

The Cost of Living (Tenant Protection) (Scotland) Act 2022: First Report to the Scottish Parliament

Laying number: SG/2023/3

January 2023

Executive Summary

Overview

Rented households are more likely to have lower household incomes, higher levels of poverty and to be financially vulnerable. The current costs crisis exacerbates existing social and economic pressure faced by those living in a rented home, making them more vulnerable as a whole. These pressures are particularly acute during the winter months given the rise in fuel use and costs during this period.

To respond to the emergency situation caused by the impact of the costs crisis on those living in the rented sector, the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the Act”) introduced a temporary, variable rent cap¹ and a temporary moratorium on evictions, along with increased damages for unlawful evictions – until at least 31 March 2023 provided it remains necessary and proportionate. The Act also contains powers to temporarily modify the rent adjudication process in connection with the expiry of the rent cap. Hereafter, all references to statutory provisions (i.e. ‘section’ or ‘Part’ numbers) relate to the Act unless otherwise specified.

Similar to our response to the emergency situation caused by the Coronavirus pandemic, the Scottish Government legislated on the basis that immediate action was required to respond to the exceptional economic circumstances currently being faced across Scotland as a result of the costs crisis. In seeking Parliament’s approval to pass the Act enabling us to respond to the crisis, the Government has made clear:

- that the powers taken are proportionate in order to respond to the costs crisis and will last only as long as required; and
- that the Scottish Parliament have continued oversight of the necessity of those powers and hold Scottish Ministers to account for their use.

To facilitate our accountability to the Scottish Parliament, this is the first report on the review of the operation of the provisions in Part 1 with a view to considering whether those provisions remain necessary and proportionate in connection with the cost of living (per section 9(1)(a)). As part of the review process, a consultation exercise has taken place with local authorities, and a wide range of stakeholders that represent the interests of tenants, landlords and financial institutions/investors that may be affected by the Act.

Specifically, the report will cover the following:

- how any of the powers conferred by Part 1 have been exercised (section 9(2)(a));
- the steps that Scottish Ministers have taken to meet the requirement in section 3 to ensure that tenants affected by the provisions of Part 1 receive appropriate information, advice and support for the period during which Part 1 remains in force (section 9(2)(b));

¹ Defined in the Act as the ‘permitted rate’

- the status (whether or not any power under a provision has been exercised, whether it is still in force, whether it has been suspended or revived or expired during the reporting period) (section 9(2)(c)(i) and section 9(5));
- a statement that the Scottish Ministers are satisfied that the status of those provisions is appropriate (section 9(2)(c)(ii));
- a summary of how the views of those consulted were taken into account by the Scottish Ministers in finalising this report (section 9(3) and (4)); and
- a consideration and explanation of proposed action in relation to the rent cap as regards the social rented sector (section 9(7)).

The end of the first reporting period for the Act is 31 December 2022 and our commitment is to publish this (the first) report within 14 days of the reporting period ending. Thereafter, the reporting period shall be three-monthly whilst Part 1 remains in force and subsequent reports will be laid before the Scottish Parliament within 14 days after the end of each reporting period. This helps ensure that the Scottish Parliament has regular oversight of the legislation, allowing it to hold the Scottish Ministers to account for their use of the powers available to them, and is important as part of our commitment to transparency.

Statement by Ministers on their satisfaction that the status of the Part 1 provisions is appropriate (required by section 9(2)(c)(ii) of the Act)

This report covers the period from 28 October to 31 December 2022. Scottish Ministers have undertaken a review of the provisions of Part 1 of the Act, in order to consider whether those provisions remain necessary and proportionate in connection with the cost of living.

At the end of this reporting period, it is clear that the unprecedented economic challenges are continuing to impact acutely on those who rent their home and therefore, having considered the outcome of this review, Scottish Ministers are satisfied that the status of the Part 1 provisions in the Act is appropriate at the end of this reporting period. This will be kept under review going forward.

Scottish Ministers have also undertaken a review of the Scottish Statutory Instruments (SSIs) related to the Act and are also satisfied that the status of the SSIs, at the end of this reporting period, is appropriate.

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1. Introduction

1.1 The costs crisis exacerbates existing social and economic pressures faced by those living in a rented home, making them more vulnerable as a whole. These pressures are particularly acute in the winter given the rise in fuel use and costs during this period. Rented households are more likely to have lower household incomes, higher levels of poverty and to be financially vulnerable.

1.2 63% of social rented households and 40% of private rented households in Scotland are estimated to be financially vulnerable, with savings which would cover less than one month of income at the poverty line, compared to 24% of households buying with a mortgage and 9% of households owning outright.

1.3 The Act came into force on 28 October 2022 as a response to the ongoing emergency situation caused by the impact of the costs crisis on those living in the private and social rented sectors, and students living in college or University Halls of Residence and Purpose Built Student Accommodation in Scotland.

1.4 The intended effect of the temporary Act is to:

- protect tenants by stabilising their housing costs through the introduction of a temporary, variable rent cap;
- where possible, during the costs crisis, reduce impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless by giving them more time to find alternative accommodation; and
- seek to avoid tenants being evicted during the cost of living crisis (unless an exemption applies), through a moratorium on evictions.

Our approach to reporting

1.5 Section 9 of the Act sets out statutory reporting requirements for Scottish Ministers. This means that every three months Scottish Ministers must review and report on the need for the provisions in the Act to either be continued or to expire, where appropriate, based on the evidence available at the time. The statutory reports must undertake a review of the operation of the measures with a view to considering whether they remain necessary and proportionate in connection with the cost of living (section 9(1)(a) in accordance with sections 9(2) and 9(5)).

1.6 Before Scottish Ministers prepare a report, section 9(3) of the Act sets out that they must consult stakeholders who represent the interests of tenants and landlords that may be affected by the provisions in Part 1, and also with Local Authorities. Scottish Ministers may also consult other persons considered appropriate. Section 9(4) also sets out that Scottish Ministers must include a summary of how those views were taken into account in finalising their report. The report details initial engagement with stakeholder groups – representing tenant, landlord, financial institutions/investors and local authorities – in order to understand and gather evidence on the impact of the provisions, since they came into force.

1.7 The report must also set out the steps the Scottish Ministers have taken to meet the requirements in section 3 (information and advice for tenants) to

demonstrate action taken to ensure that tenants affected by the provisions of Part 1 receive appropriate information, advice and support for the period during which Part 1 remains in force.

1.8 Section 9(7) of the Act also sets out that, in respect of the reporting period ending 31 December 2022, Scottish Ministers must - in considering the application of the permitted rate (within the meaning of section 24A(1) of the Housing (Scotland) Act 2001) of 0% - explain whether they propose to:

- a) retain the permitted rate at 0%;
- b) increase the permitted rate;
- c) make regulations under section 8(1) to provide for the expiry of paragraph 3 of schedule 1; or
- d) make regulations under section 6(1) to suspend the operation of that paragraph.

1.9 It is important to acknowledge that this first report covers only the first nine week period that the Act has been in force (28 October to 31 December 2022). In addition, some of the reporting arrangements are newly established and require new reporting and monitoring arrangements to be put in place, therefore the reporting process is likely to evolve and develop further over the coming weeks.

Status Update

1.10 The table on pages 7 and 8 of this report, provides detail on the status and operation of the provisions in Part 1 of the Act.

1.11 In addition, and in line with the range of evidence and supporting information provided in the accompanying documents and Impact Assessments that were published alongside the Cost of Living (Tenant Protection) Bill when it was introduced to Parliament on 6 October, this report also provides an updated overview of the current economic context underpinning the provisions (see Section 4).

1.12 As outlined above, our approach to reporting will ensure that Parliament is given as much information as is available on the operation of the Act. Where supplementary information has been provided, this is indicated within the 'Operation of provision in the reporting period' column within the table on pages 7 and 8, and can be found at section 7 of this report.

1.13 Finally, in line with section 9(7), section 6 of this report sets out Scottish Ministers consideration of the rent cap provisions within the social rented sector beyond 31 March 2023.

2. Status and operation of provisions

Up to 31 December 2022

Provision: Paras 1&2, Part 1, Schedule 1: Rent cap for residential tenancies (private residential tenancies; and applicable assured and short assured tenancies)	
Description: Introduces a temporary, variable rent cap in the private rented sector – initially set at 0% until 31 March 2023 in relation to in-tenancy rent increases. The provisions also allow for consideration of private landlords' prescribed property costs (associated with the rented property).	
Operation of the provision in the reporting period: In operation See supplementary information provided at 5.1 for further information.	Status at the end of the reporting period: Commenced and still in force
Provision: Para 3, Part 1, Schedule 1: Rent cap for social tenancies (Scottish secure and short Scottish secure tenancies)	
Description: Introduces a temporary, variable rent cap in the social rented sector – initially set at 0% until 31 March 2023 in relation to in-tenancy rent increases for tenancies under Housing (Scotland) Act 2001.	
Operation of the provision in the reporting period In operation See supplementary information provided at 5.2 for further information.	Status at the end of the reporting period Commenced and still in force (but see Section 6 for approach from 1 March 2023)
Provision: Para 4, Part 1, Schedule 1: Rent cap for student residential tenancies	
Description: Introduces a temporary, variable rent cap in relation to college and university rented accommodation and Purpose Built Student Accommodation (PBSA) – initially set at 0% until 31 March 2023 in relation to in-tenancy rent increases.	
Operation of the provision in the reporting period In operation See supplementary information provided at 5.3 for further information.	Status at the end of the reporting period Commenced and still in force

Provision: Part 1, Schedule 2: Protection against eviction from residential properties	
Description: The provisions prevent the enforcement of eviction action in the private rented, social rented and student accommodation sectors from 6 September 2022 but with relevant exemptions in relation to specified circumstances.	
Operation of the provision in the reporting period In operation See supplementary information provided at 5.4 for further information.	Status at the end of the reporting period Commenced and still in force

3. Duty to provide information and advice for tenants and steps taken

3.1 Section 3 of the Act requires that Scottish Ministers must take steps to ensure that tenants affected by the provisions of Part 1 receive appropriate information, advice and support.

3.2 In recognition of this, a wide range of information has been published for both private, social and student tenants on the Scottish Government [website](#), as follows:

- information for [private tenants](#) on the eviction moratorium and rent cap;
- information for [social housing tenants](#) on the eviction moratorium and rent cap; and
- information on the emergency measures for students living in [purpose built student accommodation and student halls](#) (in addition, links to this page was also provided via the Student Information Scotland website).

3.3 The above information can also be accessed via the Scottish Government's recently launched Cost of Living [portal](#).

3.4 Wider communication activity to support the measures coming into force and to help drive up awareness of tenants new rights also included:

- a Scottish Government news release on the day the measures came into force across all usual media streams;
- a wide range of social content was launched, including an [explainer video](#) – running across the main channels;
- the existing [Renters Rights website](#) was updated to include the new measures;
- information on tenants' rights was also included in the Cost of Living leaflet, which was distributed across Scotland (including GP surgeries, libraries, community centres and leisure centres). The leaflet included helpline numbers for organisations able to offer advice and support. This included both Shelter Scotland and Citizens Advice Scotland. The leaflet included a QR code which links to a digital copy of the leaflet, as well as translated and accessible versions;
- direct communications were also issued to all key partners (including tenant and landlord representative bodies, local authority landlords, housing associations and educational establishments) which included an update on the new legislation, and access to the campaign assets (such as website content, videos and images) to enable them to share via their own communication channels;
- direct communication with all registered landlords via local authorities text messaging alert took place;
- direct communication with all registered letting agents;
- engagement with the three Tenancy Deposit Schemes took place, to facilitate dissemination of information with tenants registered to their relevant newsletters – raising awareness and providing further information on the introduction of emergency measures; and

- a direct message to an extensive list of stakeholders, including colleges and university and purpose built student accommodation provider representatives, confirming the nature of the measures and that they have come into force which was sent along with links to information documents.

Cost of Living National Campaign

3.5 Renting rights was one of three policy strands which formed the Cost of Living Support marketing campaign. The campaign launched on 28 September and ran until 22 November 2022.

3.6 The Cost of Living Support campaign comprised different elements such as media, partnership and stakeholder engagement and public relations and signposted audiences to the Cost of Living Support website www.mygov.scot/cost-of-living-support.

3.7 Paid for media ran across different platforms – TV, out of home, radio and digital. Overall paid for activity contributed to three of four referrers of traffic to the website, successfully signposting audiences to further support across the three policy strands.

3.8 The campaign contributed to 79,232 link clicks to the campaign website. For renting rights specific advertising on Facebook and Instagram, one advert received 26,081 link clicks and 2.28% of users who saw the ad clicked through to the website, a strong indicator that the paid for media was reaching the target audience.

3.9 Partnership activity developed bespoke partnerships, for example collaborating with stakeholders who support private sector renters were targeted for meaningful engagement. Partners such as Shelter Scotland and Inverclyde Housing Rights Projects were also key. More widely, the stakeholder toolkit was shared with over 600 contacts with 33 public and third sector bodies. There were 140 downloads of the full toolkit, with a download rate which was far higher than other campaigns, reflecting the importance of the campaign to partners.

3.10 The public relations activity achieved feature articles in 90 Scottish local press titles, in addition to two feature platforms which all promoted the campaign website and the support available.

4. Updated Economic Context

4.1 Information on the economic context and key statistical and research findings that were used to help inform the development of the Cost of Living (Tenant Protection) Bill is set out in the Financial Memorandum² and the various impact assessments³ which were published along with the Bill, as well as separately published evidence papers.⁴ This section provides an update on the key evidence and data which has become available since these documents were produced.

4.2 A major challenge faced by households is the degree to which energy costs have risen, pushing more households into fuel poverty. Tables 1 and 3 show the change in the fuel poverty and extreme fuel poverty rate while tables 2 and 4 show the change in the total number of households in fuel and extreme fuel poverty between October 2022 and April 2023.

4.3 These tables show that the fuel poverty rate is expected to increase to 39% in April 2023 when the Energy Price Guarantee increases for a typical household from £2,500 to £3,000. This will result in an additional 120,000 fuel poor households compared to October 2022, bringing the total number of households in fuel poverty in Scotland to 980,000, of which 860,000 (34%) will be in extreme fuel poverty. Indeed this is an increase of around 260,000 households in extreme fuel poverty compared to October 2022.

4.4 While all tenure types will see an increase in both fuel and extreme fuel poverty this is uneven between tenures. For example the owner occupier sector will see a 4 percentage point increase in the fuel poverty rate and a 7 percentage point increase in the extreme fuel poverty rate. By comparison the social rented sector will see larger increases in both the fuel poverty rate (7 percentage points) and the extreme fuel poverty rate (19 percentage points). In fact come April 2023 half of all households in the social rented sector will be in extreme fuel poverty, the highest of any tenure. Conversely, the private rented sector will see the same percentage point change in the fuel poverty rate as owner occupiers at 4 percentage points, but a higher growth in extreme fuel poverty (10 percentage points).

4.5 In terms of total households, the private rented sector will see the smallest number of households move into fuel poverty (10,000), compared to 40,000 for the social rented sector and 60,000 for the owner occupier sector. Similarly, the private rented sector will also see the smallest number of households move into extreme fuel poverty (30,000) compared to 110,000 owner occupiers and 120,000 in the social sector. However, it should be noted that these figures are relative to the size of

² [Introduced | Scottish Parliament Website](#)

³ [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: Fairer Scotland Duty assessment - gov.scot \(www.gov.scot\)](#), [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: business regulatory impact assessment - gov.scot \(www.gov.scot\)](#), [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: equalities impact assessment - gov.scot \(www.gov.scot\)](#), [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: island communities impact assessment - gov.scot \(www.gov.scot\)](#), [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: data protection impact assessment - gov.scot \(www.gov.scot\)](#).

⁴ [Cost of Living Bill: economic background - gov.scot \(www.gov.scot\)](#), [Cost of Living Bill - Key Statistics - gov.scot \(www.gov.scot\)](#), [Cost of Living Bill: research evidence summaries - gov.scot \(www.gov.scot\)](#)

each tenure type, as the private rented sector is smaller than both the social rented and owner occupier tenures.

4.6 Despite the three tenure types experiencing changes in fuel poverty rates at different levels, there has been little change to the overall trend in fuel poverty with owner occupiers still having the lowest rates and social renters still having the highest. Indeed the gap between the fuel poverty rate for social renters and owner occupiers has increased from 30 to 33 percentage points. Conversely, the gap between private renters and owner occupiers has stayed similar at 24 percentage points. In terms of extreme fuel poverty owner occupiers still have the lowest rates; however, where private renters previously had the highest levels of extreme fuel poverty it is now the social rented sector that has the highest rates. Nevertheless, unlike fuel poverty the gap in extreme fuel poverty rates between owner occupiers and both private renters and social renters has increased from 17 to 19 and 13 to 25 percentage points respectively.

Table 1. Fuel poverty rate by tenure in October 2022 and April 2023

	Fuel poverty rate October 2022	Fuel poverty rate April 2023	Percentage point change
Owned outright	28%	33%	5%
Mortgaged	19%	21%	2%
<i>Owner Occupied subtotal</i>	<i>24%</i>	<i>28%</i>	<i>4%</i>
LA	52%	59%	6%
HA	57%	64%	7%
<i>Social rented subtotal</i>	<i>54%</i>	<i>61%</i>	<i>7%</i>
Private rented	48%	51%	4%
Scotland	35%	39%	5%

*Note differences may not sum due to rounding

Table 2. Households in fuel poverty by tenure in October 2022 and April 2023

	Households in fuel poverty October 2022	Households in fuel poverty April 2023	Change
Owned outright	250,000	290,000	40,000
Mortgaged	130,000	140,000	20,000
<i>Owner Occupied subtotal</i>	<i>370,000</i>	<i>430,000</i>	<i>60,000</i>
LA	190,000	220,000	20,000
HA	150,000	170,000	20,000
<i>Social rented subtotal</i>	<i>340,000</i>	<i>390,000</i>	<i>40,000</i>
Private rented	150,000	160,000	10,000
Scotland	860,000	980,000	120,000

*Note differences may not sum due to rounding

Table 3. Extreme Fuel poverty rate by tenure in October 2022 and April 2023

	Extreme fuel Poverty rate October 2022	Extreme fuel Poverty rate April 2023	Percentage point change
Owned outright	24%	32%	8%
Mortgaged	12%	17%	5%
<i>Owner Occupied subtotal</i>	19%	26%	7%
LA	31%	50%	19%
HA	32%	51%	18%
<i>Social rented subtotal</i>	31%	50%	19%
Private rented	35%	45%	10%
Scotland	24%	34%	10%

*Note differences may not sum due to rounding

Table 4. Households in extreme fuel poverty by tenure in October 2022 and April 2023

	Households in extreme fuel poverty October 2022	Households in extreme fuel poverty April 2023	Change
Owned outright	210,000	280,000	70,000
Mortgaged	80,000	120,000	40,000
<i>Owner Occupied subtotal</i>	290,000	400,000	110,000
LA	110,000	190,000	70,000
HA	90,000	140,000	50,000
<i>Social rented subtotal</i>	<i>200,000</i>	<i>320,000</i>	<i>120,000</i>
Private rented	110,000	140,000	30,000
Scotland	600,000	860,000	260,000

*Note differences may not sum due to rounding

4.7 The tables above on fuel poverty assume different mitigation packages to reflect the change in mitigations announced by the UK Government and Scottish Government. These are outlined in table 5 on the following page.

Table 5. Mitigation schemes

Mitigation	Included in scenario for		Eligibility
	October 2022	April 2023	
Energy Bills Support Scheme	Yes (£400)	No	Universal and received by all households in 2022/23. Not being continued in 2023/24.
Alternative Fuel Payments	No (£200)	No	Received by all households using fuels other than gas or electricity to heat their homes in 2022/23. Not being continued in 2023/24 but officials from the Department for Business, Energy & Industrial Strategy have advised that they will be keeping this under review.
Cost of living payment for households on means tested benefits	Yes (£650)	Yes (£900)	Received by households on means tested benefits in 2022/23 and 2023/24. Note: the amount will increase to £900 in 2023/24 up from £650 in 2022/23.
Cost of living payment for pensioners	Yes (£300)	Yes (£300)	Received by pensioner households in 2022/23 and 2023/24. Note: the eligibility criteria are changing and this will become universal in 2023/24, i.e. it will be received by all pensioner households, whereas in 2022/23 it was only received by pensioner households in receipt of the Cold Weather Payment.
Cost of living payment for people on disability benefits	Yes (£150)	Yes (£150)	Received by people on disability benefits in 2022/23 and 2023/24.
The Scottish Government's Cost of Living Award	Yes (£150)	No	This £150 Council Tax rebate was received in 2022/23 by households in Council Tax bands A-D or in receipt of Council Tax Reduction benefit. There has been no announcement regarding a rebate for 2023/24

4.8 Inflation as measured by the Consumer Price Index (“CPI”) increased from an annual 9.9% in August to 10.1% in September, and then to 11.1% in October 2022⁵. Although the rate eased slightly to 10.7% in November, this was still above the level in August, and not much below the level in October, which was the highest level since October 1981.⁶ While the main driver of high inflation is the price of energy (the housing, water, electricity, gas and other fuels component rose by 26.6% in November), inflationary pressures remain broadly based, with other necessities such as food and non-alcoholic beverages (16.4%), clothing and footwear (7.5%) and

⁵ [Consumer price inflation, UK - Office for National Statistics](#). Figures are shown for CPI rather than CPIH, since the latter includes owner occupiers’ housing costs and thus is less relevant for assessing the cost of living pressures faced by rented households.

⁶ Based on ONS indicative modelling as the CPI national statistic series only begins in January 1997.

transport (7.2%) showing elevated levels of inflation. This is further illustrated by CPI inflation excluding energy increasing by an annual 7.4% in November 2022, higher than the 7.0% recorded in August.

4.9 The Bank of England expects inflation to remain high in the short to medium term, with their central projection that CPI inflation will remain in double digits in the first half of 2023, before easing somewhat to 8% in Q3 2023 and 6% in Q4 2023, although this would be well above the inflation target of 2%.⁷ More recent forecasts from the Office for Budget Responsibility⁸ and Scottish Fiscal Commission⁹ also expect inflation to remain close to double digits until the second half of 2023. While their forecast of 7% inflation in Q3 2023 and 4% inflation in Q4 2023 is somewhat lower than the Bank of England projection,¹⁰ they similarly expect inflation to remain significantly higher than the 2% target until the end of 2023.

4.10 Increases in pay and earnings remain below inflation. The most recent data on average weekly earnings (August-October 2022) shows that across Great Britain, while total pay and regular pay rose in nominal terms, both at an annual rate of 6.1%, they fell in real terms by 2.7% (based on the ONS headline measure which uses CPIH as the deflator; using CPI, the fall was 3.9%)¹¹. The fall in real regular pay, while slightly smaller than the record fall in April to June 2022 (3.0%), remains among the largest falls since comparable records began in 2001. While the annual growth rate in median pay in Scotland taken from HMRC PAYE records has shown an increase, from 4.8% in August, to 5.8% in September, 6.3% in October and 8.5% in November 2022, this has also been lower than the CPI rate for the corresponding months.¹²

4.11 In their most recent set of forecasts (December 2022), the Scottish Fiscal Commission expects that Scottish households will see the biggest fall in their real disposable income since records began in 1998, with real disposable income per person falling by 3.3% in 2022-23 and by 2.3% in 2023-24.

4.12 The UK Government uses a lagged measure of the CPI inflation rate to uprate benefits so that benefit payment systems can be updated in time for new payment amounts to be paid each April. Accordingly, allowances on reserved benefits for 2022-23 were uprated in April 2022 by the 12 month to September 2021 CPI inflation rate of 3.1%. With the Office for Budget Responsibility (OBR) forecasting inflation in the UK will average around 10% in 2022-23, this increase in reserved benefits has been significantly below inflation in the current fiscal year.

4.13 In their 2022 Autumn Statement, the UK Government confirmed reserved benefits will continue to be uprated by the previous September's CPI inflation rate.

⁷ Projections taken from the Bank of England [November 2022 Monetary Policy Report](#), using the mean projection conditioned on market interest rate expectations.

⁸ Office for Budget Responsibility, [Economic and fiscal outlook - November 2022](#).

⁹ Scottish Fiscal Commission, [Scotland's Economic and fiscal Forecasts – December 2022](#).

¹⁰ OBR/SFC forecasts were published alongside/after the UK Government Autumn Statement, which contained more information on how the Energy Price Guarantee will work in 2023/24, resulting in a slightly lower forecast path for energy bills than the Bank of England had assumed.

¹¹ ONS, [Average weekly earnings in Great Britain](#).

¹² [Earnings and employment from Pay As You Earn Real Time Information, seasonally adjusted - Office for National Statistics \(ons.gov.uk\)](#)

Disability and low-income benefits will therefore be uprated by 10.1% in 2023-24, in line with September 2022 CPI. While this increase will compensate benefit clients for the exceptionally high rate of inflation in 2022-23, they will again likely face elevated inflation in 2023-24, with the OBR forecasting inflation will average around 5.5%. Benefit clients will receive compensation for this in 2024-25.

4.14 The UK Government has also decided to freeze Local Housing Allowance (LHA) rates for the third year running at 2020 levels. For sitting tenants whose rents are close to or above the relevant LHA rate, this would mean that an increase in their rent would result in little or no increase in their benefit payment.

4.15 This inherent time lag between the inflation rate used to uprate benefits (preceding September) and inflation at the time of uprating (following April) can be a particular issue during times of high inflation when household budgets are under pressure and benefit clients need to wait some time before the true value of their benefits is restored. In April 2022 the Scottish Government therefore uprated several devolved benefits by 6% in contrast to the UK Government's 3.1% uprating of reserved benefits, i.e. by more than the lagged measure of inflation. More recently, the Scottish Government increased the Scottish Child Payment from £20 to £25 in November 2022 and eligibility was extended from eligible children aged under 6 to under 16. All other devolved benefits will be uprated by 10.1% in April 2023, in line with September 2022 CPI, as announced in the Scottish Government Budget published on 15 December 2022.

4.16 The latest Scottish Government annual Private Sector Rent Statistics 2010 to 2022 were published on 29 November 2022¹³. The most recent figures cover the 12-month period to end-September 2022, and so largely pre-date the Programme for Government proposals for emergency cost of living rent freeze legislation announced on 6 September 2022. In addition the figures are based predominantly on advertised rents, and so do not represent rent changes for existing tenants to whom the rent freeze applies. However these figures do help to demonstrate trends in advertised rents as the legislation was being put in place, with average two bedroom rents increasing in 17 out of 18 areas of Scotland compared with the previous year. In 7 of these areas, increases were above the average 12 month UK CPI inflation rate of 7.6%, ranging from 7.7% in Greater Glasgow to 10.3% in South Lanarkshire. Meanwhile the average 2 bedroom rent in the Ayrshires decreased by 1.5%.

4.17 These regional trends combine to show an estimated 6.2% annual increase in average 2 bedroom monthly rents at a Scotland level in the year to end September 2022. Average rents increased at a Scotland level across all property size categories, with increases of 6.3%, 6.2%, 7.4%, 7.5% and 6.9% for 1 to 4 bedroom and 1 bedroom shared properties respectively.

4.18 The statistics also provide information on the increases in average rents seen since 2010. At a national level average two bedroom rents have increased by a cumulative 32.9%, similar to CPI inflation of 33.7%. However there are substantial differences beneath this at a regional level, with Greater Glasgow and Lothian having seen cumulative increases in average rents above the rate of inflation

¹³ [Private Sector Rent Statistics, Scotland, 2010 to 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/private-sector-rent-statistics-2010-to-2022/pages/13.aspx)

between 2010 and 2022 across all property sizes, and average two bedroom rents in these areas rising by 52.3% and 51.5% respectively. Other areas such as the Ayrshires, Dumfries and Galloway, North Lanarkshire and West Dunbartonshire have seen increases in average rents of less than the rate of inflation across all property sizes.

4.19 Since the rent data which is available largely relates to advertised rents, the ONS Private Rental Index experimental statistics attempt to represent trends across all tenants by incorporating an assumption relating to average tenancy length to account for rents to sitting tenants. The increase of 4.4% in November 2022 was the highest since the series started in 2012. The ONS series only reports on national level increases, and the Scottish Government data presented above and the letting agent data presented below show there is significant geographical variation.

4.20 Data from letting agents, which relates to new let rents only and is thus higher than the ONS Private Rental Index, also illustrates that rental growth has been high, with Rightmove¹⁴ reporting an annual increase of 13.0% and Citylets¹⁵ an increase of 8.3% in Q3 2022 in Scotland. At a more disaggregated level, Citylets reported annual increases of 14.7% for Edinburgh, 12.6% for Glasgow, and 8.0% for Aberdeen, while Rightmove reported an increase of 18.0% for Edinburgh. Note that the time period of this data overlaps with the Scottish Government rent statistics discussed above, since the latter include data for Q3 2022 as part of the latest results for the year to end-September. Slightly more recent data from Zoopla for October 2022, reports an increase in new let rents of 11.4% for Scotland, 14.1% for Glasgow, 12.4% for Edinburgh and 9.7% for Aberdeen.¹⁶ Letting agencies only cover around half of the private rented sector, and each letting agent's data will be affected by its market coverage, which will vary by geography and market segment; in contrast, Scottish Government data is designed to be representative of the whole market.

4.21 Citylets further report that the stock of listings and the time to let remain at low levels. It is important to bear in mind that indicators such as time to let and different measures of listings are affected by a range of factors, such as the demand-supply balance, and are not a direct measure of the underlying private rented stock.¹⁷ Average time to let, at 19 days in Q3 2022, remains significantly below the two-year period prior to the Covid-19 pandemic, when it fluctuated between 29 and 37 days, before increasing to 40 days in Q2 2020 due to the impact of pandemic-related restrictions. However, the sharp reduction in time to let which followed this had

¹⁴ [Rental Price Tracker | Property blog \(rightmove.co.uk\)](https://www.rightmove.co.uk/property-blog/rental-price-tracker/)

¹⁵ [Citylets Rental Market Reports](https://www.citylets.co.uk/rental-market-reports/)

¹⁶ [Zoopla UK Rental Market Report | Zoopla Advantage \(zpg.co.uk\)](https://www.zoopla.co.uk/advantage/uk-rental-market-report/)

¹⁷ For example, even if the underlying privately rented stock was unchanged, an increase in demand would mean that the average time a property needs to spend on the market before finding a buyer would decrease, which in turn would reduce the number of listings on letting agent websites at a given time. Generalising this point, if the increase in demand has been higher (or the decrease in demand has been lower) than the change in supply, then time to let and the stock of listings will fall, irrespective of whether the underlying privately rented stock has increased or decreased. The flow (as opposed to stock) of new listings may provide a better indicator of underlying stock, but this too can be affected by other factors; for example, if tenants begin to stay in their tenancies for longer due to greater security of tenancy, then the flow of new listings can fall even if the underlying private rented stock is unchanged (time to let and the stock of listings would also be affected by an increase in tenancy length).

already occurred by Q4 2021 (when the average time to let stood at 17 days), and it has remained at similar levels since then, as has the stock of listings. Rightmove recorded a 2.0% increase in the flow of new listings coming to market in Scotland in Q3 2022, which suggests that the decline in time to let and the stock of listings is due more to demand than supply factors.

4.22 Rents on relets are not subject to controls under the legislation. Data from the 2019 Scottish Household Survey on length of time at which the respondent has been at their current address suggests that about 35% of privately rented properties would experience a turnover within a 12 month period¹⁸ (this figure could be affected if there has been a change in behaviour, e.g. if tenants are staying longer due to their rents being controlled).

4.23 Mortgage interest rates, which had been on an upward trend since the end of 2021, experienced a further sharp increase after the UK Government Growth Plan / Mini-budget on 23 September 2022, with Moneyfacts data¹⁹ showing that the average advertised two-year fixed rate rose from 4.74% on 23 September to 6.65% on 20 October, before reversing some of this increase to stand at 6.13% on 22 November. Similarly, the average advertised five-year fixed rate rose from 4.75% on 23 September to 6.51% on 20 October, before falling to 5.95% on 22 November.

4.24 Although precise data does not exist, it is estimated that around 36% of Scottish private rented properties have an outstanding buy-to-let mortgage.²⁰ Across the UK, around 28% of outstanding buy-to-let mortgages are on variable rates and so will be immediately affected by increases in interest rates. Of the 72% on fixed rates, it is estimated that around third will reach their end of term over a 12-month period,²¹ meaning that about half of outstanding buy-to-let mortgages will experience a rate increase over a 12-month period. This suggests that a little under a fifth of all privately rented properties in Scotland have an outstanding buy-to-let mortgage which would experience a rate increase over a 12-month period. Taking into account turnover in the sector, over a 12-month period it is estimated that somewhat over a tenth of private rented sector properties in Scotland would constitute properties with an outstanding buy-to-let mortgage where the interest rate has increased and where the tenant has not changed.

4.25 Assuming that, when remortgaging, fixed interest rates increase from around 2% (where they were prior to December 2021, when the Bank of England began to tighten monetary policy) to the current levels of around 6% (or that the rate on a variable rate mortgage will increase cumulatively by this amount over a 12-month period), and using the average outstanding balance on a UK buy-to-let mortgage (adjusted to reflect lower average prices in Scotland) and the share of interest-only mortgages in the UK buy-to-let sector,²² the average increase in mortgage payments

¹⁸ See Table 3.8c at SHS Data Explorer (shinyapps.io)

¹⁹ [Five-year fixed average rate drops below 6% | moneyfactsgroup.co.uk](https://www.moneyfactsgroup.co.uk/news/five-year-fixed-average-rate-drops-below-6/)

²⁰ [Cost of Living Bill - Key Statistics - gov.scot \(www.gov.scot\)](https://www.gov.scot/cost-of-living-bill-key-statistics/).

²¹ This estimate is based on data on the length of interest rate fixes for all residential lending, and thus assumes that the pattern for the buy-to-let sector is not significantly different.

²² Financial Conduct Authority data show that in relation to non-regulated residential lending (of which buy-to-let mortgages are the major component) in Q3 2022 80% of outstanding were interest-only. See MLAR Table 1.32 at [Mortgage lending statistics - December 2022 | FCA](https://www.fca.org.uk/publications/mlar/mortgage-lending-statistics-december-2022).

is estimated to be in the region of £300 per month for those mortgages which experience an increase. Again, this figure should be regarded as indicative due to limitations on publicly available data relating to the characteristics of buy-to-let mortgages in Scotland.

4.26 Results from the ONS Opinions and Lifestyle Survey across the period 22 June to 11 September 2022²³ show that 88% of respondents in Scotland had reported their cost of living to have increased over the latest month, with 15% reporting that their cost of living had increased due to increases in rent or mortgage payments. In addition, 33% of respondents currently paying rent or mortgage payments over this period in Scotland had reported that their rent or mortgage payments had gone up in the last month.

4.27 Tracking the changes to size of the private rented sector with certainty over the most recent period is challenging given limitations in available sources of data. Official statistics on the size of the sector are based on annual Scottish Household Survey estimates, which have shown an increase in the size of the sector from 120,000 in 1999 to 340,000 in 2019. However, the timeliness and comparability of more recent figures have been impacted by the effects of the Covid pandemic on the operation of the survey.

4.28 Separate monthly monitoring figures on the number of registered properties are available from the Scottish Landlord Registration System. These show that the number of properties appears to have remained relatively stable since the start of 2022. There was a slight drop of around 1% from 339,525 properties in January to 336,705 properties in May 2022, an increase of 1% to September 2022 back up to 340,033 properties, and then a slight drop of 0.3% to 338,933 properties in November 2022. However there are likely to be various data quality issues that may impact on the figures obtained from this data source, including on how frequently information from landlords is updated on the system.

Table 6: Number of registered properties on the Scottish Landlord Registration System, January 2022 to November 22

	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22
Scotland	339,525	339,309	338,768	337,325	336,705	338,237
	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	
Scotland	338,721	339,632	340,033	339,574	338,933	

Source: Scottish Landlord Registration System monthly monitoring figures.

4.29 Latest figures on eviction applications registered at courts show that there were a total of 430 social sector summary cause eviction applications registered in the courts in November 2022, which compares to 458 eviction applications registered in August 2022, 421 in September 2022 and 388 in October 2022, and which is above the monthly levels seen prior to this each month between April 2020 and July 2022. Note that these are overall figures and do not specifically identify the number of applications that fall within the scope of the emergency legislation.

²³ [Impact of increased cost of living on adults across Great Britain - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

4.30 There were a total of 126 private sector eviction applications received by the First Tier Tribunal in November 2022, which is a decrease on the 312 applications in August 2022, the 227 applications in September 2022 and 212 applications in October 2022. However, this is higher than the monthly levels seen between April 2020 and April 2022. Again, these are overall figures and do not specifically identify the number of cases that fall within the scope of the emergency legislation.

4.31 According to recent YouGov polling for the Scottish Government²⁴, during the period from late September to early November 2022, concern about paying rent²⁵ has decreased slightly for social renters (from 19% to 12%) but concern among private renters has mainly held steady (at 22% and 21% respectively) although figures are subject to a margin of error. However, levels of concern about paying mortgage/rent remain higher in the rented sector than all tenures as a whole (16% for renters compared to 10% all tenures in November 2022).

4.32 This same polling found that, in early November, renters were more likely than respondents from all tenures as a whole to say that they were managing less well financially²⁶ (32% of renters compared to 21% all tenures as a whole), and more likely to say that they were struggling to pay for household bills, including energy bills, rent and mortgage payments at least a little (68% of renters compared to 53% all tenures as a whole, with 38% of renters compared to 24% all tenure as a whole saying somewhat or a lot). For social renters, the numbers of respondents who reported managing less well financially²⁷ declined from 49% to 38% and the proportion struggling somewhat or a lot to pay household bills slightly decreased from 47% to 41% from August to November, while for private renters both measures remained stable at 29% and 25% respectively for the former and at 35% for the latter, although figures are subject to a margin of error.

4.33 A November 2022 online poll by YouGov for Citizens Advice Scotland (CAS) of 1002 Scottish adults also found that 38% of respondents felt worried or worried/anxious about being able to pay their energy bills, as well as feeling worried/anxious about being able to heat their home. A further 62% of the sample expressed feeling worried/anxious about the cost of everything at the moment, not only energy bills²⁸.

4.34 Although not based on a representative sample of Scotland's population, evidence from the Scottish Government's People's Panel for Wellbeing (a panel of around 30 diverse members of the public) held in late September 2022²⁹, found that the cost of living crisis had resulted in panel members having to make hard choices about whether to heat or eat; struggling to afford basic necessities; making lifestyle adjustments; and being forced into life-changing situations such as cutting short

²⁴ From YouGov online polling for Scottish Government; fieldwork: week 127 - 23-25 August; Week 132 - 27-29 September; week 137 - 1-3 November; sample of c.1000 adults 18+ across Scotland each wave; weighted to be fully representative demographically and geographically. Data tables for all adults can be found here: [Public attitudes to coronavirus, cost of living and Ukraine: tracker - data tables - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/public-attitudes-to-coronavirus-cost-of-living-and-ukraine-tracker-data-tables/gov.scot)

²⁵ This was part of a prompted list of potential concerns in the next 2-3 months

²⁶ Not managing very well OR Having some financial difficulties OR In deep financial trouble

²⁷ Not managing very well OR Having some financial difficulties OR In deep financial trouble

²⁸ [CAS launches 'Big Energy Saving Winter' campaign | Citizens Advice Scotland](https://www.cas.scot/cas-launches-big-energy-saving-winter-campaign-citizens-advice-scotland)

²⁹ Unpublished People's Panel Wellbeing 2022 and Beyond research findings

maternity leave or giving up university. They also reported existing physical health conditions worsening and mental ill health developing because of the crisis; and panel members expressed a concern that the crisis would only worsen.

4.35 Figures provided by Opinium based on a survey carried out in October 2022 of 1000 UK 18 to 35 year olds (including those living in Scotland),³⁰ found that 27% (n=206) of surveyed young people who currently live in the PRS reported planning to move home with their parents in the next 12 months, and 12% (n=96) have already done so due to the cost of living crisis. Young people in this study also reported taking or planning to take other actions in response to the cost of living crisis that included moving in with friends, moving to live with more people to help manage bills, or moving to a cheaper rental property. Similarly, experimental ONS survey data from English university students in October/November 2022 found nearly one in five (18%) students said they had considered moving back to their family home and commuting to their university from there, with 6% of all students planning to do so³¹.

³⁰ [UK 18-35 Renters – Opinium](#)

³¹ [Cost of living and higher education students, England - Office for National Statistics](#)

5. Consultation with stakeholders

5.1 The Act sets out that before preparing this statutory report, Scottish Ministers must consult with persons representing tenants and landlords, and local authorities. It goes on to set out that Scottish Ministers may also consult other persons considered appropriate, and detail how the views of those consulted have been considered in finalising the report.

Call for Evidence

5.2 Scottish Ministers issued a call for written evidence to a wide range of rented sector stakeholder groups in respect of the social, private, and student rented sectors representing a range of interests. A list of the stakeholders consulted as part of this exercise is available at Annex A of this report.

5.3 For the private rented and student accommodation sectors, stakeholders representing landlords' interests were invited to share their views on the impact of the measures on landlords and those involved in the provision of private rental accommodation.

5.4 In respect of the social sector, a key focus of stakeholder engagement with the social housing sector has been undertaken through the Short Life Task and Finish Group (see section 6 of this report for the Group's remit and Annex B for membership). Scottish Ministers were also committed to providing a further opportunity for individual organisations to respond to understand how the measures are affecting those working directly in the social housing rented sector in Scotland. The call for evidence was therefore also shared with Regional networks, Registered Tenant Organisations, Registered Social Landlord Chief Executives and Local Authority Directors of Housing.

5.5 The call for evidence set out three questions:

- What has been the impact of these temporary measures on your perception of risk associated with involvement in the rental sector in Scotland?
- Do you have evidence of behavioural changes as a direct result of the temporary measures coming into force?
- Is there any other evidence (qualitative or quantitative) you can provide at this stage about the impact of the temporary measures to date?

5.6 Stakeholders representing tenant groups were also invited to share their views on the impact of the measures on tenants across the private and social rented sectors and student accommodation sector. That call for evidence sought responses to the following three questions:

- Have the temporary measures provided any immediate assistance to tenants?
- Are you aware of any wider impacts of the provisions on tenants, such as reducing impacts on health and wellbeing due to the additional security being provided by the temporary measures?
- Do you have evidence of behavioural changes as a direct result of the temporary measures coming into force?

- Are you aware of any evidence that tenants are experiencing landlords not meeting the terms of the emergency requirements (seeking to increase rent, unlawful evictions etc)?

5.7 Recognising the potential for measures to have an impact on homelessness, the call for written evidence was also shared with the [Change Team](#).

Summary of Call for Evidence Responses

Note: The following summary was prepared on the basis of evidence supplied in response to a targeted call for evidence from key stakeholder groups by the Scottish Government in November/December 2022.

The evidence outlined in these submissions was drawn from a wide variety of sources including; anecdotal evidence, lived experience examples, internal stakeholder data such as member surveys, stakeholder perspectives and externally published data.

In most cases, it has not been possible for Scottish Government analysts to verify the data provided in these submissions.

5.8 In total, 68 responses were received to the call for evidence, as follows:

- 7 from tenant representative and advice groups;
- 3 from student accommodation providers;
- 1 from a housing professionals membership organisation; and
- 57 from landlord/financial/investor representative groups, local authorities and housing associations, of which;
 - 22 represent interests in the private rented sector
 - 31 represent interests in the social rented sector
 - 4 represent interests in both the private and social rented sector.

Main findings

Private Sector Rent Cap

5.9 Some tenant representative organisations set out that – whilst it appears too early for evidence to be available on the impact of the emergency rent cap measures – they are welcomed as the unprecedented economic position, that gave rise to the need to take emergency action, has not yet changed fundamentally.

5.10 Across the board, private landlord representative bodies set out significant concern that the emergency measures may be leading to landlords leaving the sector due to their business no longer being financially viable and concerns about further legislation having a detrimental impact, which appeared to be based on anecdotal evidence. One landlord representative body flagged that this unintended consequence would be felt more acutely in rural areas.

5.11 One landlord group suggested that the current safeguard within the legislation relating to a maximum 3% uplift for prescribed property costs is not sufficient to cover the additional cost of borrowing for landlords with Buy to Let mortgages given the scale of interest rate rises in recent months.

5.12 It was also suggested by a private landlord representative body that as a direct result of the emergency measures, landlords behaviours are changing with many now raising rents significantly between tenancies, when they may not otherwise have done so. A further concern was landlords only carrying out essential repairs and postponing, or halting altogether, any planned improvement works.

5.13 Some financial/investor stakeholders set out examples of new build to rent developments being placed on hold due to the impact of the emergency measures, asserting that this was primarily due to decreased investor confidence and uncertainty around future legislation. A particular issue was the concern that investor confidence had been impacted negatively by the introduction of the emergency legislation without prior consultation.

5.14 In addition some landlord and financial/investor stakeholder respondents, set out that the risks of investing in Scotland have now increased, making it a less attractive to financial institutions than other parts of the UK.

Social Sector Rent Cap

5.15 The majority of social landlord respondents stated that to date the rent cap measures are having either no impact - or a negative impact - with many highlighting that social landlords already engage fully with their tenants in relation to setting affordable rents and the announcement in early September caused confusion amongst many tenants. However, one tenant representative body provided testimonies from social rented tenants who state that the rent freeze should continue due to the impacts of the ongoing cost of living crisis.

5.16 There was significant concern about the unintended consequences of the rent cap measures, such as the potential of messaging on a moratorium on evictions leading some tenants to deprioritise payment of rent over other bills. There was concern about the impact of increasing rent arrears both on housing association finances and the tenants accumulating such debt.

5.17 Many housing associations and local authority landlords stated that should the rent cap provisions continue beyond 31 March 2023, then it would have a direct impact on future investment – both in terms of new build projects and the ability to carry out maintenance, repairs and improvements (including work towards achieving energy efficiency and net zero targets).

5.18 Some financial/investor stakeholder respondents set out examples of new build social housing developments being placed on hold due to the impact of the emergency measures. A particular issue of concern in this respect was the impact on investor confidence caused by the introduction of the emergency legislation without prior consultation.

Student Accommodation Rent Cap

5.19 There was limited response to the call for evidence from student tenant representative organisations. The main theme emerging from the responses received is that for this first reporting period, there is insufficient evidence to understand whether there have been any positive or negative outcomes from the emergency measures.

5.20 A common view amongst the responses was a concern that the emergency measures – coupled with ongoing regulatory change across the rental sector in Scotland – may have the unintended effect of contracting the availability of private rented accommodation for students and result in further pressure being placed on accommodation provided by colleges, universities and purpose built student accommodation providers.

5.21 There was further concern raised by financial/investor stakeholders who responded to the call for evidence, in relation to the impact the emergency rent cap measures may have had on future investment to deliver purpose built student accommodation.

5.22 Anecdotal evidence from one response in the student accommodation sector suggests that the emergency measures provide reassurance and protection for tenants against unaffordable rent increases – both for students and college/university staff who are reliant on the private rental sector as a housing solution.

Evictions Moratorium

5.23 From a social sector perspective, due to eviction already being a last resort, the eviction moratorium provisions appear to be having minimal impact. The safeguard measures in place in relation to antisocial behaviour or criminality were welcomed by some and ensure that there is no wider, detrimental impact to neighbourhoods – as social landlords can continue to take action in such cases. Some respondents highlighted that where eviction action is taken in relation to rent arrears, the amount already accumulated is usually above the threshold set out in the legislation and therefore the eviction moratorium is resulting in minimal impact.

5.24 Similarly, stakeholders suggest that the eviction moratorium is having little impact on students living in university/college accommodation or purpose built student accommodation due to the fact that only a very small number of students are evicted in any given year and these are normally in relation to antisocial behaviour grounds, which the emergency legislation permits.

5.25 For the private rented sector, one tenant representative group flagged the importance of the emergency measures remaining in place as the unprecedented economic situation persists. They state that even the recent announcements by the UK Government to increase the minimum wage and uplift benefits by inflation, they remain very worried for private renters in more vulnerable circumstances if, and when, current restrictions are lifted – particularly in respect of possession/eviction proceedings.

5.26 One private rural landlord representative group suggests that the eviction moratorium measures have resulted in behavioural changes between landlord and tenant, with landlords moving to eviction proceedings quicker than they would otherwise have done in the absence of the emergency measures. In addition, it was also suggested landlords are becoming more cautious in the selection process for new tenancies making access to the private rented sector more difficult.

5.27 Concerns were also raised by some landlord representatives that the moratorium had also resulted in tenants not paying rent and reduced the incentive for tenants already in rent arrears to work with their landlord, leading to larger arrears putting the tenancy at risk in the longer term.

5.28 An over-riding theme emerging from many of the responses related to awareness raising and the view that the announcement of the Government's intention to bring forward the emergency measures caused confusion amongst both tenants and landlords alike. It was suggested that the delay in providing clarity on how the rent cap and eviction measures would work, meant that some private landlords rushed to instigate eviction proceedings or to increase rent, while some tenants believed they couldn't be evicted due to the legislation and have de-prioritised paying rent. Many respondents called for the Scottish Government to continue raising awareness of how the measures work in practice.

5.29 In addition, many respondents suggested that the lack of consultation prior to the measures coming into force may have alarmed investors and created significant uncertainty that has already had a detrimental impact on investment in Scotland but that could have been avoided had a different approach been adopted.

6. Proposed approach in relation to the social sector rent cap beyond 31 March 2023

6.1 Section 9(7) of the Act sets out that, in respect of the reporting period ending 31 December 2022, Scottish Ministers must – in considering the application of the permitted rate (within the meaning of section 24A(1) of the Housing (Scotland) Act 2001) of 0% - explain whether they propose to:

- a) retain the permitted rate at 0%;
- b) increase the permitted rate;
- c) make regulations under section 8(1) to provide for the expiry of paragraph 3 of schedule 1; or
- d) make regulations under section 6(1) to suspend the operation of that paragraph.

6.2 In September 2022, the Scottish Government established a social sector Short Life Task and Finish Group to provide a forum for ongoing dialogue between the Scottish Government and key social rented sector representatives, as rapid work was undertaken to develop measures within the Act. The group were also tasked with:

- helping to inform social landlords' approach to rent setting consultations and business planning for 2023-24; and
- supporting the production of advice for Ministers – receiving feedback on viability of options from a Scottish Government perspective to inform shaping of the final approach in relation to the extension or expiry of the emergency measures in place for the social sector.

6.3 Social housing plays a key role in reducing poverty levels. Research from the Joseph Rowntree Foundation suggests that continued and consistent investment in social housing has kept housing costs, and thus poverty levels, lower than in other parts of the UK³².

6.4 Scotland leads the way in the delivery of affordable housing across the UK, and we have committed to delivering 110,000 affordable homes by 2032, of which at least 70% will be available for social rent and 10% will be in our remote, rural and island communities. Enabling continued investment in the delivery of high quality social housing is therefore crucial.

6.5 Social sector representatives have set out that the current costs crisis poses an enormous threat to this progress, with inflation rates having a far greater impact on the poorest 10% of the population, and living standards and real incomes expected to fall across the UK. The volatility of the economic environment also has significant consequences for housing associations, and the services they provide to tenants.

6.6 Over the last 12 months, the cost of developing homes has increased by 17%, with the average cost now well above £200,000 per home: and rising interest rates

³² Joseph Rowntree Foundation, Poverty in Scotland, 2021

meaning this will increase further. Similarly, the cost of maintaining homes has increased by upwards of 20% for many associations. Housing associations must work on the basis of 30-year business plans; any changes to rents in a single year are therefore compounded and have a significant long-term impact across the plan³³.

6.7 The rent setting practice in this sector involves rents being set annually, in consultation with tenants. Aside from the annual rent setting process further rent increases do not typically take place either inter or intra tenancy.

6.8 It is within this context that the Social Sector Short Life Task and Finish Group has been working to develop an agreed approach on rent setting for 2023-24 – taken forward on a voluntary basis - that would see an agreement with social housing landlords that ensures that rents remain affordable but still support continued investment in the sector. The Group stressed the fine balance between affordability and investment and the need to set social sector rents at a level that ensures adequate resources to support repairs and maintenance, new build programmes and energy efficiency and carbon neutral targets and to ensure they can continue to deliver the essential support services they provide for their tenants.

6.9 The outcome of discussions led by COSLA, in respect of local authorities, and the Scottish Federation of Housing Associations (SFHA) and Glasgow and West of Scotland Forum of Housing Associations for Registered Social Landlords, has reached an agreed position with their members that would see increases of 6.4% and 6.1% respectively, as an average across Scotland.

6.10 It is important to note that the agreement of an average figure, rather than a fixed cap, is essential to allow flexibility. The majority of rents will be increased at a level below the agreed 6.4% (for local authority landlords) and 6.1% (for registered social landlords) but there may be some social sector landlords who will, for specific reasons, go beyond these levels. However, all social sector rent increases will be kept below the level of inflation. This approach recognises that in some cases tenant feedback to the statutory rent consultations may be in favour of an increase higher than the overall averages agreed, for example to allow planned improvements or maintenance to proceed.

6.11 In reflection of the outcome of the work of the Social Sector Short Life Task and Finish Group, whereby an approach on rent setting for 2023-24 be taken forward on a voluntary basis has been agreed and the continued need for investment to support delivery of the Scottish Government's ambitious affordable housing targets, Scottish Ministers intend to make regulations under section 8(1) of the Act to provide for the expiry of the rent cap provisions for the social sector contained in Paragraph 3 of Schedule 1 of the Act.

6.12 This will ensure that social sector rent levels are adequate to support repairs, maintenance, meeting energy efficiency and carbon neutral targets and to ensure social landlords can continue to deliver the essential support services they provide for their tenants.

³³ Based on analysis provided by social sector landlord representatives

6.13 Scottish Ministers will bring forward regulations that will expire the rent cap measures for the social sector from 01 March 2023. This will allow social landlords to ensure they meet requirements in relation to notifying tenants of rent increases from 01 April 2023.

7. Operation of Part 1 and assessment of necessity and proportionality

7.1 Paragraphs 1 & 2, Part 1, Schedule 1: Rent cap for private residential tenancies

Description and Operation of the Provisions

7.1.1 The Act introduced a temporary cap on in-tenancy rent increases for the majority of private sector tenancies, which was backdated to 6 September 2022 in order to prevent landlords seeking to increase a tenant's rent between the Programme for Government announcement of the 'rent freeze' and commencement of the Act. For tenancies where a valid rent increase notice was issued before 6 September 2022, the existing legislative requirements continue to apply.

7.1.2 The 'permitted rate' (the 'rent cap') is currently set at 0%, and applies to most existing tenancies in the private rented sector. Any rent increase notice issued for applicable tenancies on or after 6 September 2022 will be void whilst the cap is at 0%. Landlords can still set the rent for any new tenancy, the rent cap only restricts in-tenancy rent increases.

7.1.3 Notwithstanding the rent cap, landlords have a safeguard available to them, and can apply to Rent Service Scotland (RSS) to increase the rent for a let property above the rent cap in connection with defined 'prescribed property costs'. Landlords must give their tenant notice in writing when they make such an application.

7.1.4 An application may only be made if a landlord has had an increase in these defined costs, during the preceding six months, 'prescribed property costs' are defined as follows:

- the interest payable in respect of any mortgage or standard security over the rental property;
- any insurance premium payable by a landlord relating to insurance connected to offering the property for rent, for example 'landlords' insurance' (excluding general building and property insurance); and
- any 'service charge(s)' related to the rental property that are recoverable from the tenant via their rent as part of the contractual arrangement between tenant and landlord.

7.1.5 A landlord can apply to increase the rent to recover up to the lower of either 50% of the increase in these costs or 3% of the existing rent. The existing protection which only allows a landlord to raise rents once per 12 months still applies.

7.1.6 If an application is approved by RSS, the resultant rent increase will not come into effect until (at the earliest) 12 weeks after the date the landlord made the application. A landlord or tenant is able to appeal the RSS' decision by applying to the First-tier Tribunal for Scotland (Housing and Property Chamber) within 14 days to have the RSS calculation reviewed.

7.1.7 As at 31 December 2022, RSS have received 12 applications of this nature (of which, 10 are valid) from landlords seeking to increase rent above the permitted rate on the basis of an increase in prescribed costs that relate to the let property.

7.1.8 Whilst there have only been a relatively small number of applications received, it should be noted that general enquiries to RSS have increased significantly, due to landlords seeking information in relation to the rent cap. As at 31 December 2022, RSS have received a total of 45 enquiries; 24 from landlords regarding hardship and seeking information on how to apply for a rent increase above the rent cap; 8 from Housing Associations in relation to Fair Rent tenancies; and, 13 from tenants asking about rent increase notices generally, and specifically seeking clarification on whether their rent increase will still go ahead, where a valid notice of increase was issued prior to 6 September 2022.

7.1.9 Scottish Ministers have powers in the Act to vary certain provisions, if it is necessary and proportionate to do so, they may amend: the level of the rent cap; certain features of the landlord safeguard, such as the defined list of prescribed property costs and/or the 50% and 3% figures.

Consultation

7.1.10 The call for evidence, along with informal consultation with stakeholders, has provided valuable information on the views of key stakeholders - including landlords, tenants, housing rights organisations, investors and educational establishments and providers of student accommodation - on the operation and impact of the measures. These are summarised in Section 5 of this report. Scottish Ministers have considered these as part of assessing the continued necessity and proportionality of the measures.

7.1.11 For landlord representatives, an initial discussion was held on 25 October 2022 with the Chartered Institute of Housing and Scottish Land and Estates, with a further meeting on 6 December 2022, after the legislation came into force, with the Scottish Association of Landlords, Propertymark, the Chartered Institute of Housing and Scottish Land and Estates. These meetings included discussion of communication and awareness-raising, concerns regarding rent arrears, and concerns about current uncertainty in the sector and the potential for unintended consequences from the emergency legislation.

7.1.12 For tenant representatives, an initial discussion was held on 26 October 2022 with Citizens Advice Scotland and Living Rent, with follow up meetings with these stakeholders taking place after the legislation came into force on 7 December 2022 and 14 December 2022 respectively. Matters discussed included awareness-raising and guidance, concerns about illegal rent increases and queries about the longer-term legislative programme for the private rented sector.

7.1.13 For investor representatives, Scottish Government officials met with 12 investor organisations on 8 December 2022. Stakeholders set out concerns about investor confidence and investments which have been paused or withdrawn as a result of the emergency legislation, and the need for certainty to reassure investors going forward.

Necessity and Proportionality

7.1.14 During this reporting period, in order to assess the use and continued necessity and proportionality of the private rented sector rent cap and safeguards, the Scottish Ministers have taken into account:

- the evolving economic context of the costs crisis and the likely impact on households resident in the private rented sector;
- information from key stakeholders regarding the impact and effect of the measures on landlords and tenants; and
- information from other sources to seek to identify any unintended or unanticipated impacts that may have arisen as a result of the measures.

7.1.15 The concerns detailed by consultees in the call for evidence (see section 5 of this Report) are noted, but in terms of testing the validity of these concerns with reference to evidence, and assessing the wider impact of the rent cap measures, there is limited data available to date due to the relatively short period of time that the Act has been in place. This is, however, being continually monitored and considered.

7.1.16 We have carefully considered the response from consultees. However, based on the overall evidence set out in section 4 of the impact of the costs crisis, at present the rent cap provisions remain necessary and continue to pursue the prescribed aim in the public interest of ensuring that tenants in the private rented sector were, and are, protected against the impact of the wider economic conditions during the winter months, through stabilisation of their housing costs. This is at a time when the economic data demonstrates that the costs crisis continues to have a significant and detrimental impact on household finances, with fuel poverty on the rise, increases in inflation and other costs as detailed in Section 3 of this Report.

7.1.17 Citizens Advice Scotland reported in December³⁴ that *“Online demand around housing issues also remains significant. Notably, despite the Scottish Parliament legislating for a rent freeze in September 2022, demand for the online advice page “The landlord wants to increase the rent” is still up 25% compared to November 2021”*.

7.1.18 Consultee, Living Rent, stated that the measures provide: *“crucial relief and assistance to tenants during the most serious cost of living crisis in generations. Within just a week of asking tenants how they felt, we had over 200 people outline how important these measures have been and the necessity to have them continue”*. They also noted that there are: *“record numbers using food banks with needs outstripping supply according to the Trussell Trust and higher than during the Coronavirus pandemic, as well as a 31% increase in applications for crisis grants”*.

7.1.19 In terms of the proportionality of the rent cap, there are powers to amend the level of the rent cap combined with the ability to vary the landlord safeguard, provided through the prescribed property costs provisions, enables Scottish Ministers to take tailored and agile action in response to any changes in the

³⁴ [Data Reports | Citizens Advice Scotland \(cas.org.uk\)](https://cas.org.uk/data-reports)

economic environment, enabling them to ensure that their response continues to be proportionate. The rent cap strikes a fair balance between the public interest and the interference with landlords' rights inherent with the measures. No changes have been necessary to date due to the continuing economic evidence of the continuing costs crisis.

7.1.20 There was limited evidence received on the operation the prescribed property costs due to the relatively short period of time that the process has been operational. As set out during the passage of the Bill, the purpose of including the provision for landlords to make an application to have a rent increase considered in respect of defined prescribed property costs is to provide a suitable safeguard which takes account of the individual circumstances of landlords. We have reviewed the level and those property costs that are permitted to ensure that they strike a balance. Based on the evidence provided by stakeholders and set out in Section 4, we remain of the view that the prescribed property costs remain necessary and proportionate in balancing the rights of tenants and landlords, and taking account of the impact of the cost crisis on landlords.

7.1.21 The current framework is finely balanced, and as we begin to look forward towards emerging from the worst of the winter months, there will continue to be close monitoring of economic data and evidence of the impact of the measures will continue to be gathered. Evidence on whether, or not, the financial burdens on households begins to lift will be closely monitored alongside the impacts of the rent cap measures. Whether, or not, emerging and contemporaneous evidence supports an amendment to the level of the rent cap or and/or safeguards continuing to be necessary and proportionate remains under continued consideration.

7.2 Paragraph 3, Part 1, Schedule 1: Rent cap for social tenancies

Description and Operation of the Provisions

7.2.1 Part 1, Schedule 1 also protects the majority of tenants in the social rented sector from any increase in in-tenancy rent by their landlords of more than the permitted rate of 0%.

7.2.2 As the majority of social sector landlords increase rents once a year, in April, the emergency rent cap provisions have had minimal impact. During this reporting period – and in line with existing statutory requirements - social sector landlords have been carrying out ongoing consultation with tenants on potential rent increases that may take place from 1 April 2023 if permitted by the rent cap.

Consultation

7.2.3 The call for evidence, along with formal and informal consultation with stakeholders, has provided valuable information on the views of key stakeholders - including landlords, tenants, housing rights organisations and investors - on the operation and impact of the measures. These are summarised in section 5 of this report. Scottish Ministers have considered this as part of assessing the continued necessity and proportionality of the measures. Whether there have been any unintended or unanticipated impacts arising from the measures has also been

assessed, for example, in relation to consultee responses suggesting that the measures may have resulted in a decline of investment in the sector as considered in Section 5 of the report.

7.2.4 During this reporting period, there has been ongoing and in-depth engagement with local authority landlord and Registered Social Landlord representative bodies through the Social Sector Short Life Task and Finish Group, that has supported Ministers to make an informed decision on the rent cap provisions for the social sector. As part of this work, Social Sector Short Life Task and Finish Group members have consulted with their respective memberships and also directly with tenants to provide updates and feedback on the impact of the rent cap provisions.

Necessity and Proportionality

7.2.5 During this reporting period, in order to assess the use and continued necessity and proportionality of these provisions, the Scottish Ministers have taken into account the evolving economic context and the likely impact on households resident in the social rented sector, along with evidence from key stakeholders regarding the impact and effect of the measures on landlords and tenants.

7.2.6 The social sector rent cap provisions remain necessary during winter months in order to ensure that social tenants continue to be protected against the impact of the wider economic conditions, through stabilisation and certainty of their housing costs at a time when the cost of living crisis continues to have a detrimental impact on household finances. In the sector, the standard practice is that rents are only raised annually, however, there is no legislative restriction on a more frequent rent increase (like there is in private residential tenancies), therefore, the measures are necessary to provide parity of protection for tenants in the social rented sector too.

7.2.7 In terms of the ongoing operation of the rent cap, the ongoing necessity and proportionality has been assessed through ongoing engagement with the sector and consideration of available evidence. A voluntary agreement has been reached with key social housing sector stakeholders and it has been determined that this supports an approach that will see Scottish Ministers, in line with the duty contained in section 8(2)(b), expire the rent cap in the social sector as soon as practicable. Regulations will be laid before the Scottish Parliament in January 2023 which will achieve expiry of the rent cap in the social sector by 1 March 2023, to align with the sector's usual annual rent increase process which takes place on 1 April. Please refer to section 6 of this Report for a full statement on this proposed approach.

7.3 Paragraph 4, Part 1, Schedule 1: Rent cap for student residential tenancies

Description and Operation of the Provisions

7.3.1 The Act introduces a temporary cap on in-tenancy rent increases for students who rent college and university halls of residence and Purpose Built Student Accommodation (PBSA). The rent cap is currently set at 0%. If a tenancy agreement includes utilities and the tenancy agreement allows for recovery in respect of excessive use of utilities in addition to the fixed monthly charge, accommodation providers can pass on reasonable costs to tenants to recover such costs relating to excessive use.

7.3.2 The emergency measures set out in the Act only apply to in-tenancy rent increases. Student tenancies are regulated by the terms of the contract between the accommodation provider and the student, and by common law. These contracts typically (but not always) cover the whole academic year. If the contract states that the rent is fixed for the entire year, in the absence of a clause stating otherwise, the landlord would not be able to raise it during the term of the tenancy. Any new contractual agreement would not be covered by the emergency measures which means that providers would be able to set rent levels for new tenancies commencing in the 23/24 academic year.

7.3.3 There is currently limited data on the impact of the provisions in this sector but at the Student Accommodation Group meeting on 14 November, stakeholders advised that the rent cap provisions in the Act were having minimal or no effect on the sector. The group advised that rents were fixed in advance for the whole of the academic year and that in tenancy rent increases did not occur. However, despite the assurances from provider representatives in the Group, there may be a small number of providers whose contracts may allow for in-tenancy rent increase. Members of the group viewed the main impact of the Act to be on the mainstream private rented sector, although it was acknowledged - given the limited time since the implementation of the Act - that data may not yet be available to reflect this. In their view, there was a concern that the emergency measures would lead to increasing demand on purpose built student accommodation and university and college halls of residence, which it would be very difficult to meet.

Consultation

7.3.4 The call for evidence, along with informal consultation with stakeholders, has provided valuable information on the views of key stakeholders - including landlords, tenants, housing rights organisations, investors and educational establishments and providers of student accommodation - on the operation and impact of the measures. These are summarised in section 5 of this report. Scottish Ministers have considered these as part of assessing the continued necessity and proportionality of the measures. Whether there have been any unintended or unanticipated impacts arising from the measures is also being assessed, for example, in relation to investors' behaviour in the sector.

7.3.5 As well as the formal call for evidence issued to a range of student representative bodies and accommodation providers and their representative bodies, there has also been ongoing informal consultation with the sector:

- a discussion at the augmented Student Accommodation Group on 14 November 2022. At that meeting members were asked for information on a range of indicators, including: current rental cost and student tenant number, number of excess utilities payment requests to tenants from providers and the average cost thereof since the Act came into force, number of evictions since the Act came into force and reasons, number of students requesting and permissions granted for a termination of contract because of the impact of costs of living (for example food prices and other costs associated with living in that accommodation) since the Act came into force;
- an email to all the members of the Student Accommodation Group on 22 November 2022 to ask that they further consider this and revert to officials with the information requested at the November meeting; and
- the formal call for evidence highlighted, with regard to colleges and universities (a) from Universities Scotland that there is insufficient evidence on the impact of the Act but they anticipate the main impact of the Act would be on the PRS; (b) from University and College Unions that for staff in the university/college sector who were tenants in the PRS, the Act had provided reassurance and protection against increases in their rent.

Necessity and Proportionality

7.3.6 Whilst the rent cap provisions have only been in place for a short period of time, feedback to date is that they do not impact the student sector to the same extent as the mainstream private rented sector due to the nature of the majority of contractual student tenancy agreements. Notwithstanding this, there is no centralised register of all student sector tenancy agreements so it is possible that a minority may contractually permit in-tenancy rent increases and, given that student tenants may be particularly vulnerable to the impact of the costs crisis, these measures can be considered to be necessary to provide parity of protection with other private sector tenants.

7.3.7 For the student sector providers that have reported that the rent cap has a negligible impact for them, there is minimal or nil interference with their usual practices as a result of the rent cap. In terms of assessing the wider impact of the rent cap in this sector, there is minimal data as yet due to the relatively short period of time that the measures have been in place but this is continuing to be monitored.

7.3.8 Due to the limited data regarding impact we consider that it is appropriate to maintain provisions for the student sector at this time. We will continue to monitor the impact on the sector and keep the measures under review, in terms of whether they remain necessary and proportionate.

7.4 Part 1, Schedule 2: Protection against eviction

Description and Operation of the Provisions

7.4.1 Part 1, Schedule 2: temporarily pauses the enforcement of eviction actions in the private rented, social rented and student accommodation sectors from 6 September 2022 onwards, with relevant exemptions in relation to specified circumstances, and it also amends the process for the determination of damages for an unlawful eviction.

7.4.2 The temporary moratorium on evictions aims to help to reduce the negative impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless during the costs crisis. It will provide more time for people to seek support and to find alternative accommodation that meets their needs at an affordable rent and some responses to the call for evidence (considered below) indicate that the evictions moratorium provisions are contributing positively to that aim.

7.4.3 A number of safeguards have been put in place to allow evictions in limited circumstances. The pause does not apply where:

- the tenant has engaged in antisocial or criminal behaviour (student residential tenancies, private and social sectors);
- the tenant has abandoned the property (private and social sector);
- where the property is to be sold by a lender (private sector only);
- the tenant is no longer an employee of the landlord (private and social sector); and
- the property is subject to demolition or requires substantial work and suitable alternative accommodation will be available for the tenant (social sector only).

7.4.4 There are also three amended/new temporary grounds for eviction where the moratorium will not apply where:

- landlord intends to sell the let property due to financial hardship (this applies to private sector only)
- landlord intends to live in the let property due to financial hardship (private sector only)
- tenant has substantial rent arrears which add up to 6 months' rent or more in the private rented sector, or £2,250 or more in the social rented sector (private and social rented sectors).

7.4.5 If an eviction order is granted by the Tribunal or Sheriff Court for any of these reasons, the eviction order can be progressed in accordance with the rules that apply to these eviction grounds will apply. Where an eviction order or decree was granted before the legislation comes into force or where the landlord raised eviction proceedings before the legislation came into force and served an eviction notice before the announcement on 6th September 2022, the case will not be caught by the

moratorium and will still be able to be enforced in line with current legal requirements.

7.4.6 As set out above, where a landlord is prevented from enforcing an order for eviction while the moratorium is in effect, the enforcement of that order can only be delayed for a maximum period of 6 months.

7.4.7 As of 31 December 2022, the First-tier Tribunal (Housing and Property Chamber) confirmed that it had received 40 applications that fall within the scope of the emergency provisions. As the eviction case decisions which fall into the scope of the emergency provisions are published by the First-tier Tribunal we will review this data once it becomes available.

7.4.8 In the social rented sector the Scottish Housing Regulator have been approached to collect data on evictions from social landlords on a monthly basis, however there is currently no such data available from when the moratorium came into force. Feedback from the call for evidence to date, is showing no significant concerns on the operation of the moratorium. Please refer to the summary cause evictions data at paragraphs 4.28 and 4.29 and the limitations of that data.

7.4.9 In engagement with student sector stakeholders who provide student accommodation, it has been stressed by the sector that evictions are rare, with only one example of eviction in the last 5 years being cited, and that being on the basis of anti-social behaviour, not relating to rent arrears. In addition, to provide an indication as to the impact of these provisions on Sheriff Officers going forward, we are engaging with The Society of Messengers-at-Arms and Sheriff Officers to collect information on enforcement of evictions.

Consultation

7.4.10 In this reporting period, in order to assess the continued necessity and proportionality of the provision, the Scottish Government has considered various sources of information, formally and informally, including a call for evidence to key stakeholders - including landlords, tenants, housing rights organisations, investors and educational establishments and providers of student accommodation. We sought written evidence on the impact of the measures from local authorities and persons who represent the interests of tenants and landlords that may be affected by the provisions, and any other person considered appropriate. These are summarised in Section 5 of this Report

7.4.11 Tenants' representative reported being supportive of the moratorium. Joseph Rowntree Foundation "welcomed the interventions" and noted that they are "very worried for private renters in more vulnerable circumstances, if, and when, current restrictions are lifted, particularly in respect of possession/eviction proceedings". Feedback from Shelter Scotland noted that: "Protections from eviction and increased housing costs are essential during this time of significant financial hardship [...] We have seen the impact of the new Act with our advisers successfully challenging and stopping some evictions and rent increases using this new emergency legislation."

7.4.12 There were criticisms from private and social rented sector landlord representatives that have suggested that the moratorium has encouraged both the non-payment of rent and reduces the incentive for tenants in rent arrears to work with their landlord to repay arrears, leading to larger rent arrears putting the tenancy at risk. In addition, it has been suggested that private landlords may be becoming more cautious in the selection process for new tenancies, which could lead to an increase in homelessness for those more vulnerable households who may be considered a higher risk to house.

7.4.13 Whether there have been any unintended or unanticipated impacts arising from the measures is being assessed, but there is limited data available to date, to verify the extent and validity of the issues raised. This will continue to be investigated and monitored closely.

7.4.14 In addition to the call for evidence, we have engaged with those representing landlords, letting agents and tenants in both the private and social rented sectors as well as Local Authorities, the Scottish Housing Regulator and Lenders. The Social Sector Short Life Task and Finish Group has also provided a mechanism for key social sector stakeholders to discuss key issues arising from the cost of living crisis and it assists in monitoring the impact, and continuing need for, these provisions.

Necessity and Proportionality

7.4.15 During this reporting period, in order to assess the use and continued necessity and proportionality of these provisions across the private, social and student accommodation sectors, the Scottish Ministers have taken into account the evolving economic context of the costs crisis which continues to place pressure on households, along with evidence from key stakeholders regarding the impact and effect of the measures on landlords and tenants. Each sector is considered in turn as follows:

Private rented sector

7.4.16 As noted above, there has been a limited impact on private (and social) landlords evicting a tenant to date. Alongside the moratorium there are existing safeguards for landlords experiencing financial hardship, and there is a maximum additional delay of 6 months. Despite the reportedly minimal impact on landlords, the peace of mind and protection the moratorium provision provides tenants while the rent cap is in place is significant, and it is twofold:

- firstly, avoiding landlords ending a tenancy to raise the rent. Although it is a criminal offence to evict a tenant without a court or Tribunal order or decree, the moratorium provides additional protection to tenants from unfair or unlawful eviction action pursued by private landlords in order to seek a new tenant (which would allow them to set a new, higher rent afresh because the rent cap only applies to in-tenancy rent increases) in direct response to the temporary rent freeze; and
- secondly, to help reduce impacts on the health and wellbeing of tenants associated with being evicted, and by providing those being evicted with additional time to access support and find alternative accommodation.

7.4.17 Therefore, the measures remain a proportionate and necessary approach at this time.

Social Rented Sector

7.4.18 In the social rented sector, the proposal set out in section 6 of this Report is for the rent cap to be expired on from 1 March 2023, however, the evictions moratorium provisions continue to be necessary and proportionate. Social rented households are more likely to have lower incomes than households in other tenures, with Scottish Household Survey results for 2019³⁵ showing 60% of social rented households having a net income of £20,000 or less, compared to 38% of private rented households, 41% of households who own outright, and 14% of households buying with a mortgage.

7.4.19 Social rented households are also more likely to be financially vulnerable (defined as households with savings which would cover less than one month of income at the poverty line), with Scottish Government Statistics on Wealth in Scotland³⁶ showing 63% of social rented households being estimated to be financially vulnerable, compared to 40% of private rented households, 24% of households buying with a mortgage and 9% of households owning outright.

7.3.18 Around two-thirds (66%) of social rented households are receiving some level of support for housing costs through Housing Benefit or Universal Credit, with the equivalent figure for private rented sector households being 29%³⁷.

7.3.19 A number of stakeholders noted that evictions are a last resort and that therefore the moratorium has not imposed a significant impact. Therefore, the evidence of impact indicates that this is not an immediate and significant obstacle to sector practices. We consider that the measures, alongside the landlord safeguard and exemptions, remain proportionate in order to pursue the aim of helping reduce impacts on the health and wellbeing of social sector tenants by being evicted and/or being made homeless at a time when they are already struggling as a result of financial stress resulting from the costs crisis, and providing those being evicted with additional time to access support and find alternative accommodation.

Student rented sector

7.3.20 Whilst evictions in the student sector are reported as rare by sector consultee responses and stakeholder engagement, there remains a possibility that evictions could take place. In addition, the majority of those in halls of residence and PBSA are under 21. Taken alongside the wider economic landscape associated with the ongoing costs crisis, we consider these provisions continue to be necessary in order to help reduce impacts on the health and wellbeing of tenants by being evicted and/or being made homeless at a time when they are already struggling as a result of financial stress resulting from the costs crisis. Given the reported infrequency of

³⁵ [Scottish Household Survey Annual Report Tables 2019](#)

³⁶ [Scottish Government Statistical publication on Wealth in Scotland 2006-2020](#)

³⁷ (As reported in [Cost of Living Bill - Key Statistics](#), based on DWP StatXplore Tables for May 2022, compared with latest available rented stock figures)

eviction action, alongside the landlord safeguard and exemptions, the interference with landlords' rights imposed by the moratorium is relatively minimal and is proportionate with the aim of the Act as regards these provisions and with providing those being evicted with additional time to access support and find alternative accommodation.

8. Reporting on related Scottish Statutory Instruments

8.1 Section 9(2)(a) requires that the Scottish Ministers must set out how any powers under Part 1 of the Act have been exercised, including through the use of Scottish Statutory Instruments (SSIs). Information on SSIs brought into force as a result of Part 1 of the Act are included in the table below:

SSI title: The Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022	
Power under which SSI was made:	Sections 19(3) and 53(3) of the Housing (Scotland) Act 1988, sections 62(1)(d) and 77(1) of the Private Housing (Tenancies) (Scotland) Act 2016
Parliamentary procedure to which SSI was subject:	Negative
Date(s) of commencement:	28 October 2022
Period for which it has effect:	Until Part 1 expires
Status at end of the reporting period (31 December 2022):	Commenced and still in force

CONSULTATION IN COMPLIANCE WITH SECTION 9(3) and (4)

Before preparing this report, Scottish Ministers issued a call for evidence to the key stakeholders listed below.

Evidence was submitted from some of these stakeholders, as well as from other groups representing tenants, landlords, financial institutions/investors, and local authorities.

- Chartered Institute of Housing
- Royal Institution of Chartered Surveyors
- Scottish Association of Landlords
- Scottish Lands and Estates
- Scottish Property Federation
- UK Finance
- Homes for Good
- Universities Scotland
- Colleges Scotland
- ASRA (Association of Student Residential Accommodation)
- CUBO (College and University Business Officers)
- UNITE
- UNISON
- University College Union (UCU)
- Society of Messengers at Arms and Sheriff Officers (SMASO)
- National Farmers Union Scotland
- Scottish Tenants Farmers Association
- Scottish Agricultural Arbiters & Valuers Association
- Crown Estate Scotland
- Church of Scotland
- Law Society of Scotland
- Propertymark
- Payprop UK
- Citizens Advice Scotland
- Living Rent
- Generation Rent
- Shelter Scotland
- Inclusion Scotland
- Crisis in Scotland
- NUS (National Union of Students Scotland)
- Joseph Rowntree Foundation
- Dundee Student Renters Union
- Tenant Participation Service (TPAS)
- Tenant Information Service (TIS)
- Legal Services Agency
- Positive Action in Housing
- Govan Law
- Scottish Women's Aid
- Single Parent Families Scotland

- LGBT Youth Scotland
- Equality Network
- Dundee Student Renters Union
- Homelessness Lived Experience Panel
- RSL Chief Executives
- Local Authority Directors of Housing.

**SOCIAL RENTED SECTOR SHORT LIFE TASK AND FINISH GROUP
MEMBERSHIP**

- Scottish Government
- Association of Local Authority Chief Housing Officers
- COSLA
- Scottish Federation of Housing Associations
- Glasgow and West of Scotland Forum of Housing Associations
- Wheatley Group
- Link Housing Group
- West Granton Housing Co-operative
- Hillcrest Homes
- Scottish Housing Regulator
- UK Finance
- Tenants Information Service
- Tenant Participation Advisory Service



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Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-417-1 (web only)

Published by The Scottish Government, January 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1220502 (01/23)

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