Campaign respondents	0	0	4148	4148
% of campaign respondents	0%	0%	100%	100%
All respondents	202	99	4306	4607
% of all respondents	4%	2%	93%	100%

Percentages may not sum to 100% due to rounding

Although a substantial majority of respondents – 93% of those answering the question, including ‘Campaign’ respondents – chose the ‘Other’ option, this was generally either to restate their opposition to there being any circumstances under which rent could be increased above the cap, or to state their opposition to the introduction of rent caps. However, some of the non-campaign respondents who selected the ‘Other’ option did go on to suggest an alternative to the two options set out (with their views summarised below).

In terms of the two options set out within the consultation paper, non-campaign respondents were more likely to favour an improved rental value calculation (44% of non-campaign respondents who answered the question) than a cost recovery basis (22% of non-campaign respondents who answered the question).

‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents were more likely to support an improved rental value approach, while ‘Local authority’ respondents were more likely to favour the cost recovery approach.

Please give us your views

Around 380 non-campaign respondents explained their answer to Question 22. 'Campaign' respondents also made a comment. However, as noted above, many of the comments focused on support for, or opposition to, either rent controls or exemptions to rent controls.

The analysis presented below focuses only on comments that specifically address the question.

Positive aspects of an improved rental value basis

Those favouring the improved rental value basis for calculating a rent increase above the cap tended to the view that it would best reflect the rent the property would achieve on the open market, including by recognising that upgrades, such as energy efficiency measures, refurbishments or added amenities, enhance tenant benefit and the overall rental value. The associated concern was that selecting any calculation other than by reference to rental values risks the rent falling out of line with the market.

It was also described as the fairest approach, including for the tenant, because they would be less directly affected by the highly variable and potentially significant costs of improvements works; this was seen as fair given that the majority of tenants may only live in a property for a short period of time and hence would not fully benefit from the full lifespan of the improvements.

The improved rental value option was also seen as offering the most easily established methodology, including one which would align with how rent is typically assessed.

Negative aspects of an improved rental value basis

Concerns about the improved rental value route included that increases in rental value could outweigh the costs of any improvements that have been made, and also that the approach could create uncertainty and instability around rent levels, undermining the purpose of rent caps and potentially resulting in unjustified rent inflation.

There was also a view that the improved rental value basis would be very difficult to assess in the absence of sufficient data to allow for comparison with other local properties, which might vary in terms of quality, size and amenities.

Positive aspects of cost recovery

Those favouring the cost recovery basis tended to see it as the best route to ensuring that landlords can be fairly compensated for carrying out improvements, and continue to have a viable business, without there being excessive rent increases. In terms of avoiding higher levels of rent increase, it was noted that cost recovery is spread out over years and considers the lifespan of the improvement.

As an approach, it was described as fairer, more transparent and evidence-based than a market value uplift, including because increases could be directly proportionate to the actual, evidenced cost of qualifying improvements, rather than speculative market value. In terms of how the approach might be framed, suggestions included that increases could:

- be subject to reasonable limits
- take public grants or subsidies received by the landlord to undertake the works into account
- be scrutinised by the local authority or an independent body

There was also a view, including from some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents who generally favoured the improved rental value approach, that the cost recovery approach could have merits with respect to upgrades that do not significantly change the market rental value but are nonetheless capital-intensive; they made reference to allowing for modest increases based on a proportion of the capital outlay, perhaps amortised over time, and within reasonable limits. The hybrid option (with both improved rental value and cost recovery available) is discussed further below under 'Other suggestions'.

Views from the consultation sessions

Tenant participants considered that any increase above the cap should be proportionate to the cost of improvement, spread over time, and capped at a reasonable percentage (e.g. 7.5%).

They also called for independent oversight.

Negative aspects of cost recovery

Concerns about the cost recovery route included that it would risk creating a situation where the approved rent for a property is above that which could reasonably be achieved in that market.

Specifically, it was suggested that selecting any calculation other than by reference to rental values risks the rent falling out of line with the market, and that this does not make any sense when the mechanism used to challenge or assess rents outwith rent control areas is by reference to market values. The associated concern was that cost recovery could lead to undesirable outcomes, for example with an uplift calculated using the cost recovery basis subsequently being significantly increased or reduced when the rent control area ends, and a tenant challenges a rent increase to Rent Service Scotland who re-align it with market rates.

Other suggestions

Among the issues raised by those who favoured another approach (and who primarily selected the 'Other' option at the closed question) was that there is unlikely to be a one-size-fits-all solution, and that too prescriptive an approach could create the fear of unintended consequences, resulting in disincentivising improvements.

Calls for flexibility were sometimes associated with allowing a hybrid approach in which both improved rental value and cost recovery are options. It was suggested that such an approach would recognise the wide variety of improvement types, regional differences in market rents, and the nature of the landlord-tenant relationship; an associated point was that it is important to avoid introducing a calculation method that unintentionally disadvantages landlords in rural or island areas, as this could discourage them from making any improvements at all.

Additional comments or suggestions relating to a hybrid model included that it should still include a cap on the allowable increase to ensure fairness and consistency.

Question 23: If a cost-recovery basis was used, what kind of factors should be taken into consideration when deciding how it should be applied?

Around 370 non-campaign respondents answered Question 23, as did 'Campaign' respondents who were amongst those restating their opposition to exemptions to rent controls. Other respondents, including 'Individual' and 'Private landlord, letting agent or their representative bodies' respondents, restated their opposition to rent controls.

With direct reference to the kind of factors that should be taken into consideration when determining the level of any increase if a cost recovery basis is used, one proposal was costs incurred. It was suggested that this could be based on invoices or estimates, should recognise that upfront costs may be funded through borrowing, and should allow for staff time for managing the works or legal or factoring costs incurred.

Other suggestions included:

- the nature and scope of the works undertaken
- the expected lifespan of the works, with a suggestion that costs could be recovered over the expected useful life of the improvement, allowing for a reasonable and phased uplift in rent
- benefit to the tenant, such as lower energy bills or improved living conditions, with an associated suggestion that, if the tenant has requested the works, this should allow for a higher or faster recovery
- any grants and support received by the landlord

Views from the consultation sessions

Tenant participants suggested that benefit to the tenant, the life expectancy of improvements, whether public funding or grants were used and actual costs should be considered.

They suggested that, where public or grant funding is used to make the improvements, the cost should not be passed to the tenant via rent increases as it is the landlord who benefits in the long term from an increase in property value.

Comments on the process tended to focus on the importance of keeping it simple, with 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents amongst those calling for a light-touch notification or self-certification system rather than a lengthy approval mechanism.

It was also argued that if improvements were treated as an exemption and recorded as an "event", the process would align with how other exemptions are handled. This would make it easier for both landlords and tenants to understand and manage, while also allowing authorities to review the information more efficiently.

Other suggestions included that:

- an external body, such as the FTT or Rent Service Scotland, should determine or approve the proposed new rent level on receipt of evidence to verify works completed
- increases should only apply after the work is completed and with proper notice

Other costs a landlord may face

The consultation paper notes that a rent control area may last up to five years and, within this time, landlords may experience other increases in the costs of offering the property to let that are not included in the examples already covered. Many of these costs are likely to be correlated with inflation. The Scottish Government lodged amendments to the Bill at Stage 2 of the Bill process to set out the form of the rent cap on the face of the Bill, and this amendment was approved by the Committee. The amendment provided that rent increases in rent control areas will be limited to a rate equal to the lower of (i) the percentage change in the Consumer Price Index (CPI) plus 1% and (ii) 6%. The expectation is that a rent increase within the proposed rent cap, based on the CPI annual rate of inflation plus one percentage point, would adequately cover most of these increases in landlord costs.

However, it is recognised that increases in costs may impact certain groups of landlords more acutely than others. In particular, stakeholders have highlighted some utility and service costs for landlords which may be more likely to affect rural properties.

Question 24: Are there any other cost increases for rental properties that would justify raising the rent above the level of the cap?

A total of 4,602 respondents (or 96% of all respondents) answered the closed element of Question 24. Responses by respondent type are set out in Table 17 below.

Table 17: Question 24

Respondent type	Yes	No	Total
Advice organisation and third sector	4	4	8
Developer or investor	11	1	12
Local authority	4	9	13
Private landlord, letting agent or their representative bodies	36	2	38
Professional or representative body	1	0	1
Public body	1	0	1
Social landlord or their representative bodies	2	2	4
Tenant, community group or union	0	7	7
Total organisations	59	25	84
% of organisations	70%	30%	100%
Individuals	256	114	370
% of individuals	69%	31%	100%
All non-campaign respondents	315	139	454
% of all non-campaign respondents	69%	31%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0%	100%	100%
All respondents	315	4287	4602
% of all respondents	7%	93%	100%

A substantial majority – 93% of those answering the question, including ‘Campaign’ respondents – did not think that there are other cost increases for rental properties that would justify raising the rent above the level of the cap.

In contrast, among non-campaign respondents 69% thought that there are such cost increases. Organisations and individuals were in accord on this issue, with 70% of organisations and 69% of individuals agreeing that other cost increases would justify raising the rent above the level of the cap.

While a large proportion of ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents thought that there are other costs, all ‘Tenant, community group or union’ and a majority of ‘Local authority’ respondents did not.

Please explain your answer

Around 390 respondents explained their answer to Question 24. ‘Campaign’ respondents also made a comment.

No other cost increases

Those who did not agree that there are any other cost increases for rental properties that would justify raising the rent above the level of the cap tended to suggest that other costs will easily be priced into the above inflation rent control formula and that no further provisions are or should be required. This was also connected to private landlords being businesses that should be able to shoulder some risks.

Support for other possible cost increases

General issues raised by respondents who did think there were other cost increases that would justify raising the rent above the level of the cap included that landlords operate in a rising cost environment, and many of these pressures are outside their control.

Other general comments or suggestions included a number of references to inflation or inflationary pressures, and that any above inflation increases in any services included in the rent should justify raising the rent above the level of the cap. There was also reference to some acceptance by the Committee during consideration at Stage 2 of the Housing Bill that, when referring to rent controls, the “rent payable” in relation to a tenancy should mean the amount that is payable in rent, excluding any charges for utilities which are directly payable to the landlord under the tenancy agreement.¹⁴

Respondents also identified a number of specific cost areas which they thought should be taken into consideration, with the connection often made to these costs being unavoidable and potentially significant. They included:

- mortgage and financing costs, including as a result of rising interest rates, with reports that sustained interest rate increases can have a significant impact on viability for landlords operating with mortgage finance
- insurance costs, where there have been sharp rises in insurance premiums, especially in areas affected by flood risk, cladding issues, or changes in underwriting practices
- utility costs, where rents are inclusive of these costs and, particularly in rural areas, specific costs associated with private water and sewerage
- service charge or factoring fees cost increases, for example in flats or multi-unit buildings, where service charges can rise due to maintenance of shared areas, building safety compliance, or inflationary pressures from suppliers
- major refurbishment, including that required by external events, such as remediation works imposed by local authorities, environmental upgrades, or essential retrofitting to meet changing standards

¹⁴ It should be noted that a Stage 2 amendment to add a definition of “rent payable” in relation to the provisions on designating a rent control area to exclude from rent payments for utilities which are made to the landlord was later reversed by the Scottish Parliament at Stage 3.

- legislative and regulatory compliance costs, with reference to minimum energy efficiency standards, electrical safety, or building safety often carrying financial implications, and to any potential increases in licencing fees

Views from the consultation sessions

Tenant participants thought that any other circumstances considered should be very limited, for example, to when an improvement is in response to a legislative requirement.

Other less frequently made suggestions included rising costs associated with any (additional) taxes or rates of tax, and employer obligations and taxation changes specifically. It was reported that increases to National Insurance contributions, pension auto-enrolment costs, and other employment-related obligations directly affect operating budgets, especially for landlords running professionally managed BtR schemes with on-site teams. A related point concerned support services provided alongside accommodation, including staffing costs, with a suggestion that exemptions for support providers who deliver both support and accommodation would be welcome.

External economic pressures, including supply chain disruptions were also highlighted as having potential to cause cost increases that would justify raising the rent above the rent cap level. There was reference to price volatility in construction materials, labour and services increasing the overall cost of property management.

Question 25: Are there any other circumstances under which landlords should be allowed to raise rents above the level of the rent cap?

A total of 4,563 respondents (or 95% of all respondents) answered the closed element of Question 25. Responses by respondent type are set out in Table 18 below.

Table 18: Question 25

Respondent type	Yes	No	Total
Advice organisation and third sector	3	5	8
Developer or investor	13	1	14
Local authority	3	10	13
Private landlord, letting agent or their representative bodies	31	5	36
Professional or representative body	1	0	1
Public body	0	1	1
Social landlord or their representative bodies	2	2	4
Tenant, community group or union	0	7	7
Total organisations	53	31	84
% of organisations	63%	37%	100%
Individuals	215	116	331
% of individuals	65%	35%	100%
All non-campaign respondents	268	147	415
% of all non-campaign respondents	65%	35%	100%
Campaign respondents	0	4148	4148
% of campaign respondents	0	100%	100%
All respondents	268	4295	4563
% of all respondents	6%	94%	100%

A substantial majority of respondents – 94% of those answering the question, including ‘Campaign’ respondents – did not think there are any other circumstances under which landlords should be allowed to raise rents above the level of the rent cap.

However, a majority of non-campaign respondents – 65% of those answering the question – did think there are other circumstances under which landlords should be allowed to raise rents above the level of the rent cap. Organisations were slightly less likely to think so than individuals, at 63% and 65% respectively.

While ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents generally thought there were other circumstances to consider, ‘Advice organisation and third sector’, ‘Local authority’ and ‘Tenant, community group or union’ respondents tended to think there are not.

Please explain your answer

Around 325 respondents explained their answer to Question 25. ‘Campaign’ respondents also provided a comment.

No other circumstances

Those who did not think there are other circumstances under which landlords should be allowed to raise rents above the level of the rent cap, including

'Individual' respondents, tended to reference the potential to undermine the general purpose of rent control measures. An 'Advice organisation and third sector' respondent commented that a failure to protect the affordability of homes will have disproportionate impacts on Black and minority ethnic households, who are over-represented in the private rental sector and are more likely to experience financial hardship due to their housing costs.

'Local authority' respondents were among those referring to the importance of the system being as simple as possible, to ensure that all involved understand it properly, or to the risk that the permitted modifications could become too difficult to control or monitor.

'Campaign' respondents were among those commenting that, while there are no circumstances under which landlords should be allowed to raise rents above the level of the rent cap, there should be circumstances where they have to abide by a lower cap. 'Tenant, community group or union' respondents went on to give examples of where properties have poor energy efficiency or mould and damp, or when repairs have not been undertaken.

Other circumstances suggested

General points made included that a modification of the rent cap arrangements should only be permitted in exceptional and clearly defined circumstances. The 'Local authority' respondent making this point gave an example of significant hardship, where a landlord can demonstrate that the capped rent level is unsustainable and risks withdrawal from the sector.

Others, including some 'Private landlord, letting agent or their representative bodies' respondents, also highlighted the financial sustainability for landlords, with references to some of the potential cost increases for landlords covered at Question 24. With specific reference to portfolio-level investment by professional landlords or institutional investors, some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents commented that the ability to rebase rents across a portfolio (subject to market limits) may be necessary to meet lender covenants or reinvestment strategies, particularly where large-scale improvement programmes are being delivered.

'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents were also among those referring to significant changes to the local market. For example, it was reported that in areas where demand has surged due to significant economic, infrastructure, or population changes, a capped rent may become wholly disconnected from local rental values. It was suggested that, in such cases, a mechanism for review or adjustment will be important to maintain supply.

Other comments and suggestions tended to reflect points raised at earlier questions, including those in Chapter 1: properties exempt from rent control area restrictions. For example, a 'Professional or representative body' respondent referred to the types of property and circumstances they had listed at Question

11,¹⁵ including employment-linked housing, properties returning to the market after service occupation, housing for retired employees, rural housing with long-term tenancies, properties let for the first time after converting to a PRT, properties let under protected tenancies on a fair rent, and properties resumed from agricultural tenancy.

Reflecting issues covered at Questions 19-21, there were also suggestions that landlords should be allowed to raise rents above the level of the rent cap when:

- meeting the disability needs of an existing tenant
- tenants request significant alterations
- properties have been let at a discount, for example to friends or family
- the landlord reduces the rent to assist a tenant in financial difficulty, after an agreed period
- immediate investment is required to meet unexpected government-imposed building standards
- a landlord provides additional services, for example in supported accommodation
- a landlord provides accommodation under contract to a local authority or support service for use as temporary or supported housing
- costs that are not strictly 'rent' are included, for example related to private water or electricity supplies
- a property has returned to the PRS from temporary accommodation use or after being let through a social housing provider, for example under a private sector leasing scheme

Other suggestions, all from 'Private landlord, letting agent or their representative bodies' respondents, included:

- by mutual agreement with the tenant, for example relating to permitting pets, business use or additional occupants
- where the property is a council tax HMO¹⁶ (House in Multiple Occupation) and a tenant-related exemption or discount no longer applies due to a change in the tenant's circumstances
- where the landlord obtains an HMO licence to allow more unrelated occupants to live in the property than were previously allowed
- if a landlord is forced to sell and wishes to maintain a tenancy, as an incentive to a new investor

Also with reference to change of ownership, a 'Developer or investor' respondent commented that when charities act as landlords, they typically charge low rents,

¹⁵ Question 11: Excluding mid-market rent and build to rent/purpose built private rented accommodation, are there other categories of housing provision that should be exempted from rent controls?

¹⁶ Meaning the landlord is paying the council tax.

often at or below LHA rates. They went on to note that these charities may dispose of properties that no longer align with their operational needs and that if the rent caps applicable under the charity's ownership were to extend to a potential new landlord, this could depress the property's market price.

Demonstrating eligibility for an increase above the level of the cap

The consultation paper set out that, in cases where a landlord is allowed to increase the rent above the amount allowed by the rent cap, the landlord could be required to apply to an external decision maker, such as a rent officer (part of Rent Service Scotland) or the FTT before increasing the rent, in order to confirm the increase is allowed. This process could involve the landlord providing evidence of the reason for the increase (for example, evidence of the cost of any improvements they have made).

Alternatively, landlords could be allowed to increase the rent for the property above the rent cap, without requiring approval. Tenants could then have the right to challenge any increase that they did not feel was correct. The Bill, as introduced, already allows for a tenant to refer a case to a rent officer for verification if the tenant considers that the amount of the proposed increase of rent is more than is permitted. A process could be provided to allow tenants to challenge rent increases where a landlord is allowed to increase rent above the level of the cap.

Question 26: What should the process be if a landlord seeks to make a rent increase above the level of the rent cap for any of the reasons referred to in the previous sections in this chapter?

Please choose your preferred option:

- (a) landlords should be required to seek approval before raising the rent above the rent cap
- (b) landlords should be allowed to raise rents above the cap without a requirement to apply to an external decision maker

A total of 436 respondents (9% of all respondents or 69% of all non-campaign respondents) answered the closed element of Question 26. 'Campaign' respondents did not answer this question. Responses by respondent type are set out in Table 19 below.

Table 19: Question 26

Respondent type	Landlords should be required to seek approval before raising the rent above the rent cap	Landlords should be allowed to raise rents above the cap without applying to an external decision maker	Total
Advice organisation and third sector	6	2	8
Developer or investor	0	14	14
Local authority	8	3	11
Private landlord, letting agent or their representative bodies	5	32	37
Professional or representative body	0	3	3
Public body	1	0	1
Social landlord or their representative bodies	2	1	3
Tenant, community group or union	5	0	5
Total organisations	27	55	82
% of organisations	33%	67%	100%
Individuals	110	244	354
% of individuals	31%	69%	100%
All non-campaign respondents	137	299	436
% of all non-campaign respondents	31%	69%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	137	299	436
% of all respondents	31%	69%	100%

A majority of those answering the question – 69% – thought that landlords should be allowed to raise rents above the cap without applying to an external decision maker, while the remaining 31% thought landlords should be required to seek approval before raising the rent above the rent cap. Organisations were slightly more likely to favour landlords being required to seek approval than individuals (at 33% and 31% of those answering respectively).

All 'Developer or investor' and 'Professional or representative body' respondents favoured landlords not needing to apply to an external decision maker, as did most 'Private landlord, letting agent or their representative bodies' respondents. However, all 'Tenant, community group or union' respondents, and most 'Advice organisation and third sector' and 'Local authority' respondents thought that landlords should be required to seek approval.

Please explain your answer

Around 370 respondents explained their answer to Question 26. 'Campaign respondents' (who had not answered the closed question) also provided a comment.

Landlords should be allowed to raise rents above the cap without applying to an external decision maker

There were concerns, particularly from 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents, that having to seek approval would delay the re-letting process leading to an extended void period which could have serious financial repercussions for landlords. It was also noted that extended voids mean homes sit empty, reducing available housing stock and worsening the rental shortage. With specific reference to rural supply, it was suggested that this could result in people being unable to take up employment or other opportunities due to a lack of housing.

There were also concerns that any approvals process would not only be an administrative burden for landlords, but would also place an unnecessary workload on the body or bodies charged with giving approval. 'Professional or representative body' respondents were amongst those commenting specifically on the capacity of Rent Service Scotland and the FTT, with the suggestion that introducing an additional approval process may place further strain on services that are already under pressure. A 'Private landlord, letting agent or their representative bodies' respondent referred to potentially seeking approval from local authorities, and raised concerns about the capacity of local authorities to process approvals in a timely fashion.

It was suggested that a streamlined, self-certification model would have a number of advantages, including:

- striking the right balance between protecting tenants and allowing landlords to operate sustainably
- giving tenants the autonomy to decide if the increase is justified, respecting the fact that many tenant-landlord relationships are cooperative rather than adversarial
- supporting property upgrades, with the associated concern that a bureaucratic process may discourage property improvements if there is a risk that their approval request is delayed
- maintaining investor confidence in the rental sector

Some respondents went on to comment on how a self-certification model could operate, with the focus tending to be on how tenants should be notified and on clear and transparent record keeping. These issues are covered in greater detail at Questions 29-31.

Landlords should be required to seek approval before raising the rent above the rent cap

Those favouring landlords being required to seek approval before raising the rent above the rent cap tended to focus on the importance of ensuring transparency, which was often connected to protecting tenants' rights. It was seen as essential that the onus should be on the landlord to justify an increase, rather than the tenant having to challenge it.

Views from the consultation sessions

Tenant participants considered there should be a proper, regulated application process for landlords to go through in order to raise rents above the cap, similar to that for planning applications.

An 'Advice organisation and third sector' respondent was among those reporting that tenants are unlikely to challenge decisions made by landlords, and 'Tenant, community group or union' respondents were among those raising concerns that tenants will not be able to contest their rent increases for fear of eviction. This group of respondents went on to suggest that requiring landlords to seek approval would add in a safety measure that ensures decisions being made around rent increases are fair, and that some landlords do not abuse the system.

Other points raised by those who thought landlords should be required to seek approval before raising the rent above the rent cap included that:

- consideration should be given to the impact this will have on existing services such as the FTT and Rent Service Scotland
- it would allow for data on the reasons for and volume of applications to be captured

Some respondents went on to comment on how any approvals system should be framed. These issues are covered in greater detail at Questions 27 and 28.

Question 27: If landlords were required to seek approval before raising the rent above the rent cap, what kind of information should landlords have to provide to tenants after the rent increase has been approved, and when?

Around 365 respondents answered Question 27. 'Campaign' respondents also answered the question.

A general observation, including from 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents who disagreed with landlords being required to seek approval, was that any process should be clear, proportionate, and designed to minimise disruption to both landlords and tenants.

There were also references to any approach being transparent, with clear, accessible and timely information for tenants.

Types of information

In terms of what types of information landlords should have to provide to tenants after the rent increase has been approved, the most frequently made suggestion (across respondent types and by both those who did and did not favour landlords needing to seek approval), was a notice that the rent increase has been approved by the relevant authority. Further comments included that a certificate could be issued to the landlord which approves the rent increase, and that this could set out the factors considered by the assessing body.

The other frequently made suggestion, again by a range of respondent types, was the reason(s) for the increase, with suggestions including that the following could be provided:

- the grounds for any increase, for example the relevant exemption or qualifying circumstance
- a brief summary of work carried out or the cost incurred
- information on how any improvements exceed the minimum standard the tenant should expect from the property
- information on the benefit to the tenant

Other suggested types of information to be provided included:

- a clear statement that the increase exceeds the rent cap
- any relevant comparison with local market rents, if this was part of the approval
- the new rent amount, including the percentage increase
- the date the increase will take effect

On this latter point, it was suggested that the landlord should outline a clear timeline for the implementation of the increase, specifying key dates, the tenant's rights, and the steps they may take in response, including how to appeal against an increase. 'Local authority' respondents were amongst those referencing information on where and how tenants can seek independent advice and support, and it was suggested that this could build on the information private landlords were expected to provide to tenants as part of the Pre-action requirements that applied to notices given to tenants before 1 October 2022.

Views from the consultation sessions

Tenant participants suggested that information should be provided to tenants at least 8 weeks in advance of seeking approval. They thought it should include an independent assessment of the proposed works and justification for why it is required, as well as a breakdown of costs.

They also thought that information on how costs will be attributed to the rent level, over what period of time and how long the rent cap exemption will be in place, should be provided.

Timescales

Those who commented on when landlords should have to provide information to tenants sometimes simply noted it should be as soon as possible, or as soon as possible after the landlord has been given approval to raise the rent.

In terms of specific timescales for any rent increase, suggestions included that tenants should be given:

- a minimum three months' notice
- at least one full rent payment period before the increase takes effect

'Local authority' and 'Tenant, community group or union' respondents were among those suggesting the longer timeframe, with 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents tending to favour the shorter period.

There were also comments relating to the stage in the process at which tenants should be informed that a landlord is looking to increase the rent. These are covered at the next question.

Question 28: If landlords were required to seek approval before raising the rent above the rent cap, what should be considered when designing a process for landlords to apply?

Around 350 respondents answered Question 28. 'Campaign' respondents also answered the question.

Comments on this question tended to reflect the same general themes already set out at Question 27. These included that any approach should be as simple, efficient and quick as possible, and should consider the potential for unintended consequences. The 'Professional or representative body' respondent making this latter point suggested that, if the process is overly complex, time-consuming or uncertain it may discourage landlords, particularly smaller or rural ones, from continuing to let properties.

Features of the process

In terms of the basics that should underpin any application process, comments included that there must be clear, well-defined eligibility criteria, set out in guidance and regulations. Some 'Local authority' respondents were amongst those suggesting that landlords should indicate which criteria, or combination of criteria, are met to justify any rent increase.

Other comments addressed the stage at which tenants should be notified or involved in the process, with one 'Local authority' respondent among those suggesting a requirement for engagement and consultation with tenants prior to any application, or as part of the application process, and another 'Local authority' respondent suggesting that the tenant should be given sufficient time and opportunity to make representations on a proposed increase.

Views from the consultation sessions

Tenant participants considered that all parties should be informed 3 months before the increase takes effect.

They also thought that tenants should have a right to challenge the above cap increase, through regulated, open and accountable methods.

Other comments, including from 'Tenant, community group or union' respondents, addressed tenants' right to contest and appeal any decision to approve a rise above the rent cap, with suggestions including that there should be support for tenants to provide representations without fear of retaliation from their landlord. It was seen as particularly important that vulnerable tenants are supported to ensure that they are able to exercise their right of appeal. There were also a small number of references to landlords also being able to appeal a decision.

In terms of how tenants and landlords could be enabled and supported to appeal, comments included that tenants should have 42 days to contest a rent increase. The importance of giving tenants sufficient time was stressed by an 'Advice organisation and third sector' respondent, who reported that while services such as theirs can support people to understand and exercise their rights, demand for appointments is extremely high and it is therefore critical that people have enough time to access advice.

Other features that respondents suggested should be considered when designing a process for landlords to apply for an above rent cap rise included that there should be:

- an enforcement process for unauthorised increases
- a framework for monitoring and evaluation to ensure policy is delivering objectives and the process is continuously improved based on user experiences

It was also noted that the process must consider the disproportionate impacts that raising rent would have for those from Black and minority ethnic backgrounds or those from low-income backgrounds.

Elements of an approval process

A 'Tenant, community group or union' respondent commented that a standardised, well-supported application process will ensure consistent outcomes and safeguard both tenant affordability and landlord investment. A number of 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents were among those commenting on what that application process could look like, with suggestions including that there should be:

- no or low cost to apply, to avoid penalising responsible landlords
- a straightforward, online application form, with tick-box categories for the reason for applying for a rent increase
- minimal evidence requirements, along with the ability to upload any supporting evidence that is required
- a quick decision timeline, for example with a target of no more than 14–21 days, with automatic approval if no decision is made within that period
- an optional fast-track route where the tenant agrees to the increase
- a system to notify tenants once the application has been approved

Other proposals included that:

- a dedicated support line or helpline could assist landlords with technical queries or clarification on eligibility criteria
- the Scottish Government could commission a standardised digital portal for local authorities to use

This latter suggestion was linked to a view that any system should not be authority-by-authority, as landlords may have properties in multiple areas and a single point of entry for requests to raise rent above the cap would be extremely beneficial for both landlords and local authorities.

Question 29: If landlords were allowed to raise rents above the rent cap without seeking approval, should they still need to produce evidence to prove that they qualify?

A total of 423 respondents (9% of all respondents or 67% of all non-campaign respondents) answered the closed element of Question 29. Campaign respondents did not answer the question. Responses by respondent type are set out in Table 20 below.

Table 20: Question 29

Respondent type	Yes	No	Total
Advice organisation and third sector	7	0	7
Developer or investor	12	2	14
Local authority	12	1	13
Private landlord, letting agent or their representative bodies	20	14	34
Professional or representative body	2	0	2
Public body	1	0	1
Social landlord or their representative bodies	3	1	4
Tenant, community group or union	5	1	6
Total organisations	62	19	81
% of organisations	77%	23%	100%
Individuals	200	142	342
% of individuals	58%	42%	100%
All non-campaign respondents	262	161	423
% of all non-campaign respondents	62%	38%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	262	161	423
% of all respondents	62%	38%	100%

A majority of those answering the question – 62% – thought that if landlords were allowed to raise rents above the rent cap without seeking approval, they should still need to produce evidence to prove that they qualify. Organisations were more likely to favour landlords needing to produce evidence than Individuals (at 77% and 58% of those answering respectively).

Among organisations, all groups agreed that landlords should need to produce evidence, although among ‘Private landlord, letting agent or their representative bodies’ respondents a significant minority (14 out of 34 respondents), did not think evidence should be needed.

Please explain your answer

Around 340 respondents explained their answer to Question 29. ‘Campaign’ respondents (who had not answered the closed question) also provided a comment.

Across Questions 29 to 31, some of those commenting, including ‘Individual’ and ‘Tenant, community group or union’ respondents, restated their opposition to landlords not being required to seek approval to raise rents above the rent cap. As at Question 26, concerns tended to focus on the need for safety measures that ensure decisions are fair, and that some landlords do not abuse the system. There were references to the current rent adjudication system not being accessible to

tenants, and it was suggested that a placing the onus on tenants to contest proposed rent increases would have limited impact on affordability.

There were particular concerns, including from a 'Public body' respondent, that many vulnerable tenants might not have the capacity or capability to scrutinise any evidence that was provided or engage with the services that could support them to do so.

Those making the case for requiring evidence to be produced included some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents, who referred to the importance of transparency. There were also references to the approach being reasonable or fair. For example, a 'Professional or representative body' respondent commented that, by requiring landlords to submit evidence, tenants can be assured that rent increases are not arbitrary and are based on genuine reasons making the exemption fair, justified and transparent. Other reasons given for requiring evidence to be produced included that the information would be required if a rent increase is challenged.

Both at this, and the next question, some respondents commented on when the information should be produced, with 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents among those suggesting that the information should be provided only in the event of a rent increase being challenged.

Those making this point included those who had said 'yes' and 'no' at the closed element of the question. For example, a 'Private landlord, letting agent or their representative bodies' respondent who had answered 'no', commented that landlords should explain why they qualify for an above-cap increase in a notice to the tenant and, should the tenant wish to challenge the increase, at that point the landlord could be required to supply evidence to show they qualified for the above-cap increase. Another commented that, while it would be good practice for landlords to collate any required evidence in advance of the decision to raise the rent, requiring them to provide it other than if challenged would create an unnecessary burden on landlords and the decision-making body in the event of a challenge.

Other reasons given for suggesting that landlords should not need to produce evidence included that:

- depending on the reason, it may not always be easy to supply evidence
- the evidence would not be of interest or use to tenants who did not wish challenge an increase

Question 30: If landlords were allowed to raise rents above the rent cap without seeking approval, who should they need to provide evidence/information to and when?

Around 370 respondents answered Question 30. 'Campaign' respondents also answered the question.

To whom should evidence be provided

There were two frequently made suggestions for who should be provided with any evidence; tenants and whichever body is responsible for overseeing any increases and ruling on any challenges, with respondents often suggesting both.

There were some suggestions relating to which body or bodies might be responsible (and by extension to whom landlords might provide evidence) with the most frequent references being to Rent Service Scotland or the FTT. There were also occasional references to local authorities.

When evidence should be provided

There were also two frequently made suggestions regarding when any evidence should be provided or shared. These were at the notification of any rent increase or, as at the previous question, in the event that a rent increase is challenged.

'Advice organisation and third sector', 'Tenant, community group or union' and 'Individual' respondents were among those suggesting that information should be provided along with the notice of any rent increase. Further comments or suggestions included that:

- a standardised template should be used, with a clear and structured process
- the notice period should align with other notice periods set out in the consultation document i.e. tenants should be given at least three months' notice so they can seek advice, or challenge the increase if necessary
- the regulating body should also receive a copy of any evidence

It was suggested that sending copies of the evidence to the regulating body would ensure oversight, support enforcement and maintain records. There was also reference to the proposed rent increase information being recorded online, including so that it can be checked by tenants.

An alternative suggestion, including from some 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents, was that the notice of rent increase sent to the tenant should provide a brief explanation and supporting evidence, but that the evidence should only be shared with the relevant authority if the increase is challenged.

Other 'Private landlord, letting agent or their representative bodies' respondents were among those suggesting that landlords should only need to provide evidence if asked for it or in the event that the rent increase is challenged.

Question 31: If landlords were allowed to raise rents above the rent cap without seeking approval, what should be considered when designing a process for tenants to verify or challenge the increase?

Around 360 respondents answered Question 31. 'Campaign' respondents also answered the question.

The broader themes raised at this question tended to reflect those at Question 28, with frequent references to keeping processes simple and straightforward, including from 'Individuals' and 'Private landlord, letting agent or their representative bodies' respondents. Other comments included that the process should be:

- proportionate
- accessible
- free or low cost
- quick or time-limited
- resourced adequately
- informed by a robust and comprehensive Equality Impact Assessment

There were also calls to avoid weaponising minor disputes, with 'Developer or investor' and 'Private landlord, letting agent or their representative bodies' respondents among those suggesting that there should be a presumption of good faith, and that the system should operate on the basis that most landlords will act reasonably and in line with the rules.

There were also some comparisons with current approaches, most frequently that the process should align with the existing process for PRT challenges by application to Rent Service Scotland.

In terms of particular considerations when designing a process for tenants to verify or challenge a rent increase, there were calls for:

- clear guidance, with the Scottish Government publishing practical, plain-language guidance that outlines the specific circumstances in which rent increases above the cap are permitted
- standardised notices and templates
- accessible information available in a wide range of languages and formats, with tenants signposted to this information when they receive a rent increase notice
- a publicly available register, which would allow tenants to see if their property's rent had been raised above the cap, and the reasons for doing so
- consideration given to joint appeals where one or more tenant is affected, for example where a landlord owns a number of properties in one building

Overall, however, the most frequently made point, and an issue raised across respondent groups, was that any process must allow tenants the opportunity to verify and challenge an increase that is above the rent cap. Associated comments and suggestions included that tenants should:

- receive clear notification of their rights
- have easy access to an independent body if they want to challenge the increase
- have support available to them both during and after the process

- only be liable for the capped rent while a challenge is pending

There were also a number of comments, including from ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents, about when or how any verification or challenge process should begin. Points included that:

- tenants should be able to request further clarification or supporting documentation from the landlord if needed
- landlords should be expected to respond to a request for (further) information within a reasonable timeframe, for example either within 14 or 28 days
- if concerns remain, tenants should be able to refer the matter to the body responsible for adjudicating on any dispute

Another ‘Private landlord, letting agent or their representative bodies’ respondent suggested the process should be built around the following key stages:

- at the point of rent increase coming into force, the landlord would issue the tenant with a prescribed notice stating that the rent is increasing by more than the rent cap and setting out the reasons why
- the notice would give guidance to tenants on when above-cap increases are allowed, and would explain that if the tenant believes the reason for the above-cap increase does not apply, they can challenge the increase by reference to Rent Service Scotland within 30 days
- Rent Service Scotland would notify the landlord of the challenge and ask for evidence to support their reason for qualifying for an above-cap increase, giving guidance on what evidence is expected for each of the permitted reasons
- Rent Service Scotland would notify both parties of their decision on whether the increase is permitted or not
- if the increase is not permitted, the rent officer should state at what level the rent is set, and the landlord must refund any overpayment to the tenant
- there could be a penalty mechanism in place for those landlords who increase the rent by more than the cap without issuing a prescribed notice to the tenants explaining the reason for it

The proposed processes outlined above assume that formal oversight should only be triggered where there is a clear dispute or a failure to provide adequate justification. It was suggested that such an approach would encourage compliance, support constructive landlord-tenant relationships and ensure that regulatory effort is focused where it is genuinely needed.

Chapter 3: ending joint tenancies in the private rented sector

The Bill creates a new route for the ending of a joint tenancy that does not require mutual agreement. At present ending a PRT requires the agreement of all joint tenants meaning that a person can be ‘trapped’ in a tenancy by other joint tenants, regardless of the circumstances, if agreement cannot be reached. Provisions in the Bill introduce an additional way to end the PRT in these circumstances.

Requirement for a pre-notice

Provisions in the Bill mean a joint tenant can end the tenancy for everyone, but only after they have given the other joint tenant(s) and the landlord at least 2 months’ notice. Under the Bill this notice is known as ‘a pre-notice’. After this minimum 2-month pre-notice period, the departing joint tenant would still have to serve the usual 28-day notice to leave on the landlord. The final 28-day notice must be served within 1 month of the pre-notice ending. The minimum 2-month pre-notice, plus the 28-day notice, will give tenants who need to find alternative accommodation a minimum of 3 months to find alternative accommodation. The Bill requires the pre-notice to:

- i be in writing;
- ii state that the joint tenant intends to bring to an end the tenancy by giving the landlord a notice under section 48(1) of the Private Housing (Tenancies) (Scotland) Act 2016; and
- iii fulfil any other requirements prescribed by Scottish Ministers in regulations.

The consultation paper noted that the Regulations could, for example:

- Create a statutory form for the pre-notice, ensuring a consistent approach
- Ensure all joint tenants are provided with information about their rights and the stages of ending a joint tenancy without mutual agreement
- Require that the notice is given in a particular way, for example, recorded delivery or by sheriff officer

Question 32: What additional information do you think should be included in a 2-month pre-notice (for example, information on the process, signposting to advice and support available)?

Around 250 respondents answered Question 32. ‘Campaign’ respondents did not answer this, or any of the other questions, in this chapter.

Approach or process for ending a joint tenancy

‘Social landlord or their representative bodies’ respondents were among those advocating parity of approach with the social rented sector, and they raised concerns that the proposal would place a burden on private rented sector tenants. In terms of how an overall process should be framed, ‘Private landlord, letting agent

or their representative bodies' and 'Professional or representative body' respondents were among those suggesting that open dialogue between tenants and the landlord should be encouraged. However, some 'Private landlord, letting agent or their representative bodies' and 'Developer or investor' respondents stressed that the onus should be on the initiating tenant to inform and manage communications with other joint tenants and that the landlord's role should be passive, unless a dispute arises.

In addition to the specific information that should be included in a 2-month pre-notice (discussed further below), there were also some general observations or suggestions relating to information provision. These included from a 'Public body' respondent who observed that the information provided should be inclusive and accessible with consideration given to literacy, various spoken and written languages, and digital literacy. Other suggestions about the general information that should be available included that:

- joint tenants should be provided with information relating to their rights and the requisite stages of ending their tenancy without mutual consent prior to signing their tenancy
- a flow chart could be used to explain the procedure for ending a joint tenancy
- there should be information on how tenants can swap in another tenant so that they can remain in the property
- there should be information on appeals routes, with a reminder that disputes can be raised via the FTT

A range of respondents also highlighted the need for all the tenants involved to be signposted to independent advice and support services to ensure they understand their rights, the implications of a joint tenancy ending and potential future housing options. Advice and support services referenced included Shelter, Citizens Advice, local authority housing options services, and college and university housing support services. It was also suggested that:

- the remaining tenant(s) could benefit from money or welfare benefit advice, as the departure of one joint tenant may leave the other(s) in financial hardship
- tenants without capacity or tenants living in adapted/accessible housing will need tailored support
- signposting to information on specific legal mechanisms for removing a perpetrator of domestic abuse from a joint tenancy should be available

With reference to this latter point, it was noted that any risks of non-compliance with the pre-notice requirements that prolonged the tenancy for administrative reasons may be dangerous for individuals fleeing domestic abuse situations. It was suggested that the proposed stipulation that non-compliance with the final notice timeline requirements negates the pre-notice actions is concerning, because it may prolong an exit in such cases.

Contents of the pre-notice

General points, including from 'Tenant, community group or union' respondents, included that the pre-notice should clearly outline the process, timeline and implications for all parties, including the other tenants and the landlord. It was suggested that the pre-notice should:

- set out the options for both the tenant(s) receiving the pre-notice and the landlord
- explain what response, if any, they are required to provide
- make clear to both tenant(s) and landlord that they cannot block or prevent the serving tenant from bringing the current tenancy to an end, unless they have not used the required pre-notice form or have not given the required total 3-month notice period

'Local authority', 'Private landlord, letting agent or their representative bodies' and 'Social landlord or their representative bodies' respondents were among those providing specific suggestions on the contents of the pre-notice. These included:

- the names of all joint tenants, the name of the joint tenant giving notice, and the date the pre-notice is issued
- the property address and start date of the joint tenancy
- confirmation that it is a pre-notice of intent to end the joint tenancy, not a formal notice to leave and explaining that no immediate action is required from other tenant(s), but that a 28-day final notice will be served following the end of the 2-month notice period

There were mixed views on whether the pre-notice should include reasons for the departing tenant ending the tenancy. For example, 'Local authority' and 'Professional or representative body' respondents were among those suggesting that this information should be included. However, a 'Private landlord, letting agent or their representative body' felt that departing tenant should not have to provide an explanation as to why they wish to end the tenancy.

In relation to the other joint tenants, i.e. those who have not given notice that they intend to leave, it was suggested that they should be given information on:

- their right to remain in the property, subject to agreement with the landlord
- the deadline by which they must give notice if they also intend to move out
- the date of any new tenancy agreement which would be issued if they wish to remain at the property
- information on what their new rent would be, along with any other charges for which they would be liable

Question 33: Do you think a legal form (sometimes known as a prescribed form) should be created that a joint tenant must use for issuing the pre-notice?)

A total of 338 respondents, or 53% of non-campaign respondents, answered the closed element of Question 33. 'Campaign' respondents did not answer this question. Responses by respondent type are set out in Table 21 below.

Table 21: Question 33

Respondent type	Yes	No	Total
Advice organisation and third sector	6	2	8
Developer or investor	9	1	10
Local authority	12	0	12
Private landlord, letting agent or their representative bodies	25	6	31
Professional or representative body	3	0	3
Public body	1	0	1
Social landlord or their representative bodies	7	1	8
Tenant, community group or union	4	2	6
Total organisations	67	12	79
% of organisations	85%	15%	100%
Individuals	159	100	259
% of individuals	61%	39%	100%
All non-campaign respondents	226	112	338
% of all non-campaign respondents	67%	33%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	226	112	338
% of all respondents	67%	33%	100%

A majority of those answering the question – 67% – thought a legal form should be created that a joint tenant must use for issuing the pre-notice. Organisations were more likely to think so than individuals (at 85% and 61% of those answering respectively).

Although the majority of each respondent group thought a legal form should be created and issued, a number of 'Private landlord, letting agent or their representative bodies', 'Tenant, community group or union' and 'Advice organisation and third sector' respondents were amongst those who did not think so.

Please explain your answer

Around 235 respondents explained their answer to Question 33.

Support for use of a prescribed form

'Private landlord, letting agent or their representative bodies', 'Social landlord or their representative bodies', 'Developer or investor' and 'Individual' respondents were among those who supported the use of a prescribed form, including because it would ensure clarity and consistency while promoting fairness, transparency and equal access to justice for tenants with varying degree of legal literacy.

An 'Advice organisation and third sector' respondent commented that the proposal would align with best practices in other areas of tenancy law, where prescribed forms are already used to ensure legal compliance and the protection of tenants. It was also suggested that a prescribed form could prevent incomplete or incorrect notices being issued and the consequent disruption for the joint tenants and landlords.

'Private landlord, letting agent or their representative bodies' and 'Developer or investor' respondents were among those commenting that a prescribed form would also provide a clear paper trail, while also ensuring that landlords are not required to interpret varying formats or levels of detail. From the landlord's perspective, it was felt that receiving notices in various formats would make interpretation more time-consuming and potentially lead to administrative delays or disputes. It was also suggested that a prescribed form would allow housing advisors, other support agencies, and the FTT to assess the legitimacy and content of a notice easily and hence guide tenants more effectively.

From the tenants' perspective, 'Social landlord or their representative bodies' respondents were among those hoping that a prescribed form could help avoid any non-compliance related delays, which could be critical if a tenant is unsafe, for example, in domestic abuse situations. An 'Advice organisation and third sector' respondent commented that creating an official record of a notice can be particularly important in cases where there may be a history of coercion or abuse.

Views from the consultation sessions

Tenant participants agreed that a legal form should be provided.

Other comments included that a prescribed form must be user-friendly, available in multiple formats or languages, and in both downloadable and hardcopy formats. It was also suggested that information on how to end a joint tenancy should be included in the PRT agreement, with accompanying easy read guidance.

Concerns about use of a prescribed form

Some 'Tenant, community group or union' respondents commented that there is currently no prescribed form for tenants wishing to leave a normal PRT. They went on to suggest that there should just be a clear explanation regarding what is in a pre-notice and how it needs to be sent and received by the other joint tenant(s). Their view was associated with a concern that a prescribed or 'model' notice might be inaccessible to tenants, especially when they are in a potentially stressful situation.

There were also concerns, from an 'Advice organisation and third sector' respondent, that a common aspect of abusive control is to restrict internet access

and/or remove digital devices, and that this could make it difficult for someone to access an online form. More generally, it was suggested that a prescribed form could place hurdles in the way of those who are not comfortable with, or able to access, online materials.

Alternative approaches suggested, including by 'Individual' respondents, were that an email or written notice of some kind would be sufficient and help avoid the potential administrative burden and bureaucracy of a prescribed form.

Question 34: Do you think that the pre-notice should be sent by the tenant initiating the end of the tenancy in a specific way to the other joint tenants, for example recorded delivery or by sheriff officer?

A total of 347 respondents, or 55% of non-campaign respondents, answered the closed element of Question 34. 'Campaign' respondents did not answer this question. Responses by respondent type are set out in Table 22 below.

Table 22: Question 34

Respondent type	Yes	No	Total
Advice organisation and third sector	6	3	9
Developer or investor	10	1	11
Local authority	13	0	13
Private landlord, letting agent or their representative bodies	17	14	31
Professional or representative body	3	0	3
Public body	1	0	1
Social landlord or their representative bodies	1	7	8
Tenant, community group or union	3	3	6
Total organisations	54	28	82
% of organisations	66%	34%	100%
Individuals	124	141	265
% of individuals	47%	53%	100%
All non-campaign respondents	178	169	347
% of all non-campaign respondents	51%	49%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	178	169	347
% of all respondents	51%	49%	100%

Respondents were relatively evenly divided on whether the pre-notice should be sent by the tenant initiating the end of the tenancy in a specific way to the other joint tenants. A small majority of those answering the question – 51% – thought it should, while the remaining 49% thought it should not. Organisations were more likely to think so than individuals (at 66% and 47% of those answering respectively).

All or most 'Local authority', 'Advice organisation and third sector', 'Developer or investor' and 'Professional or representative body' respondents favoured the approach. 'Private landlord, letting agent or their representative bodies' and 'Tenant, community group or union' respondents were relatively evenly divided on the issue, while 'Social landlord or their representative bodies' were largely opposed.

Please explain your answer. If yes, what method do you think should be required?

Around 245 respondents explained their answer to Question 34.

'Private landlord, letting agent or their representative bodies' and 'Individual' respondents referred to the terms of the lease as being the vehicle for setting out the agreed method for how tenants should communicate with each other in the event of a breakdown of a tenancy. An 'Advice organisation and third sector' respondent suggested that, when entering into a tenancy, joint tenants should be informed that they should be able to evidence that they have given timely and written pre-notice to joint tenants.

Recorded delivery

A number of respondents, including 'Local authority', 'Advice organisation and third sector', 'Professional or representative bodies', 'Tenant, community group or union' and 'Individual' respondents, suggested that recorded delivery would be suitable option for delivery of the pre-notice. Reasons given included that:

- it provides evidence that a tenant has sent the notice, and it has been received, should the other tenant(s) claim otherwise
- it is a relatively straightforward process for the tenant who wishes to serve the notice
- the costs of recorded delivery are minimal when compared to using a sheriff officer

Views from the consultation sessions

To avoid disputes, tenant participants thought that the form should be sent via recorded delivery, or email with a read receipt, to the landlord and all joint tenants.

Sheriff officer

Overall, opinions on delivery by sheriff officer were mixed, with some respondents taking the view that they should not be used. There were concerns that the higher cost of sheriff officer services could be a barrier for some tenants, and that they would be unaccustomed to accessing these services.

However, 'Advice organisation and third sector' respondents were among those suggesting that using a sheriff officer could be useful where there may be safety issues, including cases involving domestic or economic abuse or where communication between tenants has broken down for other reasons.

Other options

Email: 'Advice organisation and third sector' and 'Tenant, community group or union' respondents were among those suggesting that the pre-notice could be sent by email, with the read receipts feature used as a record to confirm that the email has been received and opened.

Hand delivery: 'Professional or representative body' and 'Advice organisation and third sector' respondents were among those suggesting the pre-notice could be hand delivered, and a signed receipt obtained as confirmation. It was noted that where delivery by the tenant could be inappropriate or unsafe, the notice could be delivered via a trusted third party, such as a support worker, legal representative or the local authority.

An online portal or form: A centralised, online system was also suggested, including by 'Private landlord, letting agent or their representative bodies' respondents and a 'Professional or representative body'. The advantages outlined included that it could automatically notify all joint tenants and the landlord once the pre-notice was submitted and offer built-in confirmation of receipt, reducing the administrative burden on the tenant initiating the process. The Safe Deposits Scotland scheme was given as an example.

Finally, a 'Professional or representative body' respondent commented that in rural and remote areas, tenants may face additional barriers that complicate the process for ending a tenancy. They reported that issues might include limited access to postal services and unreliable internet connectivity, and that in-person delivery of notices may also be impractical due to geographic isolation or safety concerns, particularly in cases involving domestic abuse. It was suggested that realistic alternatives for serving and evidencing notices in rural and island contexts, such as allowing for third-party delivery or telephone confirmation followed by written notice, are needed.

Requirements for serving the final notice to leave on the landlord

To ensure that other joint tenants are clear when they must leave the property, and when other tenancy liabilities are due to come to an end, an amendment was made by Scottish Ministers to the Bill. The amendment means that the tenant ending the tenancy must provide a copy of the 28-day notice to leave to all other joint tenants and confirm to the landlord that this has been done when serving the notice to leave on the landlord.

The amendment to the Bill also provided the Scottish Ministers with regulation-making powers to enable them to set out other requirements in relation to the way in which the 28-day notice is served on the remaining joint tenants.

Question 35: Do you think the tenant initiating the ending of the tenancy should be required to provide evidence that the pre-notice has been sent alongside the notice to landlord? For example, proof of email, postage, or information that shows it has been served by a sheriff officer.

A total of 412 respondents, or 65% of all non-campaign respondents, answered the closed element of Question 35. 'Campaign' respondents did not answer this question. Responses by respondent type are set out in Table 23 below.

Table 23: Question 35

Respondent type	Yes	No	Total
Advice organisation and third sector	5	3	8
Developer or investor	11	0	11
Local authority	13	1	14
Private landlord, letting agent or their representative bodies	26	8	34
Professional or representative body	3	0	3
Public body	1	0	1
Social landlord or their representative bodies	4	3	7
Tenant, community group or union	6	0	6
Total organisations	69	15	84
% of organisations	82%	18%	100%
Individuals	245	83	328
% of individuals	75%	25%	100%
All non-campaign respondents	314	98	412
% of all non-campaign respondents	76%	24%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	314	98	412
% of all respondents	76%	24%	100%

A majority of those answering the question – 76% – thought the tenant initiating the ending of the tenancy should be required to provide evidence that the pre-notice has been sent alongside the notice to landlord. Organisations were more likely to think so than individuals (at 82% and 75% of those answering respectively).

Although the majority of each respondent group thought the tenant should be required to provide evidence, some 'Private landlord, letting agent or their representative bodies', 'Advice organisation and third sector' and 'Social landlord or their representative bodies' respondents did not think so.

Please explain your answer.

Around 290 respondents explained their answer to Question 35.

Some respondents reiterated points made at Question 34 on the potential methods that could be used as evidence that the pre-notice has been sent: recorded delivery, email with read receipt, using a sheriff officer or other third party, hand delivery and digital portal. Additional comments are detailed below.

Support for providing evidence

A 'Professional or representative body' and a 'Public body' were among those suggesting that requiring the tenant to provide evidence to the landlord that the pre-notice has been served on the other joint tenants would:

- give assurance to the landlord that all joint tenants are properly informed, and that the statutory process has been followed
- reduce the risk of disputes or claims of non-receipt, and make the process less open to legal challenge by the other joint tenant(s)

It was also suggested that providing this evidence would eliminate the need for the landlord to rely on information provided by the other joint tenant(s), which would be particularly relevant in cases where a domestic abuse survivor has sent a pre-notice.

Concerns about providing evidence

A 'Social Landlord or their representative bodies' respondent queried whether or not it is the landlord's responsibility to ensure that the remaining tenants have been informed, observing that it is not clear from the proposals who bears the responsibility for compliance and enforcement.

Another 'Social landlord or their representative bodies' respondent commented that it should be set out clearly whether it is the landlord's sole responsibility to ensure that any other joint tenant(s) are properly informed about the termination and that it would be helpful to understand the potential implications of failing to do so, including any legal, financial or practical consequences for both the landlord and the other tenant(s).

The view of some other respondents, including 'Private landlord, letting agent or their representative bodies' and 'Individuals' was that the tenant should serve notice to the landlord or agent in writing, and the landlord or agent should then notify the other joint tenants that the tenancy is coming to an end and the reason why. An 'Advice organisation and third sector' respondent took the view that, in instances where there are abuse or control issues, there should be a mechanism for a tenant or an agency to inform the landlord, who could then take action to assist the tenant to leave.

Question 36: Do you think that the copy of the 28-day notice to the landlord should be sent by the tenant initiating the ending of the tenancy in a specific way to the other joint tenants, for example, recorded delivery or by sheriff officer?

A total of 384 respondents, or 60% of all non-campaign respondents, answered the closed element of Question 36. 'Campaign' respondents did not answer this question. Responses by respondent type are set out in Table 24 below.

Table 24: Question 36

Respondent type	Yes	No	Total
Advice organisation and third sector	5	3	8
Developer or investor	9	0	9
Local authority	14	0	14
Private landlord, letting agent or their representative bodies	20	14	34
Professional or representative body	3	0	3
Public body	1	0	1
Social landlord or their representative bodies	3	6	9
Tenant, community group or union	4	2	6
Total organisations	59	25	84
% of organisations	70%	30%	100%
Individuals	187	113	300
% of individuals	62%	38%	100%
All non-campaign respondents	246	138	384
% of all non-campaign respondents	64%	36%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	246	138	384
% of all respondents	64%	36%	100%

A majority of those answering the question – 64% – thought that the copy of the 28-day notice to the landlord should be sent by the tenant initiating the ending of the tenancy in a specific way to the other joint tenants. Organisations were more likely to think so than individuals (at 70% and 62% of those answering respectively).

However, the majority of 'Social landlord or their representative bodies' respondents, and a significant minority of 'Private landlord, letting agent or their representative bodies' and 'Advice organisation and third sector' respondents did not think the tenant initiating the ending of the tenancy should be required to send the notice to the other joint tenants in a specific way.

Please explain your answer.

Around 270 respondents explained their answer to Question 36.

'Private landlord, letting agent or their representative bodies' and 'Developer or investor' respondents were among those commenting that the responsibility to ensure that all relevant parties are notified should lie with the initiating tenant and not with the landlord.

Many respondents reiterated their comments on the range of methods referenced at Question 34, with recorded delivery or email preferred above the sheriff officer. 'Tenant, community group or union' and 'Individual' respondents were among those suggesting that the notice should not be served through a sheriff officer because this would be cumbersome and inaccessible, in particular for vulnerable tenants.

There were specific comments on the need to avoid the process becoming prohibitively costly for tenants, including from 'Local authority', 'Tenant, community group or union' and 'Individual' respondents. Some 'Local authority' respondents also observed that the costs and arrangements for the use of sheriff officers is beyond the means of many people.

A 'Private landlord, letting agent or their representative bodies' respondent suggested a central government portal, similar to that for Safe Deposits Scotland, could be used. A 'Social landlord or their representative bodies' respondent noted that they would not support costly or overly complex requirements beyond what is required of social rented sector tenants.

It was suggested that the process should be dealt with sensitively in instances where there has been domestic abuse or a falling out between tenants and that, in some situations, the tenant initiating the change may need support from an external agency, such as a Citizens Advice Bureau.

Finally, it was suggested that the tenancy agreement should confirm appropriate or required methods of communication at the outset of the tenancy.

Question 37: Do you think the tenant ending the tenancy should be required to give evidence to the landlord that a copy of the 28-day notice has been sent to all other joint tenants? For example, proof of email, postage or by served by sheriff officer.

A total of 391 respondents, or 61% of all non-campaign respondents, answered the closed element of Question 37. 'Campaign' respondents did not answer this question. Responses by respondent type are set out in Table 25 below.

Table 25: Question 37

Respondent type	Yes	No	Total
Advice organisation and third sector	4	4	8
Developer or investor	10	0	10
Local authority	13	0	13
Private landlord, letting agent or their representative bodies	26	9	35
Professional or representative body	3	0	3
Public body	1	0	1
Social landlord or their representative bodies	3	5	8
Tenant, community group or union	3	3	6
Total organisations	63	21	84
% of organisations	75%	25%	100%
Individuals	219	88	307
% of individuals	71%	29%	100%
All non-campaign respondents	282	109	391
% of all non-campaign respondents	72%	28%	100%
Campaign respondents	0	0	0
% of campaign respondents	0%	0%	0%
All respondents	282	109	391
% of all respondents	72%	28%	100%

A majority of those answering the question – 72% – thought the tenant ending the tenancy should be required to give evidence to the landlord that a copy of the 28-day notice has been sent to all other joint tenants. Organisations were slightly more likely to think so than individuals (at 75% and 71% of those answering respectively).

However, the majority of ‘Social landlord or their representative bodies’ respondents did not think so, and ‘Advice organisation and third sector’ and ‘Tenant, community group or union’ respondents were evenly divided on the issue.

Please explain your answer. If yes, what method(s) should be required?

Around 260 respondents explained their answer to Question 37.

Respondents often referred to, or reiterated, comments made at Questions 34 and 35 and listed various methods that could be used to provide evidence, with recorded delivery and email preferred above using the sheriff officer. The tenancy agreement was again mentioned as being the place to confirm methods of communication.

Reasons for thinking evidence should be required

‘Local authority’ and ‘Private landlord, letting agent or their representative bodies’ respondents were among those who thought that requiring the tenant to provide evidence to the landlord that the 28-day notice has been served would help support

transparency, ensure procedural fairness and reduce the likelihood of disputes based on claims of non-receipt.

‘Professional or representative body’ respondents were among those noting that this would provide landlords with confidence that the statutory process has been properly followed before they act on the notice, while also protecting the rights of all joint tenants. ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents were among those highlighting the importance of an evidence-based, traceable and auditable process.

Views from the consultation sessions

Tenant participants thought that proof of sending notice to other joint tenants should be provided to the landlord. They suggested this could be via a copy of recorded delivery receipt or email.

Reasons for thinking evidence should not be required

A ‘Professional or representative body’ respondent thought that, to ensure accessibility and maintain flexibility for tenants in different circumstances, the legislation should allow for a range of evidential methods, rather than prescribing a single format. A ‘Social landlord or their representative bodies’ respondent referred to what they saw as costly and overly complex requirements to end a joint tenancy that are beyond what is required of social rented sector tenants.

Other observations included that:

- this requirement must not delay or invalidate the notice period itself, and tenants initiating the end of the tenancy should not face barriers in doing so, particularly in cases involving safety concerns
- requiring more steps may make it even less likely that survivors of domestic abuse will be able to leave the home, for example in a coercive control situation where proof of postage could be discarded or emails deleted
- the proposed requirement would be cumbersome as tenants will have already shown the evidence of the pre-notice
- the proposal could lead to uncertainty for tenants as to whether a notice period has been accepted or not, and make the process much more stressful and complicated

Summary of process

The consultation paper set out that collectively the proposed changes mean that, for a joint tenant to bring a tenancy to an end without the agreement of the other joint tenants, they must have:

- i served a pre-notice on the remaining joint tenants between 2 to 3 months before serving the 28-day notice to leave on the landlord;
- ii given a copy of the 28-day notice to leave to every other joint tenant;

- iii ensured that the 28-day notice to leave served on the landlord is accompanied by a statement that a pre-notice and a copy of the 28-day notice has been given to every other joint tenant; and
- iv met any other requirements as prescribed through regulations by Scottish Ministers.

The consultation paper suggested that each of these steps help to ensure a fair and balanced process for all parties to the tenancy agreement.

Question 38: We will be developing guidance to accompany these measures that would support both landlords and tenants to understand and make use of the new process. We want to provide information and support in certain circumstances such as domestic abuse where further guidance would be helpful, for example where a non-contact order is in place.

What particular information or advice should the guidance cover?

Around 240 respondents answered Question 38.

Preparation of guidance

'Local authority' and 'Advice organisation and third sector' respondents were among those suggesting that the guidance should be prepared in consultation with tenants, landlords and other interested parties, including stakeholder groups and third sector organisations. A 'Public body' observed that the guidance should be co-designed with people who have lived experience or organisations that are able to represent their interests.

Other suggestions, including from an 'Advice organisation and third sector' respondent, included that the guidance should be trauma-informed so that tenants, particularly those experiencing domestic abuse, coercive control or similar risks, can confidently and safely initiate the end of tenancy process without fear of re-traumatisation, legal vulnerability or delay.

'Advice organisation and third sector' respondents also highlighted that the language used should be accessible, with the content reflecting best practice in supporting vulnerable individuals, including informing tenants of their human rights and relevant protections under housing legislation and the Equality Act 2010.

Other suggestions included:

- the use of flow charts to explain the process
- having separate sections for the tenant wishing to end the tenancy early, the other joint tenant(s) who receive the notice and the landlord of the property, with each section detailing their legal rights and responsibilities, the timescales of the process and where they can seek independent advice
- providing template forms, model letters and checklists
- including case studies and examples of potential scenarios at different stages of the process

There was also a call for the guidance to be supported by training and resources for landlords.

Content suggestions

‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents were among those suggesting that the guidance should:

- define who qualifies as a joint tenant
- set out the responsibilities of the initiating tenant including timelines, who must be notified and what forms (if any) must be used
- clarify the legal standing of tenants who receive a pre-notice and their rights/options
- include a breakdown of each step (pre-notice, 28-day notice, service requirements)
- provide a copy of, or link to, any prescribed pre-notice form, with an explanation of the acceptable methods of serving the notice and the legal consequences for non-compliance
- set out tenants’ rights under other legislation, for example the Matrimonial Homes (Family Protection) (Scotland) Act 1981

It was also suggested that the process for transferring or assigning the tenancy should be covered. A ‘Private landlord, letting agent or their representative bodies’ respondent suggested that a template assignation contract would help landlords to consider this option, albeit that landlords should first check with any mortgage/insurance provider that tenancy assignations are allowed before proceeding.

It was also suggested that guidance for landlords should be provided on:

- the legal position if the joint tenancy is ended and some occupants remain in the property after the end date, including the implications of accepting money from the occupants after that date and how to lawfully remove the occupants if necessary
- deposit payment and return, and the inventory checking process

Covering what tenants and landlords can do if there is a dispute about ending the tenancy, including routes for appeal or complaint, was also suggested. ‘Developer or investor’ and ‘Private landlord, letting agent or their representative bodies’ respondents were among those calling for the guidance to reinforce that landlords are facilitators, not arbitrators, and that any dispute should be referred to the FTT for resolution. As at earlier questions, there were also suggestions relating to signposting to advice and support services.

Particular circumstances or groups

‘Local authority’ and ‘Advice organisation and third sector’ respondents were among those highlighting the importance of tailored advice and support for tenants experiencing domestic or economic abuse, including:

- setting out the legal mechanisms available for survivors to stay in the property and have the perpetrator removed
- providing examples of what tenants can do if a non-contact order is in place, such as how to safely serve a notice or communicate with other joint tenants or the landlord when there is a non-contact or protection order
- providing support for survivors who wishing to exit a tenancy safely and legally, including delivery of the notice by sheriff officer, or with the involvement of a proxy
- including clear pathways for emergency re-housing

A 'Professional or representative body' respondent advised that the guidance should highlight areas where the new process could potentially be used as a mechanism for coercive control. The example given was of the service of a pre-notice by someone who is a joint tenant but is no longer residing at the property where a joint tenant who is a survivor of domestic abuse still resides at the tenancy, and their abuser seeks to terminate the tenancy to force them out. The respondent raising this issue also called for the guidance to highlight that the process may also be used in situations involving exploitation, human trafficking and/or criminality, leaving vulnerable people at risk of homelessness. They were looking for advice for landlords on what to do in these instances, including details of appropriate signposting organisations and professional services.

An 'Advice organisation and third sector' respondent observed that relevant information should be provided about LGBTQ+ identities alongside information about support for survivors of domestic abuse. They went on to suggest that the guidance should also remind landlords and other parties not to assume the sexual orientation or gender of tenants, and therefore not to assume the relationship between them.

Mental health or capacity issues were also highlighted as instances where additional protections may be required, for example where a joint tenant lacks legal capacity.

Annex 1: Organisations responding to the consultation

Advice organisation and third sector

Citizens Advice Scotland
Coalition for Racial Equality and Rights (CRER)
Consumer Scotland
Counselling Services Glasgow
Gillespie Macandrew LLP
Housing Opinion
Independent Age
LGBT Youth Scotland
LIFT@MMC
Nationwide Foundation
Quarriers
Reapit

Local authority

Aberdeen City Council
Aberdeenshire Council
Argyll and Bute Council
Dumfries and Galloway Council
Dundee City Council
East Lothian Council
East Renfrewshire Council
Glasgow City Council
Highland Council
North Lanarkshire Council
Scottish Borders Council
South Lanarkshire Council
Stirling Council
The Association of Local Authority Chief Housing Officers (ALACHO)
The City of Edinburgh Council – officer response

Private landlord, letting agent or their representative bodies

Aberdalgie & Forteviot Farm Partnership
Acumenpro Ltd
Amazing lettings
Apidae Properties Ltd
Areto Services Ltd
Association for Rental Living
BLIT Investments Ltd
Bridges Fund Management

Buccleuch Property
Castlemilk and Corrie Estates
Church of Scotland General Trustees
Crosbie Property Ltd
Davidson and Robertson
Douglas Dickson Property Management Ltd
Earlstoun Estate
Ellerton Properties (Scotland) Ltd
ESPC
ESPC Lettings
Haddo Estate and Haddo Properties Ltd
Highland Housing Alliance
Hopetoun Estates
Housing T
HUB Living
Invercauld Estate
Kincardine Estate
Kingsford Residence 1 Ltd
LetLink Ltd
Lloyds Living (a division of Lloyds Banking Group)
Marble Properties
Moda Living
Moray Estates
Mulguy Properties Ltd
National Trust for Scotland
Newhill Properties Limited
PLATFORM_
Propertymark
Puresurf Ltd
R H Gladstone and Co
Rentlocally.co.uk
Savills (UK) Limited
Scottish Association of Landlords
SLIC Property Partnership
Springfield Properties PLC
Watkin Jones Group

Professional or representative body

Chartered Institute of Housing Scotland
Edinburgh Chamber of Commerce
HOMES FOR SCOTLAND
Scottish Land & Estates

Scottish Property Federation
Solicitors of The Civil Legal Assistance Office (CLAO)
UK Finance

Public body

Public Health Scotland
Scottish Futures Trust (SFT) and Scottish Futures Trust Investments Ltd (SFTI)
(together SFT)
SOSE (South of Scotland Enterprise)

Social landlord or their representative bodies

Glasgow and West of Scotland Forum of Housing Associations
Grampian housing Association / Kirkgate Developments Ltd
Hillcrest
Home Group Scotland
Kingdom Group
Link Group Ltd
Places for People
Royal Air Forces Association
Scottish Federation of Housing Associations
West of Scotland Housing Association
Wheatley Housing Group

Tenant, community group or union

East Lothian Tenants & Residents Panel
Generation Rent
Glasgow University Students' Representative Council
Living Rent
National Union of Students Scotland
UNISON Glasgow City
University and College Union (UCU) Scotland
Yorkhill and Kelvingrove Community Council

Annex 2: Abbreviations used

BRMA	Broad Rental Market Area
BtR	Build to Rent
CPI	Consumer Price Index
EPC	Energy Performance Certificate
FTT	First Tier Tribunal
HMO	Houses in Multiple Occupation
LHA	Local Housing Allowance
MMR	Mid-Market Rent
PBSA	Purpose Built Student Accommodation
PRS	Private Rented Sector
PRT	Private Residential Tenancy
RSL	Registered Social Landlord
SHR	Scottish Housing Regulator



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