



UK COLLABORATIVE  
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# Rent control: principles, practicalities and international experience

Briefing paper

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## Summary

- This short briefing paper provides examples of the range of contemporary international rent control or rent regulation practice as operated in the private rented sector (PRS), highlighting a small number of European examples in a little more detail.
- The paper considers and reflects on the evaluative criteria used to assess and appraise these policies, and reflect on what this means for the Scottish debate on an effective national rent control policy.
- This is a revised version of a briefing prepared at the request of the Scottish Government in January 2022, in relation to their ongoing work aimed at 'introducing a national effective system of rent control'.

# 1. Introduction

- 1.1 The briefing paper complements the recent international evidence review published by CaCHE<sup>1</sup>. This paper looks in more detail at current international practice and draws more sparingly on international research evidence. We have focused on a small number of recent contributions setting out international comparative practice regarding rent control, rent regulation, and related issues.<sup>2</sup>
- 1.2 The rent control literature frequently draws the distinction between first-, second- and third-generation rent controls, referring to important differences in the detail of policy design. However, one note of caution about undertaking this sort of review is that it quickly becomes apparent that the original authors are not necessarily consistent, as a group, in how they categorise or classify specific countries in relation to the “generation” of rent controls in operation.
- 1.3 Also, policy and practice can change and evolve quickly. This has been exacerbated by Covid-19 lockdown measures, some of which will undoubtedly have longer-term consequences. The information in the literature, particularly the comparative literature, can lag behind current practice. Caution is therefore required about the current status of policies in different countries.
- 1.4 While it is possible to provide descriptive information on different schemes that are in operation in different countries, systematic information (in English) evaluating the impact of such schemes – either in terms of achieving stated policy objectives, having unintended consequences, or generating positive/negative spillovers – is less readily available.

# 2. Contemporary international approaches

- 2.1 Kholodilin (2020) presents a long-term assessment of the sweep of housing interventions from 1910 to 2020. He argues that the evidence suggests extensive take-up, from World War 1, in first generation rent control (i.e. nominal rent freezes, almost always accompanied in the longer term by tenure security protection measures), followed by divergence after World War 2, with rent control shifting either to later generation models that represent lighter regulation or being phased out. However, he notes that there are examples of current affordability problems leading to new rent control in France, Germany and California. He also notes the frequent use of temporary rent freezes during the early Covid-19 lockdowns. A global diagram (Kholodilin, 2020, figure 2, p.999) indicates that later (second, third) generation rent regulations dominate in Canada, Europe and one or two other places; many countries have no controls<sup>3</sup>; while still others in Africa, South America, India and a couple of European countries<sup>4</sup>, operate first generation controls.

<sup>1</sup> Gibb, K, Soaita, A and Marsh, A (2022) Rent Control: A Review of the Evidence Base. CaCHE: Glasgow.

<sup>2</sup> Wheatley, H. et al (2019) Getting Rents under Control: How to Make London Rents Affordable. New Economics Foundation. Jones Day (2020) Mapping out Rent Controls across Europe - White Paper. Jones Day: London. OECD Affordable Housing Database (2021) PH6.1 Rent Regulation. OECD: Paris. Kettunen, H. and Ruonavaara, H. (2021) Rent regulation in 21st century Europe. Comparative perspectives, Housing Studies 36 (9) 1446-68. Whitehead, C. and Williams, P. (2018) Assessing the evidence on rent control from an international perspective. RLA: London. Kholodilin, K. (2020) Long-Term, Multicountry Perspective on Rental Market Regulations, Housing Policy Debate, 30:6, 994-1015. Lunde, J and Whitehead, C (2021) How Taxation Varies Between Owner-Occupation, Private Renting and Other Housing Tenures in European Countries. CaCHE: Glasgow. Scanlon, K, Whitehead, C and Blanc, F (2021) Private Landlords and Tax Changes. LSE London: London. Fondation Abbé Pierre/Feantsa (2021) Sixth Overview of Housing Exclusion in Europe 2021 (May). Feantsa and Abbe Pierre Fondation (Brussels and Paris).

<sup>3</sup> Noting that several federal systems, like the USA, will have a mix of control and no-control at state and metropolitan levels.

<sup>4</sup> Although one, Greece, in the context of the aftermath of the global financial crisis, has shifted from a rent freeze under the socialist government to free market rents under the subsequent centre-right government.

- 2.2 Kholodilin argues that contemporary rent controls have three key features: rules regarding rents for new rent contracts (i.e. the initial rent), rules concerning the updating of rents within a contract (i.e. rent increases) and, exceptions which either exempt or provide for enhanced regulations. First generation rent controls are directed at the initial rent. This rent may be derived in different ways. It could be derived from comparisons at a given point in time, calculated in proportion to property tax value, or derived by the local or national government in absolute terms by a political process. Later generation controls generally allow for the initial rent to be set at the market rent but thereafter limit rent increases using a range of means. It is not, however, unknown for there also to be regulation of the level of the initial rent: in Germany since 2015, in areas of ‘acute housing shortage’, initial rents cannot be set at more than 10% above the average market rent in the same neighbourhood.
- 2.3 Whitehead and Williams (2018) argue that earlier research indicates that history, or path dependency, matters for the trajectory of rent control (which they combine with measures to regulate tenure security in rental markets internationally).<sup>5</sup> They examine the trajectory of rent regulation from 1980 to 2010 and find that, for the sample of countries they considered, the extent of rent regulation broadly fell among hitherto high-regulation countries while in contrast it rose in initially less regulated countries (regulation fell in the UK, Spain, Finland, The Netherlands and Denmark; while rising in Switzerland, Ireland and France; with some degree of rent regulation growth in countries like Germany and Sweden, occupying the middle ground). As we will see later, a more up-to-date version of this comparison would now show a larger cluster in the medium regulation range. Whitehead and Williams also argue that large, more policy-stable PRS systems tended to have established and stable rent regulation approaches, but that the examples of market stress are often where the PRS has grown rapidly since 2000 in a low regulation environment (they nonetheless note pressure to expand rent regulation in Canada, Ireland, Germany and France).
- 2.4 In a recent paper Hanlon et al (2021) contrast the tax and regulatory position facing English landlords with international experience.<sup>6</sup> Apart from being lightly regulated, English landlords (and by extension Scottish landlords) are at the least generous end of the spectrum comparatively in terms of tax treatment and have faced further tax changes recently. These changes are unusual, from a comparative perspective, since they also impact on net returns. This, they argue, is discouraging landlords from remaining in the sector, but they note that the actual behaviour of suppliers is hard to predict because it is influenced by other factors including rising house prices.
- 2.5 Kettunen and Ruonavaara (2021) provide a comprehensive comparative perspective across Europe.<sup>7</sup> They classify 33 European states by rent regulation and welfare regime. They find national context is important and can impede comparative analysis e.g. while the Nordic states have a distinctive welfare state regime, individual Nordic countries have different and distinct housing systems and modes of interventions including rent regulation.<sup>8</sup> Annex one of this briefing reproduces their table 1 on regulation across Europe around 2017. Kettunen and Ruonavaara also classify countries by welfare regime and rent control generation – suggesting that countries with no controls tend to be post-socialist (bar Poland and Croatia), that social democratic countries operate second- or third-generation controls (bar Finland and Iceland), corporatist welfare state regimes all have second or third generation rent controls (e.g. Germany, Netherlands, Austria, France, Belgium, etc.), and neo-liberal regimes have second generation (Ireland), third generation (Scotland) or no rent controls (England). Southern European welfare regimes are mainly characterised by an absence of national-level controls (Portugal, Italy, Greece and Malta), although Spain and Cyprus have third-generation controls. This mix of outcomes illustrates why it is dangerous to assume that welfare regime types map in a straightforward way onto specific social policy models. Moreover, we should not assume that rent controls are primarily implemented at national level: many are a product of policy at state/province/region or city/town/metropolis level. It is also the case, as we discuss further below, that rent control policy can be focus of dispute between national and lower tiers of government.

<sup>5</sup> See fn 3.

<sup>6</sup> See fn 3.

<sup>7</sup> See fn 3.

<sup>8</sup> On which see also Norberg, P. and Juul-Sandberg, J. (2018). “Rent control and other aspects of tenancy law in Sweden, Denmark and Finland: how can a balance be struck between protection of tenants’ rights and landlords’ ownership rights in welfare states?”, *Tenancy Law and Housing Policy in Europe: Towards Regulatory Equilibrium*. pp. 260-293.

2.6 The most current comparative analysis is by OECD (2021).<sup>9</sup> Across the OECD they found that 13 countries controlled initial rents and regular rent increases were restricted in 23 countries. Altogether, 18 countries appear to have no form of rent control, although federal systems exhibit local variation and, as in the USA, have examples of city level control in a wider context characterised by generally free markets. In addition, for many countries where rent controls are in operation they only apply for a designated portion of the stock (e.g in the Netherlands in submarkets where rents are below a threshold level or in France and Germany where there are pressured or tight local markets).

### 3. Delving deeper

3.1 In this section, drawing on background material from a number of secondary sources (e.g. Jones Day, 2020; OECD, 2021; and other references in footnote 3), we briefly look in a little more detail at three types of approach: systems that incorporate points/utility rather than direct rental comparisons to set initial rents (Netherlands and Sweden); pressured market triggers (Germany and France); and the specific case of Ireland, also a pressured system, which led to the introduction of Rent Pressure Zones (a version of which was subsequently introduced by the 2016 Act in Scotland). We describe the approach briefly in each case, focusing on the approach to setting the initial rent and rent increases, and then reflect on the models. Where possible the discussion also includes reference to an example of in-country evaluation carried out by academics or similar, but we suggest that caution should be observed in placing too much weight on single studies.

#### Utility and points: Sweden and the Netherlands

3.2 In Sweden, tenancies are open-ended and initial rents at the beginning of a tenancy are set by a Rent and Tenancy Tribunal on the basis of their reasonableness compared to the 'utility value' of the property (Jones Day, 2020; Kettunen and Ruonavaara, 2021; Fondation Abbe Pierre/Feantsa, 2021<sup>10</sup>). Essentially, the Tribunal will consider the rents to be reasonable if they are broadly comparable to similar properties of the same utility value. A property's utility value is based on a range of characteristics of equivalent homes in the area: flat size, construction, how modern the property is relative to the average, quality of soundproofing, and its state of repair. A premium over utility value is allowed for newly constructed units known as 'presumption rents'. This is only allowed provided that the landlord has already entered into a collective bargaining agreement with the Tenants Union. The actual tenant will still have the right to test in court whether any subsequently proposed rent increases are justified. In general, rent increases are the purview of the legally-constituted collective bargaining process. Sweden has what is known as a unitary housing system wherein there are few practical differences in rights or in terms of rent determinations across private and non-market housing. OECD sums up the Swedish situation as: *'Rent can be freely negotiated but shall not exceed rent of comparable units by too much (5 percent difference is considered reasonable). Rent increases must be collectively bargained'*.

3.3 Swedish commentators<sup>11</sup> have described this system as a third way between the rental market and rent control, a form of economic corporatism managed by collective bargaining. Rent setting and rent controls are politically charged issues in Sweden and were instrumental in the collapse of the national government in 2021 because of concerns over rent control liberalisation.

<sup>9</sup> See fn 3.

<sup>10</sup> See fn3

<sup>11</sup> Reported by Hannu Ruonavaara in comments on the draft of this paper.

- 3.4 There is also considerable contemporary criticism of rent control in Sweden because it is argued to result in long queues for people seeking to access housing. This is a major source of contention among the political parties (see: <https://www.bbc.co.uk/news/business-58317555>). Wilhelmsson<sup>12</sup> examines the demand for rental housing in the rent-controlled Stockholm environment characterised by rents set below market levels. Excess demand is rationed by a queue established and run by the municipal housing agency. The paper contains a short evidence review about rent controls in Sweden, highlighting that controls in Sweden are relatively 'hard' in that they, albeit with exceptions for new build, impact on old and new tenants alike and are indefinite (p.4). Wilhelmsson notes that in theory rent regulation can protect the tenant against poor quality and reduce distortions created by market power. However, properties are not allocated by willingness to pay but by queue position and quantity rationing. The author finds that even though the market is in disequilibrium and allocated by non-price means, there is a positive income elasticity of demand i.e. higher incomes increase demand and there are useful market signals generated by the preferences expressed in the waiting list system (similar findings were reported for a smaller waiting list study of regulated housing market in Amsterdam<sup>13</sup>).
- 3.5 In the case of the Netherlands, the rental sector is divided into social and private sector housing on the basis of a rent threshold. Below the threshold, rental housing is classified as social and rents are regulated; above the threshold, housing is classified as private and there are no limits on rents other than what the market can bear. OECD summed up the situation as: Rent increases can be up to CPI +1%. Dwellings with a rent below EUR 737.14 per month (in 2020) are regulated as social housing. Only indirect moderation principles apply (Jones Day, 2020) for subsequent rent increases e.g. a tenancy clause that allows rents to rise by CPI+1%. In an earlier study by Jonkman et al, we get an insight into the points system:
- The maximum allowed rents for regulated housing are determined by an administrative valuation system based on points reflecting the quality of the unit. Units with a point-total of up to 142, corresponding to a maximum allowed rent (i.e., the liberalization level) of €699 in 2014, are rent controlled. Units with a higher point-total may—but do not have to—be rented out without the restriction of rent regulation policy. If the initial rent at the start of the tenancy is lower than the liberalization limit, the unit remains regulated for the whole tenancy. Since 2012, the point valuation system includes scarcity points. Additional points are allocated to dwellings that are located in popular areas with high average house prices.<sup>14</sup>*
- 3.6 In the Netherlands, within the first six months of a tenancy, a tenant can go to an independent rent tribunal to determine whether the rent charged is reasonable. The rental value of the property is determined on the basis of a points system which takes account of size of the property and other attributes. If the Tribunal decides the rent should be set below the threshold it can reclassify the property as social housing and therefore reduce the rent (Jones Day, 2020).
- 3.7 Jonkman et al (2018) report Dutch evidence that rent controls flatten the distribution of rents across space making more attractive locations relatively less expensive - benefitting those already living there – and making lower demand areas relatively more expensive. Their paper is an attempt to evaluate the decentralisation of rent increases and identifies the complex set of interrelationships between different parts of the private and social rented sectors as well as with owner-occupation. Much of the analysis implicitly anticipates incentive effects leading to change in behaviour and outcomes e.g. on mobility and tenure change – but this appears to be assumed rather than evidenced.

<sup>12</sup> Wilhelmsson, M. (2021) Demand for rent-regulated apartments: the case of Sweden, KTH Royal Institute of Technology, division of real estate and finance working paper 2021: 4.

<sup>13</sup> Van Ommeren, J. and Van der Vlist, A. (2016). Households' willingness to pay for public housing. *Journal of Urban Economics*, 92, 91-105.

<sup>14</sup> Jonkman, A., Janssen-Jansen, L., and Schilder, F. (2018) Rent increase strategies and distributive justice: the socio-spatial effects on rent control policy in Amsterdam, *Journal of Housing and the Built Environment*, 33, 653-673. at p.658.

## Dense and tense pressured market triggers: Germany and France

- 3.8 According to Jones Day (2020), beginning in 1989 France has applied rent moderation measures for private residential leases in certain designated densely populated areas. The rent for a new tenancy or upon renewal may not exceed the previous rent except within limits set by an agreed rent reference index (with some limited exceptions to this rule). In 2018 authorities in densely populated areas were enabled, should they wish, to enforce stricter rent control measures on initial rents: the initial rent may now be capped at an amount between 30% below and 20% above a predetermined reference median rent (again subject to limited exceptions). This policy was implemented in Paris in July 2019 and in Lille from March 2020. Additional French cities are contemplating joining Paris and Lille. Fines apply to landlords who do not comply. Local rental observatories are being set up across the country to analyse trends in private rents. This policy is initially established for a 5 year experimental period (Fondation Abbe Pierre/Feantsa, 2021).
- 3.9 The OECD summary of the approach in France suggested that it allows both free and controlled markets, and concludes, to paraphrase (pp2-3): with respect to the initial rent, the 2018 reform authorised such pressured local markets to choose to pilot a rent control measure for 5 years, whereby the initial rent levels are determined within a benchmark range (with some exceptions). With respect to subsequent increases in rent levels, in the case of a new lease or the renewal of a lease, the rent level paid by the tenant can only be increased based on a fixed rate benchmark index for rent (provided that the landlord did not make any improvements).
- 3.10 Comprehensive evaluation of the broader effects of this policy – on, for example, housing supply – is yet to be undertaken. Industry sources suggest that the post-2019 regime had the effect of suppressing rent increases but that this effect may have been relatively short-term. One of the key messages we take from recent French experience relates to compliance. While a moderation in rent pressures may have been detected, a substantial proportion of properties that should be subject to regulation are operating with rents outside the limits set by the regulations.<sup>15</sup> Non-compliance appears also to be an issue in Germany – see below.
- 3.11 Germany introduced a ‘rent brake’ in 2015, entitling German states to decree the existence of a ‘tense housing situation’ for up to 5 years (which can be extended but not beyond the end of 2025). Where such a decree operates, the initial rent for a new lease must not exceed the higher of (i) 10% above the comparable rent or (ii) subject to specific conditions, the level of rent in the previous lease. In addition, the rent must not increase by more than 20% over a period of three years and, in any event, must not be more than 10% higher than the comparable rent (Jones Day, 2020; Fondation Abbe Pierre/Feantsa, 2021). Certain exceptions apply, including housing built or substantially modified after 2014. Student housing is also exempt, and regulation is more limited for furnished accommodation. OECD summarised this regime as: *In Germany, regulated rents apply to rental dwellings in areas where there is pressure on the housing market, whereby rent levels may only exceed the benchmark rent of the area by up to 10%* (p.2).<sup>16</sup>
- 3.12 In June 2015, the Federal State of Berlin decreed a ‘Tense Housing Situation’ and a Rent Brake has operated subsequent to this date (Jones Day, 2020; Kholdilin, 2020; Fondation Abbe Pierre/Feantsa, 2021). However, in January 2020 the Parliament of the Federal State of Berlin went further and imposed a five year rent freeze (based on June 2019 rents). In practice, rents in many cases have been reduced. This does not apply to public subsidised units; new build (after October 2014); hostels; or property with a subset of statutory modernisations carried out. Initial rents on new tenancies for properties built before 2014 and let after February 2020 will have their rent per square metre determined by a series of attributes: property size, age, characteristics (e.g. is central heating present) and quality standards. The new law allows for some modest rent increase if the contractual rent is below the maximum allowable rent. The courts have powers to charge large fines on landlords for non-compliance (up

<sup>15</sup> Malard, L. and Poulhes, M. (2020/1) Rent control in Paris: housing with small rooms more constrained than others, *Économie & Prévision*, no 217, <https://www.cairn.info/revue-economie-et-prevision-2020-1-page-1.htm>; Wikimmo (2020) Rent control, 1 year later, <https://www.meilleursagents.com/wikimmo/encadrement-des-loyers-1-an-apres/>

<sup>16</sup> In reviewing this paper Christine Whitehead noted that the pressured markets have extended in Germany, as they have in Ireland as well.

to €500,000). There is a high degree of uncertainty over this regime because of constitutional legal claims regarding its legitimacy. It has been contested with the claim that the Berlin State has acted *ultra vires*. The current position is that Higher Courts have rejected Berlin's approach and there is uncertainty about what happens next.

- 3.13 Thomschke<sup>17</sup> uses a difference-in-difference model to evaluate the impact of the rent brake introduced in 2015. New contract rents are found to have moderated in Hamburg, Munich and Berlin (and this is assumed to have been associated with the rent brake) but no effect is found in the rent brake cities of Cologne and Düsseldorf. Overall, despite a lack of data and difficulties isolating causality, the effects are viewed as relatively minor, if apparent at all. But the author also stresses that media commentary is generally suspect because it does not account for missing data, landlord overcharging, or other dimensions of inefficient implementation of the policy (including that tenants seem reluctant to enforce the rent brake).
- 3.14 Breidenbach *et al*<sup>18</sup> is a new paper that also uses the difference-in-difference method (actually differences cubed) and explores differences in the effect of the policy over time as well. While the authors find that there was evidence of rent falls of 5% and up to 9% in specific property types, the impact did not persist and disappeared after a year to 18 months. Moreover, they find that the rent brake has the largest effect on rent reduction where higher income residents live (i.e. 8% compared to 4% in low value neighbourhoods). Breidenbach *et al* also conclude that the rent brake is associated with a decline in the quality of properties coming on to the market compared to non-pressured uncontrolled markets.

## Rent Pressure Zones (RPZs): Ireland

- 3.15 The Residential Tenancies Act of 2004 regulates initial rents (in a sense at least) and subsequent rent increases. There is an initial rent in the sense that landlords must not set rents greater than the market rent, which is defined as a rent that both a willing tenant would pay and a willing landlord would accept<sup>19</sup>. A local area is designated a rent pressure zone if standardised rent increases (annual) have risen by at least 7 per cent in 4 of the last six quarters. The Residential Tenancies Board publishes a quarterly rental bulletin which posts the relevant data for new letting agreed rents. In addition, properties outside of designated Rent Pressure Zones benefit from rent certainty i.e. rents may only be revised once in any 24 month period. Restrictions on increases in rents were introduced in legislation in 2016 (for a limited period which has subsequently been extended). As a result, rents within designated RPZs had their increases capped at 4% per annum. RPZs can have rents reviewed every 12 months. Following further legislation in 2019, the majority of the regulations now also apply to student accommodation.
- 3.16 Ahrens *et al*<sup>20</sup> review the early years of the RPZ system in Ireland. They found robust evidence that rent increases had fallen in RPZs relative to unregulated areas. However, two in five tenants in areas where RPZs operated were still experiencing more than 4% increases in rents – though it is not clear precisely why this was the case (non-compliance or disproportionate rates of exemptions from the scheme). The authors conclude that data coverage needs to be comprehensive and they note the (then) active legislation going through the Parliament of Ireland to enhance data coverage to provide both comprehensive coverage but also the ability to monitor compliance.
- 3.17 In 2021 it was announced that RPZs would have their uprating changed so that they would be capped at a 2% increase per annum or by the official inflation rate, whichever was lower. By late 2021, three quarters of tenancies were covered by Rent Pressure Zones. In a newspaper article (21/12/21) in the Irish News, Craig Hughes noted that a freedom of information request had shown that the department of finance had concerns about expanding the zones based on economics evidence from abroad and landlord data in Ireland that supply would be curtailed.

<sup>17</sup> Thomschke, L. (2019) Regional Impact of the German Rent Brake, *German Economic Review*, 20 (4) 894-912.

<sup>18</sup> Breidenbach, P., Eilers, L. and Fries, J. (2022) Temporal Dynamics of Rent Regulations – the case of the German rent control, *Regional Science and Urban Economics*, 92, online first.

<sup>19</sup> This is a good example of where we would like to find out more about how this works in practice.

<sup>20</sup> Ahrens, A., Martinez-Cillero, M. and O'Toole, C. (2019) Trends in Rental Price Inflation and the Introduction of Rent Pressure Zones in Ireland. ESRI: Dublin.

- 3.18 From a Scottish perspective, two points are striking. The 2017 Scottish version of RPZs had no database on a par to the RTVB in Ireland and instead left local authorities with the responsibility for defining and measuring rental hardship to create the ruling that an RPZ could be introduced. Second, while the data approach signalled in the New Deal consultation for the Scottish government indicates a willingness to move to such a position, we note that not only has this data set been developed in Ireland but there has also been continuous and evolving monitoring of the policy and understanding of the local markets in a regional and national context.<sup>21</sup>
- 3.19 A number of reflections follow from this brief look at this selection of contemporary European rent regulatory practices:
- It is important to start by noting how difficult it is to appreciate the nuances and complexities of individual national systems and their detailed workings (e.g. around comparables, exceptions, the precise nature of the points and utility systems in practice) from a range of high level reports and journal articles. These details can be crucial in shaping the incentives presented to landlords and tenants and therefore in shaping the way in which the system responds to the policy regime. There would definitely be value in talking further to national policy experts.
  - These rent regulation models are not as low cost as might at first be imagined (i.e. in comparison to the costs of alternative policy instruments such as direct subsidy or tax policy). Rent control needs a bureaucracy to collect data, measure comparables, apply points and utility values, and enforce the outcomes of the various systems implied. These are non-trivial considerations; their introduction will have opportunity costs for those taking on new roles to implement rent regulations. That is not to say it should not be done, rather that it needs to be part of the policy calculus.
  - Because a rent control system is statutory and would be legally-binding it has to achieve minimum standards, operate transparently and comprehensively. If the policy does not achieve these standards, legal disputes will add significantly to cost and to delays (over and above initial legal test cases, etc.).
  - The points systems, the trigger systems, and the RPZs all rely on the availability of substantial amounts of good quality rental data. The timely collection, analysis and publication of rental market information is essential.
  - While parts of some of the systems described above are based around market comparables (and presumably the work of real estate valuation professionals), other systems develop non-market (points or utility value) approaches to measuring quality and standards in order to compute key bundles of typical PRS services and use these to drive pricing under the regulatory system. The latter systems raise a question. Is there something odd about creating new data collection requirements and models, as well as defining terms and principles by which such points systems would operate (something well known to be contentious in social housing circles in the UK), while at the same time doing away with the valuable information that market rental data provides about quality and could readily be constructed through familiar hedonic pricing models? Why not make the best use of actual rental data?
  - As was indicated by Whitehead and Williams above, context and path dependency are important to what we can and should draw from these models. Their feasibility and effects in specific places arise from the market and policy contexts of those countries. A case in point is the unitary housing policy system long advanced in Sweden. We also know from the Abbe Pierre/Feantsa (2021) 6th Overview of Housing Exclusion, that Germany is but one example of a European country in the throes of a constitutional battle over whether states and lower tiers of federal systems of government can pursue local rent control policies at odds with national government housing policies. This is usually a case of local states seeking tougher controls than would be approved by the national government. Spain is also experiencing this type of constitutional conflict. Similar tensions are very much in evidence between State and municipal governments in parts of the US.

<sup>21</sup> Scottish Government (2021) A new deal for tenants: Draft strategy consultation paper, The Scottish Government: Edinburgh.

## 4. Evaluative criteria

- 4.1 As part of the discussion over developing a feasible and implementable rent control system for London, the New Economics Foundation (Wheatley et al, 2019) map out the options for how initial rents are set and then, within tenancies, how rents are increased. They go on to build a clear narrative account of different forms of rent control 'solution' by assessing them against multiple criteria and making an overall judgement.
- 4.2 Before we look at that evaluative framework, it is helpful to set out the classification Wheatley et al (2019) adopt for characterising the contemporary rent control options (see figure 1 in their report). The model abstracts from the complexity of exceptions, exemptions and moderations e.g. for new build, improvements and the like. It is also implicit, at the highest level of the classification, that the choice between free market rent-setting and rent controls has been decided in favour for the latter. In other words, there is a policy decision in favour of some form of rent regulation. The issue then becomes: what approach is taken re initial rents and how are rent increases dealt with?
- 4.3 The initial rent can be set either according to market linkages or by non-market approaches. The market linkages include either linking the initial rent to existing comparable local market rents (perhaps allowing some flexibility within a band of allowable rent levels above or below the benchmark level, as we saw in France and Germany) or applying an absolute market cap such as the freeze in Berlin based on existing market rents at a point in time (in practice many regulated rents were set below the current or pre-regulated rent). The non-market approaches to the initial rent include points-based system (Sweden and the Netherlands); running costs (in Denmark this is a formula based on a yield return, running costs and a maintenance allowance); or linked to property value, such as a return on assessed capital value (Malta uses a 2% return).
- 4.4 Within-tenancy rent increases may be linked to a simple fixed percentage annual (or less frequent) uplift, CPI inflation, wage growth, or directly linked to the calculation of the initial rent. Once rents are set, the allowable maximum of the typically annual increase may vary considerably e.g. 4% a year (Ireland), inflation-only (CPI) in Spain or CPI & 1% for Scottish RPZs.
- 4.5 Wheatley et al (2019) identify criteria with which to assess the desirability of a new rent control policy focusing on five key outcomes:
- **Affordability for existing PRS tenants.** We note that while the policy may be targeted at improving rental affordability for existing tenants, the existence of controls may worsen affordability for potential tenants who cannot access controlled properties. The econometric evidence for instance has pointed out that households at least as needy as those in rent-controlled properties may be excluded and forced into lower quality and more expensive housing (i.e. we cannot assume they get into social housing). Moreover, tenants in controlled properties may have to make various side payments in addition to formal rent payments in order to secure a property. Tenants in neighbouring non-controlled areas may face rising rents as demand shifts spatially because of control-induced shortages. We would also note recently published evidence from Berlin suggesting that while the 2015 rent brake improved affordability these impacts were short lived and it wasn't necessarily the poorest households who benefited most.<sup>22</sup> There may therefore be several levels of affordability analysis required if we are to better understand the net and distributional effects of different approaches.
  - **Security of tenure** is a key component of the regulatory regime (i.e. threat of eviction lessened). Whitehead and Williams note the critical (and perhaps necessary) shift towards the more frequent combined use of third-generation controls and longer – often indefinite – tenancies.
  - **Feasibility** (administrative infrastructure, monitoring and enforcement, and, presumably, data and evidence) has been discussed in the section above. These practicalities, requirements and costs are undoubtedly a critical, if sometimes overlooked, dimension of successful policy delivery.

<sup>22</sup> Breidenbach, P., Eilers, L. and Fries, J. (2022) Temporal dynamics of rent regulations – the case of German rent control, *Regional Science and Urban Economics*, 92, <https://doi.org/10.1016/j.regsciurbeco.2021.103737>. In reviewing a draft of this paper Whitehead commented that evidence from places like San Francisco and New York also suggest that benefits are not well targeted to lower income households.

- **Negative risk to the wider housing market and economy** (particularly on housing supply and the labour market, but also on the wider rental market). The Scottish Government have talked about not compromising quality in the sector. The issues highlighted here are often about reductions in rental supply, lower investment in maintenance, and reduced labour mobility. Rent control leading to reduced labour movement is a common part of the academic economic evidence but there is less clarity over its impact on property maintenance (and we know that well-designed non-price regulation may be able to weaken negative maintenance effects, e.g. through the right to repair). We think that the traditional view about rent controls reducing supply is less convincing, in part because it depends on the 'bite' of the control relative to expected returns for landlords, but also because it makes simple assumptions about what suppliers do in terms of exit from the market, who they sell to, or whether they are less responsive to controlled rents (there is certainly evidence that where the structure of landlordism in an area comprises more small scale landlords they can respond quite differently to larger and better capitalised landlords).<sup>23</sup>
- **Equity** (i.e. the balance between landlords and current and potential tenants, including the less advantaged). This is not independent of some of the other factors above (and perhaps this is one reason why Wheatley et al did not focus on this criterion so much) but it does raise a couple of important points. First, not all landlords are wealthy or even comfortable. They may actually be reliant on their rental income as a pension or, indeed, to make ends meet.<sup>24</sup> At the same time, and while rent controls may be viewed by some as a mechanism that redresses the tenant-landlord balance, suppliers have been facing other economic difficulties before rent regulation i.e. a succession of adverse tax changes which appear, according to sector stakeholders and housing strategy teams in parts of Scotland, to be generating market exits (Hanlon, et al, 2021).
- At the same time as rental affordability is an issue, there is a intersecting policy debate over lack of energy efficiency and achieving net zero in the PRS. Seeking energy efficiency improvements in the PRS will be a difficult challenge even in the absence of any rent control regime. If rent control were to significantly suppress rental incomes then that challenge becomes all the greater. This points to wider issues – that are a more established part of the rent control debate - about where and how property improvements warrant a rent increase (e.g. where tenants do not value the improvement or view it as a necessary repair).

<sup>23</sup> Whitehead argues that in order to restrict excessive movement to e.g. short term lets, there needs to be legal tenure constraints, as in Denmark (but not the UK, where there is much evidence of such movement) so that the tenure of a property cannot be changed.

<sup>24</sup> See Soaita, A., Gibb, K. and MacLennan, D. (2019) Housing Wealth Inequality in Scotland: International Evidence Review. CaCHE: Glasgow

## 5. Final reflections

5.1 Our final reflections return to what this means for Scotland and developing an effective system of rent control at national level over this Parliament:

- The national housing policy context and history matters (and, as we have seen, not just the wider welfare regime cluster). Sweden's unitary housing system is longstanding. An aspiration to move to something similar (reducing housing's role as a site for holding wealth, de-commodifying housing and focusing on housing as shelter and not an asset, equal rights across tenure, de-speculating the housing market, etc.) is recognisable in the *Housing to 2040* long term vision and principles. This is a highly ambitious aspiration and there is a significant job to do to build in Scotland the institutions and infrastructure that makes the Swedish system tick, not least the collective bargaining system. That is not to say that contexts do not change or paths evolve – but it is no small feat to drive that process consciously rather than it be the consequences of opportunities created by profound shocks like Covid or the Global Financial Crisis. The importance of context also does not imply that there are not any international lessons to build on and carefully customise for domestic consumption.
- The Fair Deal for Tenants consultation makes it clear that the Scottish Government seeks to work (including within the development of rent controls) from a positive vision for the private rented sector and that there is an evident long-term commitment to ramping up the government's approach to PRS data and evidence. Both are welcome innovations. The international evidence suggests both issues are important for the credibility, durability and, in the case of data, for operational policy development.
- There is no ducking the need for the infrastructure and support required to implement and enforce the system. There will need to be a serious effort to cost the running of this system, as well as understand its market and distributional outcomes. And there needs to be robust and appropriately resourced operations put in place. There may be lessons on regular monitoring to learn from Ireland in this regard.
- We are convinced that there would be value in developing a more detailed on the ground understanding of policies of interest with local experts and practitioners e.g. in France, Germany, Netherlands, Sweden and Ireland. This briefing note has quickly pulled together high-level information. It is a start, but local expertise is necessary to understand fully the nuances of systems operating elsewhere.

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## Annex Table 1: Regulation of Rents in 33 European Countries

<b>Country</b>	<b>Is there a rent regulation system?</b>	<b>What is regulated: initial rents and/or rent increases?</b>	<b>RC generation</b>	<b>Share of PRS (% of total)</b>
Austria	YES (several models date-based)	Initial rents and/or rent increases	2nd	16.3
Belgium	YES	rent increases	3rd	23
Bulgaria	NO	-	-	1.7
Croatia	YES (open ended rental contracts)	rent increases	3rd	2.9
Cyprus	YES (statutory tenancies)	rent increases (max of 14%)	(Mild) 3rd	18.8
Czech Republic	NO	-	-	17.6
Denmark	Yes (multiple forms)	Initial rents and rent in-creases	2nd	24
England	NO (bar pre-89)	-	-	18
Estonia	NO	-	-	17.3
Finland	NO	-	-	16
France	YES	Initial rents & rent in-creases in larger cities; elsewhere increases only	2nd	23
Germany	YES	Rent increases (reference rent) and rent brakes on new lets in high demand areas	3rd	48
Greece	NO	-	-	19.8
Hungary	NO	-	-	8
Iceland	NO	-	-	11.1
Ireland	YES (RPZs)	Initial rents and rent in-creases tied to 4%	(Mild) 2nd	18.5
Italy	NO	-	-	16.3
Latvia	NO	-	-	14.7
Lithuania	NO	-	-	9
Luxembourg	YES (in part)	Rent increases fixed for 3 years	3rd	27.7
Malta	NO	-	-	14.6
Netherlands	YES (excludes high quality property)	Initial rent & rent in-creases – quality points	2nd	8
Norway	YES	rent increases	3rd	22.2
Poland	YES	rent increases	3rd	4
Portugal	NO (bar pre-90)	-	-	18
Romania	NO	-	-	4.2
Scotland	YES (RPZs)	RPZs, annual increases, unreasonable test	(Mild) 3rd	11.6
Serbia	NO	-	-	5
Slovakia	NO	-	-	2.6
Slovenia	NO	-	-	3
Spain	YES (depends date of contract)	Rent increases for the first 3-5 years	3rd	10.1
Sweden	YES	Initial rents based on utility value and increases in collective bargaining	2nd	41
Switzerland	YES	Rent increases	3rd	52

Source: Kettunen and Ruonavaara (2021) table 1 p.1450 [based on 2017 national reports]