POLICY NOTE

THE PRIVATE HOUSING RENT CONTROL (EXEMPT PROPERTY) (SCOTLAND) REGULATIONS 2026

SSI 2026/158

The above instrument is to be made in exercise of the powers conferred by section 17D(1) of the Private Housing (Tenancies) (Scotland) Act 2016 following approval by the Parliament. The instrument is subject to affirmative procedure.

Summary Box

To set out the description of properties exempt from rent control restrictions in the Private Housing (Tenancies) (Scotland) Act 2016, as inserted by the Housing (Scotland) Act 2025.

Policy Objectives

Measures inserted into the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") by the Housing (Scotland) Act 2025 introduce a system of long-term, evidence based rent control across Scotland. This system of rent controls will deliver a nationally consistent approach to rent control that allows flexibility to consider local circumstances.

As part of this system, local authorities will carry out mandatory assessments of rent conditions in their area on a 5-yearly cyclical basis, ensuring that there is ongoing review of the need for rent control. The outcome of these assessments will inform the Scottish Ministers' decisions on whether it is justified and proportionate to designate rent control areas for the purpose of protecting the social and economic interests of tenants in those areas.

In any area designated for rent control, rent increases will be capped at CPI +1%, up to a maximum of 6%. These restrictions will apply both within and between tenancies, to stabilise the level of rents within the area and avoid the potential for rents to continue to rise more steeply between tenancies.

It is essential that these protections for tenants are balanced with the property rights of landlords, recognising that investment in a robust supply of rented homes is also fundamental to improving housing availability and affordability across Scotland for those who rent their homes.

To ensure the appropriate balance is achieved, the Act creates powers for Scottish Ministers to exempt certain categories of properties from rent control.

The introduction of rent controls has caused concern in the housing investment sector since the intention was announced as part of the Bute House Agreement in 2021 and the Act was introduced as a Bill in March 2024. Those who work with investment stakeholders have indicated that the intention to introduce rent control has impacted on the attractiveness of Scotland as a place to invest in new homes for private rent and for mid-market rent (the latter being intended to increase the supply of affordable homes in Scotland).

In order to give early consideration to these matters, the Scottish Government brought forward a consultation during the Act's progress through Parliament. This consultation included possible use of powers to exempt certain categories of property.

Following on from this consultation, the Scottish Government announced its intention to bring forward regulations exempting mid-market rent and build-to-rent properties from rent controls under the Act. This is intended to remove the reported barriers to investment created by the intention to introduce rent controls, prioritising efforts to increase the availability of rented housing.

Build to Rent

The overall aim of exempting this category of property is to remove the barrier to investment in purpose-built homes for rent, which rent controls represent, and to promote the retention of these properties in the private rented sector. The exemption is designed to cover the types of commercial developments of residential property which were most affected by reduced investment following the announcement of rent control in August 2021.

In order to target the developments which could have seen a reduction in funding following the announcement of rent control, the exemption is applied to properties constructed after the date of the announcement. This is designed to promote future investment in new purpose-built homes for rent and to promote the retention of those build-to-rent developments already constructed, and which may have seen a reduction in funding, in the private rented sector.

In order to target these types of commercial developments of residential rented property, the exemption applies to groups of 6 or more properties covered by the same planning permission and all owned by one person or one group of persons. This reflects the status given to transactions of 6 or more residential properties for the purposes of Land and Buildings Transaction Tax (LBTT). Section 59(8) of the Land and Buildings Transaction Tax (Scotland) Act 2013 provides that, in relation to those transactions, those properties are treated as not being residential property. Non-residential property transactions are taxed differently than residential property transactions for the purposes of LBTT.

The Regulations provide that the Build to Rent exemption will cease to have effect where the nature or use of the property is changed. For example, the exemption will cease where the property is owner-occupied or used as a short term let. These restrictions on the exemption in regulation 4(2) are designed to promote the retention of Build to Rent properties in the private rented sector – the loss of the exemption acting as a deterrent against removing the property from the private rented sector.

Mid-Market Rent

This exemption recognises that mid-market rent properties already have some form of contractual restriction on rent increases based on a variety of different measures of affordability. A form of control on rents already exists and layering additional rent control measures could create unnecessary complexity for providers without offering further benefit to tenants. The exemption is designed to apply where there is a restriction included in such funding, placed either directly or indirectly on the landlord. Mid-market rent properties provided via direct public funding will operate where grant conditions directly prevent the landlord from raising the rents above a specified level.

As this type of funding for mid-market rent properties can be provided to a registered social landlord who offers those properties for rent via a holding company or subsidiary company

(Registered Social Landlords cannot be the landlord in a private residential tenancy), Regulation 5(3) captures these arrangements by applying the exemption where funding is provided to someone other than the landlord and the landlord is indirectly prevented from raising the rent above a certain level.

It is acknowledged that mid-market rent properties can be provided by persons who do not receive public funding but keep rents below a certain level. The Regulations cater for these circumstances by applying the exemption to circumstances where the landlord contractually restricts themselves from raising the rent above a specified level via the terms of the tenancy.

The Regulations set out a specified level above which the rent cannot be raised as the median of broad rent market area values as this reflects the restrictions on rent increases which are found in grant conditions for the provision of mid-market rent properties. This specified level above which rents cannot be raised applies to all forms of properties that are seeking to be exempt from rent control as a mid-market rent property, whether publicly funded or not. The requirement that the rent must not be raised above the specified level, separate from the required restrictions on raising the rent, ensures that the exemption will no longer apply if the restrictions on rent increase are ignored and the rent is raised above the specified level.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, The Private Housing Rent Control (Exempt Property) (Scotland) Regulations are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

In accordance with section 17D(6) of the 2016 Act, the Scottish Ministers have consulted persons who appear to them to represent the interests of tenants and landlords, and such other persons they consider appropriate, before laying a draft of this instrument before the Scottish Parliament.

The consultation process revealed a significant divergence in opinion between different groups. Those who responded in support of a campaign response by Living Rent were opposed to any form of exemptions. 'Developer or investor' and 'Social landlord or their representative bodies' were generally strongly in favour of exemptions. There were more mixed views amongst other groups who responded to the consultation.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. The consultation responses were categorised as follows:

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**

In addition, exemptions for mid-market rent and BtR were a recommendation of the Housing Investment Taskforce, who published their report during the consultation period.

Mid-Market Rent

Although a large majority of all respondents (driven by campaign responses) supported the criteria suggested for the scope of the mid-market rent exemptions, most non-campaign respondents disagreed. Those in agreement highlighted the need for clear definitions, periodic review, and recognition of community-led providers and key worker targeting. Those who disagreed argued that the criteria either needed strengthening, with stricter, binding rent limits tied to affordability, or broadening to include privately financed mid-market rent models. Some considered that the proposed definition is too narrow and overlooks evolving affordable housing delivery mechanisms outside of the existing model of delivery through Scottish Government Affordable Housing Supply Program support.

In response to the views set out in the consultation, clarification has been provided within the regulations that:

- The exemption applies to circumstances where the landlord has received financial support from the Scottish Government or a local authority, or where a person other than the landlord received financial support to provide mid-market rent properties.
- The exemption also applies where mid-market rent properties are provided by an organisation not in receipt of public funding, but where there is a similar restriction on the rent that can be charged.
- Where a property benefits from an exemption through being offered as mid-market rent, the rent cannot go above the median of market rents, as published on an annual basis by the Scottish Government.

Build to Rent

The majority of respondents overall disagreed with the criteria for a Build to Rent exemption set out in the consultation, though views varied by group and a number of respondents who were opposed thought they required minor clarifications or modifications. Those who disagreed, who were mainly campaign respondents, individuals, and tenant groups, felt the

criteria were too vague, risked loopholes, or could enable inconsistent application of rent controls. Respondents in agreement, including some local authorities and social landlords, said the criteria were broadly correct and captured the distinguishing features of Build to Rent. Many respondents across groups, however, argued that the criteria were either too narrow (excluding smaller schemes, rural schemes, conversions, and dispersed portfolios) or too inflexible to reflect the diversity of the Build to Rent sector, and that greater clarity was needed on terms like "scale," "single site," and "single ownership."

In response to these views, further clarification has been provided within the regulations:

- A 'single site' is defined as being a development which is covered by a single planning application;
- The 'scale' of a portfolio which constitutes a Build to Rent development is defined as 6 or more properties - reflecting the need to allow for smaller schemes, particularly in rural or island locations, to benefit from the same exemption; and
- Properties that are converted for use as residential and derelict properties returned to use are included in the exemption.

A number of respondents suggested further criteria which should be included, reflecting concerns about affordability, investment certainty, and long-term management. The campaign response argued that there should be strict time-limits on the exemption. Some argued for embedding affordability conditions, such as requiring a proportion of homes to be let at discounted or mid-market level rents. Others suggested the addition of long-term investment commitment requirements, professional management standards, longer tenancies, and minimum service levels, viewing these as core components that distinguish Build to Rent from traditional privately rented properties. Additional suggestions included energy-efficiency standards, conditions related to community benefit, or rules to allow conversions or acquisitions to qualify where they match Build to Rent characteristics.

Impact Assessments

The following impact assessments have been completed:

- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Equality Impact Assessment (EQIA)
- Fairer Scotland Duty assessment

A scoping assessment has been completed for the following impact assessments and it was assessed that a full impact assessment was not required:

- Data Protection Impact Assessment
- Islands Communities Impact Assessment (ICIA)
- Strategic Environmental Assessment (SEA)

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been prepared. The impact of the Regulations on business is considered to be broadly positive, as they seek to remove perceived barriers to investment in mid-market rent and Build to Rent housing, supporting increased supply and availability of rented homes in Scotland.

Landlords of exempt properties in rent control areas will face additional administrative processes to confirm their exempt status, while non-exempt landlords will remain subject to

rent caps and may perceive that they are at a disadvantage. However, the Scottish Government is gathering evidence through stakeholder engagement to identify and mitigate any disproportionate effects.

Scottish Government
Housing Directorate

28 January 2026