

**The Cost of Living (Tenant Protection)
(Scotland) Act 2022: Report to the Scottish
Parliament covering the period 1 June to
30 September 2023**

Laying number: SG/2023/194

October 2023

Executive Summary

Overview

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”)¹ introduced a temporary, variable rent cap² and a temporary moratorium on evictions, along with increased damages for unlawful evictions provided it remains necessary and proportionate. The Act also contains powers to temporarily modify the rent adjudication process in connection with the expiry or suspension of the rent cap.

The Scottish Government legislated on the basis that emergency action was required to respond to the exceptional economic circumstances 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 necessary and 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 powers and hold Scottish Ministers to account for their use.

As required by the Act, this report covers the period 1 June 2023 to 30 September 2023. It provides a review of the status and operation of the remaining provisions in Part 1 setting out the Scottish Government’s position on the necessity and proportionality of the measures. 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 remaining 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));
- 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)); and
- 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)).

¹ 2022 asp 10. Hereafter, all references to statutory provisions (i.e. ‘section’ or ‘Part’ numbers) relate to the Act unless otherwise specified.

² Defined in the Act as the ‘permitted rate’

This report also sets out the legislative changes that have been made to the Act since it was introduced last October, including where provisions have been expired, suspended, varied and extended.

The end of this reporting period for the Act was 30 September 2023, and the report is being published within 14 days of the reporting period ending, as per our duty to do so. Moving forward, the reporting period remains on a three-monthly basis 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 1 June to 30 September 2023. Scottish Ministers have undertaken a review of the remaining 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, the economic analysis indicates that the economic challenges continue 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 remaining 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 continues to exacerbate existing social and economic pressures faced by those living in a rented home, making them more vulnerable as a whole. The latest 'Understanding Scotland: Economy' report, carried out in August 2023³, found that around six in ten (58%) Scots surveyed believe that their own personal financial situation has worsened in the last 12 months, only slightly down from 63% in February 2023 and 60% in May 2023.

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. Private renting households continue to report higher levels of concern about paying mortgage/rent⁴ than households in all tenures: the proportions were 27% for private renters and 12% for all tenures.

1.3 Although showing a recent downward trend, fuel poverty rates remain significantly higher than before the cost of living crisis. In 2019 the national fuel poverty rate was 24.6% - around 9 percentage points lower than the estimated rate for October – December 2023. It is estimated that 46% of households in the private rented sector and 52% of households in the social rented sector will be in fuel poverty for the first part of the coming winter period. By comparison the fuel poverty rate for owner occupiers in 2019 was 17%, around 6 percentage points lower than October-December 2023.

1.4 The Act came into force on 28 October 2022 as a temporary 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.

1.5 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.

Changes to the emergency Act since introduction

1.6 The social sector rent cap (paragraph 3, Schedule 1 of the Act) was expired on 26 February 2023 following the development of an agreed approach on rent setting for 2023-24, taken forward on a voluntary basis, with social housing landlords. Social housing landlords are “not for profit” organisations and all rental

³ [Understanding Scotland Report Wave 8](#).

⁴ This was part of a prompted list of potential concerns in the next 2-3 months.

income is used to support the delivery of housing and associated services for tenants.

1.7 Under the Scottish Government's Social Housing Charter social landlords are required to set rents and service charges in consultation with their tenants so that a balance is struck between the level of services provided, the cost of the services and how far current and prospective tenants and service users can afford them. The aim of the agreed approach to rent setting has been to keep rent increases well below inflation to ensure that rents remain affordable, whilst still supporting continued investment in the sector.

1.8 On 31 March 2023, the rent cap in relation to student residential tenancies (paragraph 4, Schedule 1 of the Act) was suspended due to evidence of the minimal impact that rent cap was having in this sector. These tenancies are regulated by the terms of the contract between the accommodation provider and the student, and by common law. These contracts typically cover the whole academic year and there is only a very slight possibility of a contract that permits in-tenancy rent increases arising. As such, the rent cap measures were having minimal impact on the student residential sector. It should be noted that suspension of the measures mean that they cease to have effect but there is a power for the provisions to be revived during the lifetime of Part 1 of the Act should evidence support that being necessary and proportionate. Although assurances were received from the majority of institutional and Purpose Built Student Accommodation ("PBSA") providers that there would be no in-contract rent increases, and evidence to date supports this, these assurances do not cover all providers with certainty, so suspension (as opposed to expiry) was considered appropriate.

1.9 Information on the provisions expired or suspended, and the reasons for their inclusion in the expiry and suspension regulations, is provided within the Policy Note for those regulations.

1.10 On 1 April 2023, further regulations came into force that extended the emergency Act beyond its initial first six month period, for a further 6 months until 30 September 2023. The regulations also varied the rent cap provisions in relation to the private rented sector, increasing the 'permitted rate' by which rent can be increased during a tenancy from 0% to 3%. This decision was taken following a comprehensive analysis of the latest economic context and consideration of a wide range of evidence from stakeholders. A [Statement of Reasons](#) providing a full justification and evidence base underpinning that decision was published alongside the regulations.

Our approach to reporting

1.11 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 suspend, vary or 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)).

1.12 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 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.

1.13 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.

1.14 When extensions to Part 1 were sought, a Statutory Statement of Reasons setting out the justification and evidence base for it was required. During reporting periods that a Statement of Reasons was laid, it replaced the need for a formal report on the review of the operation of the provisions in Part 1 of the Act for that reporting period (section 9(8)).

1.15 Since the Act came into force, the following statutory report and Statement of Reasons have been published:

- [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022: First Report to Parliament](#)
- [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022: Proposed Extension - Statement of Reasons \(January 2023\)](#)
- [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022: 2nd Proposed Extension - Statement of Reasons \(June 2023\)](#)

Status Update

1.16 The tables on pages 8 and 9 of this report, provides detail on the status and operation of the provisions in Part 1 of the Act.

1.17 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 last year, this report also provides an updated overview of the current economic context underpinning the provisions (see Section 4).

1.18 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 8 and 9, with further detail available in section 6 of this report.

2. Status and operation of provisions

Up to 30 September 2023

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 – set at 3% since 1 April 2023 in relation to in-tenancy rent increases. The provisions also allow for consideration of private landlords' 'prescribed property costs' as defined by the Act (associated with the rented property).	
Operation of the provision in the reporting period: In operation See supplementary information provided at 6.1 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: Introduced a temporary, variable rent cap in the social rented sector – initially set at 0% in relation to in-tenancy rent increases for tenancies under Housing (Scotland) Act 2001.	
Operation of the provision in the reporting period Expired	Status at the end of the reporting period: Expired. The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Early Expiry and Suspension of Provisions) Regulations 2023 expired the rent cap provisions that applied to the social rented sector from 26 February 2023.
Provision: Para 4, Part 1, Schedule 1: Rent cap for student residential tenancies	
Description: Introduced a temporary, variable rent cap in relation to college and university rented accommodation and Purpose Built Student Accommodation (PBSA) – initially set at 0% in relation to in-tenancy rent increases.	
Operation of the provision in the reporting period Suspended	Status at the end of the reporting period: Suspended. The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Early Expiry and Suspension of Provisions) Regulations 2023 suspended the rent cap provisions that applied to Purpose Built Student Accommodation from 30 March 2023.

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 6.2 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 whilst Part 1 remains in force.

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 were also provided via the Student Information Scotland website).

3.3 The above information can also be accessed via the Scottish Government's 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 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.

3.5 In addition, renting rights was one of three policy strands which formed the Cost of Living Support marketing campaign. That campaign launched on 28 September and ran until 22 November 2022.

3.6 Scottish Government social media led communications, news releases and direct email communications through Tenancy Deposit Schemes and the Scottish Landlord Register were also undertaken earlier this year to raise awareness of the changes to the emergency legislation from 1 April. This included awareness raising of a tenants' right to seek verification that a rent increase notice issued by their landlord is within the permitted 3% rent cap.

Young Scot Campaign

3.7 We recently collaborated with Young Scot to deliver a Tenants' Rights Awareness Raising Campaign to increase young people's awareness of their rights when renting a property in the private rented sector. The campaign ran for a 2-week period through August and September 2023, timed to support the start of the academic year, and was targeted at young people and students aged 18 to 24. The campaign delivered:

- a dedicated landing hub hosted on young.scot bringing together key information for young people on tenants' rights;
- TikTok/Instagram Reels style videos created by young content creators from Young Scot's 'Creator Collective' group; and
- paid digital marketing activity which ran for two weeks

3.8 One of the main aims of the campaign was to inform young people of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and how, and where, to get support if they feel their rights have been challenged.

3.9 The overall impact of the campaign has been positive, with over 1.2 million impressions⁵, a reach⁶ of over 650k and over 70k unique video views. A post-campaign evaluation survey carried out by Young Scot found that, as a result of seeing or engaging with this campaign, of the young people within Young Scot's audience, 80% agreed or strongly agreed that the content was clear about their rights, and 68% agreed or strongly agreed that they are more aware of the opportunity to challenge their landlord when necessary. On the Act, 66% agreed or strongly agreed that they are more informed about the temporary rent cap.

3.10 The campaign has supported young people to access high-quality, relevant and timely information to make informed decisions about renting in Scotland, and to feel empowered to exercise their rights should they need to.

⁵ A social media metric that measures the number of times a piece of content has been seen by users

⁶ A social media metric that refers to the number of individual users who have seen or interacted with a piece of content

4. Updated Economic Context

4.1 The Statement of Reasons which accompanied the proposal for a second extension of the Cost of Living (Tenant Protection) Act, published on 1 June 2023, provided an updated economic context and Business and Regulatory Impact Assessment.⁷ This section summarises data which has been released subsequent to that Statement of Reasons. Overall, while some of the data suggests that the economic situation might be beginning to stabilise, there has as yet been no significant improvement following a sustained period of deterioration in household finances.

4.2 The latest Understanding Scotland: Economy report carried out in August 2023⁸ found that around six in ten (58%) Scots surveyed believe that their own personal financial situation has worsened in the last 12 months, only slightly down from 63% in February 2023 and 60% in May 2023.

4.3 According to recent YouGov polling for the Scottish Government, in August 2023⁹ private renting households continued to report higher levels of concern about paying mortgage/rent¹⁰ than households in all tenures: the proportions were 27% for private renters and 12% for all tenures.

4.4 In addition, in August 2023 private renters remained more likely than households generally to say that they were struggling at least a little¹¹ to pay for household bills, including energy bills, rent and mortgage payments (65% of private renters compared to 50% of all tenures – these proportions have remained relatively steady since November 2022¹²), and that they were managing less well financially¹³ (35% of private renters compared to 22% for all tenures). In August 2023, a majority of private renters (57%) reported that their mental health had been impacted negatively¹⁴ by the cost of living, broadly similar to the figure of 63% recorded in March 2023.

4.5 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 rates respectively, while Tables 2 and 4 show the change in the total number of households in fuel and extreme fuel

⁷ [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 - 2nd proposed extension: statement of reasons](#); see in particular Section 4 and Annex F.

⁸ [Understanding Scotland Report Wave 8](#).

⁹ From YouGov online polling for Scottish Government; fieldwork: week 137 – 1-3 November 2022; week 158 – 28-30 March 2023; week 178 – 15-17 August 2023; weekly sample of c. 1,000 adults aged 18+ across Scotland each wave; weighted to be fully representative demographically and geographically. Base size for private renters is 119 for August 2023, 117 for March 2023 and 145 for November 2022. Data tables for all adults can be found at [Public attitudes to coronavirus, cost of living and Ukraine: tracker - data tables](#).

¹⁰ This was part of a prompted list of potential concerns in the next 2-3 months.

¹¹ Households who said they were either “struggling a little” OR “struggling somewhat” OR “struggling a lot”.

¹² The proportions were 64% for private renters and 53% all tenures in November 2022.

¹³ Households who said they were “not managing very well” OR “having some financial difficulties” OR “in deep financial trouble”. This has increased slightly since polling in November 2022 (which showed 25% among private renters compared to 21% for all tenures as a whole).

¹⁴ Either “to some extent” OR “to a large extent”.

poverty respectively between October 2022-March 2023 and October-December 2023.¹⁵

4.6 These tables show that the fuel poverty rate is expected to fall slightly to 33% in October-December 2023 when the Ofgem Energy Price Cap falls to £1,923. This will result in a decrease of around 20,000 fuel poor households compared to July-September 2023, bringing the total number of households in fuel poverty in Scotland to 830,000, of which 530,000 (21%) will be in extreme fuel poverty. This is a decrease of around 50,000 households in extreme fuel poverty compared to July-September 2023.

4.7 While all tenure types will see a decrease in both fuel and extreme fuel poverty, the rates remain uneven between tenures. In October-December 2023 we estimate that 46% of households in the private rented sector and 52% of households in the social rented sector will be in fuel poverty. These represent very slight decreases of one percentage point from estimates for October 2022-March 2023 for both tenures. However, for October-December 2023 we estimate that 23% of owner occupied households will be in fuel poverty, meaning that the overall trend of social and private renters having higher rates of fuel poverty remains. This shows that there has been little change in the pressures faced by households in all tenures since October 2022.

4.8 As a result, fuel poverty rates remain significantly higher than before the cost of living crisis. In 2019 the national fuel poverty rate was 24.6%, around 9 percentage points lower than the estimated October-December 2023 rate. Similarly, in 2019 the fuel poverty rate for social rented properties was 37%, around 15 percentage points lower than October-December 2023, while the fuel poverty rate for households in the private rented sector was 36%, around 10 percentage points lower than October-December 2023. By comparison the fuel poverty rate for owner occupiers in 2019 was 17%, around 6 percentage points lower than October-December 2023.

¹⁵ The fuel poverty rate is estimated for the periods that different Ofgem price caps apply.

Table 1. Fuel poverty rates by tenure

Tenure	Rate				Change (% point)	
	Oct 22- Mar 23	Apr- Jun 23	Jul- Sep 23	Oct- Dec 23	Oct 22- Mar 23 to Oct- Dec 23	Jul- Sep 23 to Oct- Dec 23
Owned outright	28%	31%	28%	27%	-1%	-1%
Mortgaged	19%	19%	18%	18%	-1%	[low]
Owner occupied subtotal	24%	26%	23%	23%	-1%	-1%
Local authority	52%	55%	51%	49%	-3%	-2%
Housing association	57%	62%	57%	56%	-1%	-1%
Social rented subtotal	54%	58%	54%	52%	-2%	-1%
Private rented	48%	50%	47%	46%	-1%	[low]
All	35%	37%	34%	33%	-1%	-1%

* Note differences may not sum due to rounding

* [low] indicates a value of less than 1%

Table 2. Households in fuel poverty by tenure

Tenure	Number in fuel poverty (000s)				Change (000s)	
	Oct 22- Mar 23	Apr- Jun 23	Jul- Sep 23	Oct- Dec 23	Oct 22- Mar 23 to Oct- Dec 23	Jul- Sep 23 to Oct- Dec 23
Owned outright	250	270	240	230	-10	-10
Mortgaged	130	130	120	120	-10	0
Owner occupied subtotal	370	400	360	350	-20	-10
Local authority	190	200	190	180	-10	-10
Housing association	150	170	150	150	0	0
Social rented subtotal	340	370	340	330	-10	-10
Private rented	150	150	140	140	0	0
All	860	920	850	830	-30	-20

* Note differences may not sum due to rounding

Table 3. Extreme fuel poverty rates by tenure

Tenure	Rate				Change (% point)	
	Oct 22- Mar 23	Apr- Jun 23	Jul- Sep 23	Oct- Dec 23	Oct 22- Mar 23 to Oct- Dec 23	Jul- Sep 23 to Oct- Dec 23
Owned outright	24%	28%	23%	22%	-2%	-2%
Mortgaged	12%	14%	11%	11%	-1%	-1%
Owner occupied subtotal	19%	22%	18%	17%	-2%	-1%
Local authority	31%	39%	30%	27%	-4%	-3%
Housing association	32%	42%	31%	28%	-5%	-4%
Social rented subtotal	31%	40%	30%	27%	-4%	-3%
Private rented	35%	40%	35%	33%	-2%	-2%
All	24%	29%	23%	21%	-3%	-2%

* Note differences may not sum due to rounding

Table 4. Households in extreme fuel poverty by tenure

Tenure	Number in extreme fuel poverty (000s)				Change (000s)	
	Oct 22- Mar 23	Apr- Jun 23	Jul- Sep 23	Oct- Dec 23	Oct 22- Mar 23 to Oct- Dec 23	Jul- Sep 23 to Oct- Dec 23
Owned outright	210	250	200	190	-20	-10
Mortgaged	80	100	80	70	-10	-10
Owner occupied subtotal	290	340	280	260	-30	-20
Local authority	110	140	110	100	-20	-10
Housing association	90	110	80	70	-10	-10
Social rented subtotal	200	260	190	170	-30	-20
Private rented	110	120	110	100	-10	-10
All	600	720	580	530	-60	-50

* Note differences may not sum due to rounding

4.9 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.

Table 5. Mitigation schemes

Mitigation	Included in scenario for		Eligibility
	October 2022	October 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

4.10 Annual Consumer Price Index (CPI) inflation, which reached a peak of 11.1% in October 2022 (its highest rate since 1981), has subsequently moderated, falling to 6.7% in August 2023, its lowest level since February 2022. One of the key reasons for this is that previous very large increases in energy prices are now in the baseline: as a result, annual inflation for the category “electricity, gas and other fuels”, which reached 89.7% in October 2022, has fallen significantly to stand at 5.3% in August 2023. The most recent Bank of England forecasts (published on 3 August 2023) projects that CPI inflation will continue to fall, reaching around 5% in Q4 2023, 4% in Q1 2024 and then 3% in Q2 2024, although this remains above the 2% inflation

target.¹⁶ Furthermore, even if the inflation rate (the change in prices) moderates, the level of prices, in particular energy prices, will be significantly higher than prior to the cost of living crisis. For example, in August 2023 the CPI subindex for the category “electricity, gas and other fuels” was 56% above its level in March 2022. Office for National Statistics provisional estimates for inflation rates for different income groups show that annual CPI inflation was higher for low-income households (8.4% in June 2023, the latest available figure for this breakdown), than for high-income households (7.7%) and all households (7.9%).¹⁷

4.11 For the 3-month period May-July 2023, annual growth in employees’ median seasonally adjusted regular¹⁸ pay in Great Britain was 7.8%, the highest figure since comparable records began in 2001.¹⁹ However, this was approximately in line with annual CPI inflation over this three-month period, meaning that regular real pay was unchanged over the year. Furthermore, this follows a period of consistent falls in regular real pay, with the last annual increase recorded in August-October 2021. As a result, regular real pay in May-July 2023 was 3.3% below its level in August-October 2021. Based on data from HMRC PAYE records, the annual growth rate in median (seasonally adjusted) nominal pay in Scotland was 8.1% in the period June-August 2023. In real terms (adjusting using CPI), pay rose by an annual 0.9%, although again the recent stabilisation in real pay follows a period of significant decline which began in early 2022; relative to the period December 2021- February 2022, real pay in June-August 2023 was 3.4% lower.

4.12 While the decision by the UK government to uprate reserved disability and low-income benefits by 10.1% (the inflation rate in September 2022) in 2023-24 will compensate benefit clients for the exceptionally high rate of inflation in 2022-23, they again face elevated inflation in 2023-24. Furthermore, the UK Government has frozen Local Housing Allowance (LHA) rates, which apply in the private rented sector, at 2020 levels for the third year running.

4.13 Since the publication of the Statement of Reasons for the second extension at the beginning of June 2023, the Bank of England’s Monetary Policy Committee increased Bank Rate by 50 basis points at its June meeting and by 25 basis points at its August meeting, taking Bank Rate to 5.25%. However, at its September meeting, the Committee decided to leave Bank Rate unchanged, ending a sequence of 14 consecutive increases in Bank Rate which began in December 2021 when Bank Rate was 0.1%.

4.14 The increases in Bank Rate in June and August have been reflected in mortgage rates, with Bank of England data showing that the average quoted two-year fixed rate, 75% loan to value (LTV) Buy-to-Let (BTL) mortgage rate increased from 4.78% in May 2023 to 6.23% in July, before falling to 6.10% in August (the

¹⁶ Bank of England, [Monetary Policy Report - August 2023](#); modal CPI forecast based on market interest rate expectations.

¹⁷ Data from ONS, [Provisional CPIH and CPI-consistent inflation rate estimates for UK household groups: January to June 2023](#). The inflation rate for households whose income is in the second decile of equivalised income is used for low-income households, while the inflation rate for households in the ninth income decile is used for high-income households – this is in line with previous ONS practice.

¹⁸ Regular pay excludes bonuses; including bonuses, total pay rose by 8.5%, but this was affected by one-off bonus payments for NHS England.

¹⁹ ONS, [Average weekly earnings in Great Britain: September 2023](#).

latest available figure for this dataset; this dataset therefore does not yet reflect any impact from the decision to hold Bank Rate steady in September).²⁰ However, this is similar to the level of mortgage rates experienced towards the end of 2022, following the UK Government's mini-budget in September 2022.²¹

4.15 Increases in mortgage rates are likely to have contributed to the increase in BTL mortgages in arrears: UK Finance data show that the share of all outstanding BTL mortgages in the UK with arrears of more than 1.5% of the outstanding balance has risen from 0.37% in Q2 2022 to 0.68% in Q2 2023, the highest level since 2013.²² Landlords in Scotland who have experienced an increase in mortgage rates who have an existing tenant are able to apply for a rent increase on the alternative ground of prescribed property costs, which has a higher cap of 6%; if their tenant has moved, they are able to set the rent for a new tenant to the market level. It is also worth noting that the absence of restrictions on rent increases would not protect those landlords who are particularly exposed to interest-rate risk – such landlords still need to compete with other landlords who are not subject to the same financing costs,²³ and the impact of the cost of living crisis on tenant finances restricts the ability of landlords to pass on financing costs. This is illustrated by the fact that the increase in arrears is a UK-wide phenomenon.²⁴ As yet, there has been no significant increase in repossessions: according to UK Finance data, the share of BTL properties taken into possession as a share of all BTL mortgages in the UK has been around 0.02% over the period from Q3 2022 to Q2 2023, about half the level (0.04%) recorded in Q3 2019 prior to the pandemic.

4.16 In terms of available data on other costs faced by landlords, the CPI category relating to regular maintenance and repair of a dwelling shows that annual inflation for this category has moderated from 7.5% in September 2022 to 2.7% in August 2023.

4.17 Latest data from letting agents²⁵ shows continuing high growth in new let rental prices in Scotland, although similarly high rental inflation is evident in other parts of the UK where rent restrictions do not apply. Citylets data²⁶ shows an increase of 11.4% in Scotland in Q2 2023; Rightmove data²⁷ for the same quarter

²⁰ Data sourced from Bank of England [Statistical Database](#).

²¹ The two-year fixed rate, 75% LTV BTL rate was 6% in November 2022. The five-year fixed rate, 75% LTV BTL rate has shown a similar pattern, rising from 4.71% in May 2022 to 5.89% in July, before easing to 5.79%, the same level as in November 2022.

²² A breakdown for Scotland is not available.

²³ It is estimated that around a third (36%) of private rented sector properties across the UK have an outstanding BTL mortgage (although landlords might have other types of loans than BTL mortgages); see [Cost of Living Bill - Key Statistics](#).

²⁴ The private rented sector in Scotland is estimated to constitute in the region of 7% of the UK private rented sector; therefore, it is very unlikely that a significant increase in UK BTL arrears can be solely the result of trends in Scotland.

²⁵ 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. Scottish Government [Private Sector Rent Statistics](#) provides a more comprehensive picture of average rents by Broad Rental Market Area and size of property, although again the data largely relates to the new-let market, and it is only published annually, with the next update for the year to end September 2023 scheduled to be released in November 2023.

²⁶ Citylets, [Quarterly Report, Q2 2023](#); data only available for Scotland.

²⁷ Rightmove, [Rental Price Tracker, Q2 2023](#).

shows an annual increase of 13.7% in Scotland, with London showing the same growth rate while the national average excluding Greater London shows a 9.3% increase; Zoopla²⁸ reported an increase of 12.7% in Scotland in July 2023, as compared with 12.4% in London and 10.5% in the UK as a whole; and HomeLet²⁹ reported a 14.4% increase in Scotland in August 2023, as compared to 13.0% in Greater London and 10.3% for the UK as whole. In the rest of the UK, therefore, new tenants are also exposed to approximately double-digit rent increases while existing tenants are not protected as in Scotland.

4.18 As has been set out in previous reporting, official statistics on the size of the private rented sector based on the annual Scottish Household Survey estimates have been affected by the impact of the Covid pandemic on the operation of the survey. Therefore, the most comprehensive up-to-date measure of the overall stock of privately rented properties is the number of properties registered on the Scottish Landlord Register. There are some limitations of this data source, such as the fact that registrations last for a period of three years and there could be a time lag in landlords de-registering properties which are no longer available for rent. Also in the case of any landlords looking to leave the sector or reduce their portfolio, it should also be recognised that the process could take several months from freeing up properties to completing sales. Nevertheless, subject to these limitations, Table 6 shows that the number of registered properties has been steady across the period January 2022 to September 2023, with the number of properties registered in September 2023 (343,635) being 1.2% higher than in August 2022 (339,632).

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

Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22
339,525	339,309	338,768	337,325	336,705	338,237	338,721	339,632
Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23
340,033	339,574	338,933	340,149	340,108	340,193	340,154	341,110
May-23	Jun-23	Jul-23	Aug-23	Sep -23			
341,417	341,556	341,898	342,542	343,635			

Source: Scottish Landlord Registration System monthly monitoring figures. Note that May-23 figures were based on a snapshot taken on 6 June 2023

²⁸ Zoopla, [Rental Market Report: September 2023](#).

²⁹ Homelet, [Rental Index, August 2023](#).

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 In September, Scottish Ministers issued a call for 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 invited to take part in the call for evidence is available at Annex A of this report.

5.3 The Call for Evidence set out that in order to help inform Scottish Ministers' statutory review of the remaining emergency provisions and inform the next report to Parliament, any representations stakeholders wished to make or bring to our attention were invited.

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

5.5 In respect of the social sector, Scottish Ministers were also committed to providing a further opportunity for individual organisations to respond to understand how the remaining emergency measures affecting the sector were impacting. 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.

5.6 In addition to the call for evidence, the Scottish Government has undertaken meetings and engagements with a range of stakeholders during this reporting period in order to listen to their views on the impact of the emergency legislation.

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 views from key stakeholder groups by the Scottish Government in September 2023.

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.

5.7 In total, 10 responses were received to the call for evidence, as follows:

- 3 from tenant representative and advice groups;
- 3 from a housing professionals membership organisation; and
- 4 from landlord/financial/investor representative groups, local authorities and housing associations, of which;
 - 2 represent interests in the private rented sector
 - 2 represent interests in both the private and social rented sector.

Main findings

Private Sector Rent Cap

5.8 Some tenant representative organisations set out that the provisions in the Act continue to provide reassurance and protection against rent increases, and remain “absolutely necessary” whilst the pressures of the cost of living crisis persist.

5.9 Responses from two local authorities set out concerns that the emergency measures may be leading to landlords leaving the sector due to their business no longer being financially viable, which is consequently contributing to increased homeless presentations. For example, in one local authority in 2022/23, there were 210 homeless presentations from the private rented sector, an increase of 41% since 2021/22 (149 presentations), with the reason stated as ‘other action by landlord’ and ‘termination of tenancy/mortgage due to rent arrears/default on payments’. However, consistent with national level statistics, this increase is driven by applications received in the first half of the 2022/23 financial year, before the introduction of the emergency legislation. It is highlighted that any decline in the private rented sector will have direct implications for social rented housing in terms of pressure and demand.

5.10 One response from a local authority reported evidence of landlords choosing not to renew their landlord registrations, which has resulted in a real term decline in the number landlords in the area. However, there is no evidence to support that this is a direct consequence of the emergency legislation, and the number of registered properties for rent in Scotland has remained broadly stable since 2020. In this scenario, a decline in the number of landlords registered in the area could potentially

be due to the average landlord portfolio size increasing over this time period e.g. a scenario of smaller landlords leaving the sector, but larger landlords remaining or entering the sector and buying up further properties.

5.11 A housing professionals membership organisation also reported a marked increase in social housing applications due to private rented properties being marketed for sale by landlords, and they have concerns that the Act is placing demand and pressure on the social sector. They also highlighted that the cumulative impact of regulatory changes, including the New Build Heat Standard and new Building Regulations, combined with the emergency measures and wider economic challenges, will undoubtedly have a negative impact on the supply of housing of all tenures.

5.12 A housing professionals membership organisation raised concerns around investment and financial planning in the mid-market rent (MMR) sector. Increased construction costs coupled with the rent cap were cited as reasons for delaying or halting development of sites designated for MMR, as they are no longer deemed to be financially viable. Anecdotal evidence provided suggests this comes at a time of increased demand for MMR as a result of the decline in availability of private rented sector properties. In the response, their view is that MMR properties should be considered separately to any rent cap measures, as they already have a strategic commitment to keep rents as low as possible. As MMR providers issue Private Residential Tenancies, they are able to make use of the Prescribed Property Costs safeguard built into the Act and can apply to Rent Service Scotland to increase the rent for a let property above the rent cap (up to 6%) in connection with defined 'prescribed property costs' where applicable.

5.13 A response from a charity providing residential care for people with learning disabilities, that is operating as a private landlord, noted that the emergency measures are well intended to protect tenants from excessive rent increases during these challenging economic times, however they are concerned that they are being conflated with the private sector. They called for their tenancies to be excluded from the extension of the Act. The respondent's view is that the measures are not helpful due to the distinct pressures they face with regards to the care and support services they provided.

5.14 This response noted that they issue private residential tenancies which means that they would be able to apply to the prescribed property cost safeguard to seek to secure an increase in their rents of up to 6%. However, they raised concerns around the bureaucracy of the application process, because it requires an application for each tenancy given each rent increase affects an individual tenancy. They stated that this places pressure on them and felt it may not take account of the particular costs associated with their organisation.

5.15 In addition, some respondents had the view that the emergency legislation has damaged investors' confidence across the Scottish housing market, and suggest that Scotland is falling behind other areas of the UK in the delivery of Build to Rent homes.

5.16 A tenant representative group stressed the importance of maintaining the rent cap to avoid unaffordable rent increases, and reference was made to anecdotal evidence of landlords increasing rents by between 10-30% between tenancies. The response also calls for reform of the rent adjudication system to prevent a cliff edge when the temporary measures come to an end.

Evictions Moratorium

5.17 From a social sector perspective, due to eviction already being a last resort, the eviction moratorium provisions appear to be continuing to have minimal impact. A social sector representative reiterated concerns about the definition of substantial rent arrears i.e. equal to or more than £2,250, as it may be being perceived as an acceptable level of debt that is unmanageable for some tenants and delays social landlord intervention. They state that the moratorium may have resulted in tenants not paying rent, or deprioritising the payment of rent, and reduced the incentive for tenants already in rent arrears to work with their landlord.

5.18 The response also refers to recently published data from the 2022-2023 Scottish Housing Regulator Annual Returns Charter data collection which indicates that the sum of housing association gross rent arrears at year end has increased from £59,548,145 in 2021/22 to £65,608,420 in 2022/23, an increase of 10%³⁰. However as the response notes, the reporting period of April 2022 to April 2023 does not fully align with the Act's introduction in October 2022 to enable a direct comparison of the effects of the Act.

5.19 One tenant representative group reported members and tenants feeling reassured by the protections of the moratorium on the enforcement of evictions. They note that the evictions moratorium has been especially important in conjunction with the rent cap in order to prevent landlords from abusing grounds for eviction in order to increase rent. This is in the context of increasing numbers of private sector tenants seeking advice regarding illegal evictions, as reported by Citizens' Advice Scotland³¹.

5.20 A response from a religious group, who operate as a private landlord, highlighted the impact of the evictions moratorium on the letting of vacant manses. Due to the potential delay around recovering the property when it is required for occupation by a new minister, many congregations are choosing to leave properties vacant which is impacting on finances and future planning for retiring ministers.

³⁰ [Statistical information | Scottish Housing Regulator](#)

³¹ [cas illegal eviction full report.pdf](#)

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

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

Description and Operation of the Provisions

6.1.1 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.

6.1.2 The rent cap was initially set at 0%, and applied to most existing tenancies in the private rented sector. Any rent increase notice issued for applicable tenancies on or after 6 September 2022 was void while the cap was at 0%.

6.1.3 On 1 April 2023, [regulations](#) came into force that extended the emergency Act beyond its initial first six month period, for a further 6 months until 30 September 2023. The regulations also varied the rent cap provisions in relation to the private rented sector, increasing the 'permitted rate' by which rent can be increased during a tenancy from 0% to 3%. This decision was taken following a comprehensive overview of the latest economic situation and consideration of a wide range of evidence from stakeholders, and a [Statement of Reasons](#) providing a full justification and evidence base underpinning that decision was published alongside the regulations.

6.1.4 This meant that from 1 April 2023, private landlords were once again able to issue a rent increase notice (for applicable tenancies), so long as the increase was within the permitted rate. As before, landlords can still set the rent for any new tenancy, as the rent cap only restricts in-tenancy rent increases.

6.1.5 Notwithstanding the rent cap, landlords continue to 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. The regulations that came into force on the 1 April also varied the prescribed property costs safeguard from 3% to 6%.

6.1.6 An application using the safeguard may only be made if a landlord has had an increase in 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.

6.1.7 A landlord can apply to increase the rent to recover up to the lower of either 50% of the increase in these costs or 6% of the existing rent. The existing protection which only allows a landlord to raise rents once per 12 months still applies.

6.1.8 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.

6.1.9 As of 25 September 2023, RSS have received the following applications:

Timeframe	Landlord 3% Prescribed Property Costs application	Landlord 6% Prescribed Property Costs application	Tenant rent cap verification request application
28 October 2022 to 31 March 2023	47 applications received and 38 decisions made.		
1 April 2023 to 25 September 2023		1,126 applications received and 928 decisions made	50 applications received and 25 decisions made

Summary of applications received by Rent Service Scotland under the Cost of Living (Tenant Protection) (Scotland) Act 2022

6.1.10 A total of 47 Landlord applications for 3% prescribed property costs were received up to 31 March 2023 with 20 incomplete applications having to be returned and 0 withdrawn. 38 decisions were made and 9 decisions have not been made as no supporting documentary evidence of costs were received. Of the 47 applications, 47 were for interest payable in respect of a mortgage or standard security, 0 were for landlord insurance other than general building and contents and 0 were for service charges relating to the property.

6.1.11 Since 1 April 2023, 50 tenant verification applications have been received and 25 decisions have been made. Of the 25:

- 16 were verified at the 3% cap;
- 9 applications had rent increase notices that exceeded the 3% cap and these were capped at 3% by the Rent Officer. Of the 9 which exceeded the cap: 3 were between 5 and 7%; 2 were between 7 and 8%; 2 at 15%; 1 at 25% and 1 at 45%.

6.1.12 Since 01 April 2023, 1,126 Landlord applications for 6% prescribed property costs have been received of which:

- 101 incomplete applications were returned
- 74 applications withdrawn
- 23 applications still to be processed
- 928 decisions were made:

6.1.13 The table below shows a breakdown in the type of prescribed property costs requested:

Mortgage interest/standard security	Landlord Insurance	Service Charges	Total accepted applications
920	26	22	928

6.1.14 Of the 928 accepted applications, 35 applied stating they had an increase in more than one prescribed property cost. Additionally, not all applicants requested an increase in rent due to an increase in mortgage costs. One applicant only requested an increase in rent due to an increase in in their insurance costs. This was the only prescribed property cost they claimed for. 7 applicants requested an increase in rent due to an increase in their service costs. This was also the only prescribed property cost all 7 applicants claimed for.

6.1.15 One landlord has challenged the outcome of their application and has requested the First-tier Tribunal review the decision taken by the Rent Officer.

6.1.16 RSS received 465 enquiries regarding the landlord prescribed property cost applications and tenant verification applications. 253 were received by e mail and 212 by telephone.

Consultation

6.1.17 The call for evidence, along with informal consultation with stakeholders, has provided valuable information on the views of key stakeholders on the operation and impact of the rent cap 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.

6.1.18 During this report period the Scottish Government has met with a range of key stakeholders to discuss the ongoing operation and impact of the rent cap provisions. This included:

- a meeting with the Scottish Property Federation on 26 June where challenges with the rent cap were discussed;
- a meeting with investors on 2 August, which included Scottish Property Federation representatives, Goodstone Living, Legal & General, Hub Residential, Scarlett Development, Ryden, Moda Living and Get Living. The

message from the group was that clarity regarding future rent controls would help restore investor confidence in Scotland, which they consider has been significantly damaged by the Cost of Living Act. They are keen to understand in detail what will be brought forward in forthcoming legislation and to have a clear line of sight on the timeline; and

- a meeting with tenant representative group Living Rent on 2 August, where they expressed concern that any interval between the emergency measures expiring and future rent controls might lead to steep rent increases for tenants before rent controls are in place.

Necessity and Proportionality

6.1.19 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.

6.1.20 The concerns detailed by consultees in the call for evidence (see section 5 of this Report) are acknowledged. In terms of testing the validity of these concerns, and assessing the wider impact of the rent cap measures, there is limited data available to evidence a direct link between the rent cap provisions and wider changes to the rental market, a key issue flagged by many stakeholders. The Scottish Government will continue to closely monitor information as it becomes available and has considered all available evidence and data at this time.

6.1.21 Having carefully considered the responses from consultees we remain of the view, based on the overall evidence set out in section 4, that the rent cap provisions remain necessary and continue to pursue the prescribed aims of the Act. The economic data demonstrates that the costs crisis continues to have a challenging impact on household finances. The measures remain in the public interest seeking to ensure that tenants are, protected against the impact of the wider economic conditions, through stabilisation of their housing costs.

6.1.22 As set out in section 4 of this report, although fuel poverty rates are showing a recent downward trend, they remain significantly higher than before the cost of living crisis, and it is estimated that 46% of households in the private rented sector and 52% of households in the social rented sector will be in fuel poverty for the first part of the coming winter period.

6.1.23 The Scottish Government remain of the view that the measures have continued to strike a proportionate balance between the protection of tenants and the rights of landlords via the safeguards built into the legislation. The purpose of including the provision for landlords to make an application to have an above cap rent increase to reflect an increase in defined prescribed property costs is to take

account of the individual circumstances of landlords. Scottish Ministers made use of the powers to amend the level of the rent cap and the landlord safeguards in April this year – as a direct response to consideration of the available evidence and wider economic circumstances. We have reviewed the level and those property costs that are permitted to ensure that they continue to strike an appropriate balance.

6.1.24 There was limited evidence received from consultees on the operation the prescribed property costs safeguard due to the relatively short period of time that the process has been operational. However it is clear that a proportion of landlords are successfully making use of it as set out in paragraphs 6.1.12 – 6.1.15.

6.1.25 The current framework is finely balanced, and we will continue to closely monitor the available economic data and evidence of the impact of the measures. Evidence on whether, or not, the financial burdens on households begins to ease further will be closely monitored alongside the impacts of the Part 1 measures.

6.1.26 Based on the evidence provided by stakeholders, and the evidence set out in Section 4, we remain of the view that the measures continue to be necessary and proportionate.

6.2 Part 1, Schedule 2: Protection against eviction

Description and Operation of the Provisions

6.2.1 Part 1, Schedule 2, temporarily pauses the enforcement of eviction orders and decrees 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.

6.2.2 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.

6.2.3 A number of safeguards have been put in place to allow the enforcement of 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).

6.2.4 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).

6.2.5 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. Where an eviction order or decree was granted before the legislation came 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.

6.2.6 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.

6.2.7 As of 31st August 2023, data from the First-tier Tribunal (Housing and Property Chamber) shows that there have been a total of 2,097 applications for eviction from September 2022 to 31 August 2023, which compares to 1,958 applications for evictions in the same period in the previous year, although volumes in the previous year will have been impacted by eviction measures in place through the Coronavirus (Scotland) Act 2020. The total number of eviction applications includes eviction action relating to the Coronavirus Act period, post Coronavirus Act period and under the Cost of Living (Tenant Protection) (Scotland) Act 2022. Data on the status of these applications is only available in relation to Coronavirus Act cases and Cost of Living Act cases (detailed below), and it is therefore not possible to indicate how many of the total number of applications resulted in an Order for eviction being granted, refused, or withdrawn.

6.2.8 More recent data from the Tribunal up to 4 October 2023 shows that there have been, 1,552 eviction applications that fall within the scope of the Cost of Living Act's provisions. Of the 1,552 applications received, 631 are awaiting outcome. The remaining 921 applications are broken down as follows:

Number of First-tier Tribunal (Housing and Property Chamber) eviction applications falling within the scope of the Cost of Living Act provisions, by status and month of outcome as at 4 October 2023

	Granted	Refused	Rejected	Withdrawn	Dismissed
Sep-22	-	-	-	-	-
Oct-22	-	-	-	-	-
Nov-22	-	-	-	-	-
Dec-22	-	-	1	11	-
Jan-23	1	-	4	23	-
Feb-23	7	-	4	25	-
Mar-23	35	5	6	45	1
Apr-23	27	-	5	39	-
May-23	71	2	10	45	1
Jun-23	59	3	14	48	1
Jul-23	48	3	11	52	2
Aug-23	66	5	27	71	3
Sep-23	49	3	12	57	2
Oct-23	9	0	1	7	0
Total	372	21	95	423	10

6.2.9 The majority of these eviction applications, 1,094, were in relation to private residential tenancies. Of these, 260 were granted, 15 refused, 9 dismissed and 454 awaiting an outcome. The remainder 356 were either rejected (57) or withdrawn (299).

6.2.10 The table on the following page provides a breakdown by grounds used for cases which were granted, refused and dismissed. In addition to the [18 grounds of eviction](#) set out in the Private Housing (Tenancies)(Scotland) Act 2016, there are 3 new grounds under the Act – 1A (landlord intends to sell due to financial hardship), 4A (landlord intends to live in the let property due to financial hardship) and 12A (substantial rent arrears).

6.2.11 Of the 260 granted, the two main grounds used were rent arrears and intention to sell. It is important to note that applications for eviction can use more than one repossession ground, and so the number of grounds in the table, if totalled, will therefore total to more than the number of cases.

Ground	Granted	Refused	Dismissed
1	80	3	2
1A	7	1	-
2	3	-	-
3	6	-	-
4	10	-	1
4A	2	-	1
5	4	1	-
6	-	-	-
7	-	-	-
8	1	-	-
9	-	-	-
10	11	-	-
11	16	2	-
12	105	8	3
12A	66	-	1
13	-	-	-
14	7	-	-
15	-	-	-
16	-	-	-
17	1	-	-
18	-	-	-

6.2.12 Latest available figures from the Scottish Courts on the total number of social sector summary cause eviction applications registered at courts each month show a decrease over the period since August 2022, with the number of applications registered falling from 458 in August 2022 to 225 in April 2023, although numbers across more recent months have risen slightly to 349 in August 2023. It should be noted that these are overall figures and do not specifically identify the number of applications that fall within the scope of the emergency legislation. Also note that whilst eviction application figures in August 2023 remain above the monthly levels seen prior to this each month between April 2020 and July 2022, the Coronavirus (Scotland) Act 2020 was in force from 7 April 2020 to 30 September 2022 and had a significant impact on the number of summary cause eviction applications registered by the courts during this period.

6.2.13 Latest published figures from the Scottish Housing Regulator on the number of social sector properties recovered following court eviction actions³² are on a financial year basis only and so provide no information on trends since September 2022, nor do the figures specifically identify the number of properties recovered that fall within the scope of the emergency legislation, of which it could take a number of months for these to progress from application to outcome. Across the latest financial year 2022-23, there were a total of 618 properties recovered, an increase from the 383 properties recovered in the previous year 2021-22, but substantially lower than the 1,866 properties recovered in the pre-pandemic year 2019-20, with numbers since 2019-20 being likely to have been affected by the Coronavirus Act measures in

³² See information on Charter Indicator 22 at [Statistical information | Scottish Housing Regulator](#)

place. Across the latest financial year 2022-23, 17% (104) of the properties recovered were for anti-social behaviour, a higher percentage than the 4% (79) of properties recovered for anti-social behaviour in 2019-20.

6.2.14 Feedback from the call for evidence once again shows that social sector landlord representatives see the eviction moratorium provisions as having a minimal impact, due to eviction already being a last resort for social landlords. However, concerns were raised again about the definition of substantial rent arrears in the emergency Act, as it is being perceived by some tenants as an acceptable level of debt to accrue before action can be taken.

6.2.15 In engagement with student sector stakeholders who provide student accommodation, it remains the position of 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.

6.2.16 Data from the First-tier Tribunal for Scotland (Housing and Property) Chamber indicates that they have received 13 applications for unlawful eviction damages from 1 November 2022 to 31 August 2023. To date no decisions have been published on the Tribunal website that fall within the scope of the Act.

Consultation

6.2.17 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 further call for evidence issued to a range of key stakeholders - including landlords, tenants, housing rights organisations, investors and educational establishments and providers of student accommodation.

6.2.18 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.

6.2.19 Tenants' representatives reported being supportive of the moratorium, with one group reporting that members and tenants feel reassured by the protections of the moratorium on the enforcement of evictions. They note that the evictions moratorium has been especially important in conjunction with the rent cap in order to prevent landlords from abusing grounds for eviction in order to increase rent. In addition, and in written evidence provided in response to a Call for Evidence by the Local Government, Housing and Planning Committee on the draft regulations to extend the Act beyond 30 September, Living Rent commented: "In the last month (June), many tenants have gotten in touch regarding threatened evictions, mentioning that many landlords were seemingly abusing grounds for eviction in order to raise rents. They were reassured by having still the greater protection regarding the enforcement of eviction order, however this shows the need to review grounds for eviction and introduce greater penalties for landlords abusing grounds for eviction and shifting the burden of proof on landlords rather than tenants".

6.2.20 There have been previous criticisms from private and social rented sector landlord representatives suggesting 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.

6.2.21 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.

6.2.22 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. We also continue to engage with The Society of Messengers-at-Arms and Sheriff Officers on the operation of the eviction moratorium in practice.

Necessity and Proportionality

6.2.23 During this reporting period, in order to assess the use and continued necessity and proportionality of the eviction moratorium 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

6.2.24 As noted above, there has been a limited impact on private 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.

6.2.25 We consider that the measures, alongside the landlord safeguard and exemptions, continue to 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 continue to struggle as a result of financial stress caused by the costs crisis, and providing those being evicted with additional time to access support and find alternative accommodation.

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

Social Rented Sector

6.2.27 We know that social rented households are more likely to have lower incomes than households in other tenures, with Scottish Household Survey results for 2019³³ 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.

6.2.28 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 Scotland³⁴ 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.

6.2.29 Around two-thirds (65%) 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 28%³⁵.

6.2.30 Social sector stakeholders continue to note that evictions are always a last resort and therefore the moratorium does not impose 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, continue to 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 continue to struggle as a result of financial stress caused by the costs crisis, and providing those being evicted with additional time to access support and find alternative accommodation.

Student Rented Sector

6.2.31 Whilst evictions in the student sector are reported as being extremely rare by sector, there remains a possibility that evictions could take place.

6.2.32 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

³³ [Scottish Household Survey Annual Report Tables 2019](#)

³⁴ [Scottish Government Statistical publication on Wealth in Scotland 2006-2020](#)

³⁵ Based on DWP StatXplore Tables for May 2023, compared with latest available rented stock figure

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.

6.2.33 Given the reported infrequency of 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.

7. Reporting on related Scottish Statutory Instruments

7.1 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

SSI title: The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Early Expiry and Suspension of Provisions) Regulations 2023	
Power under which SSI was made:	Sections 6(1)(a) and 8(1) of the Cost of Living (Tenant Protection) (Scotland) Act 2022
Parliamentary procedure to which SSI was subject:	Negative
Date(s) of commencement:	Expiry Regulations came into force on 26 February 2023. Suspension Regulations came into force on 30 March 2023.
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

SSI title: The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023

Power under which SSI was made:	Sections 5 and 7(3)(a) of the Cost of Living (Tenant Protection) (Scotland) Act 2022(1), sections 23A(3), 24J(2) and 53(3) of the Housing (Scotland) Act 1988(2), sections 21A(3), 33F(2) and 77(1) of the Private Housing (Tenancies) (Scotland) Act 2016(3).
Parliamentary procedure to which SSI was subject:	Affirmative
Date(s) of commencement:	1 April 2023
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

SSI title: The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023

Power under which SSI was made:	Section 7(3)(b) of the Cost of Living (Tenant Protection) (Scotland) Act 2022
Parliamentary procedure to which SSI was subject:	Affirmative
Date(s) of commencement:	1 October 2023
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

PERSONS NOTIFIED OF CALL FOR EVIDENCE 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.

- All Local Authorities in Scotland
- All Registered Social Landlords in Scotland
- Aff the Streets
- Age Scotland
- ALACHO
- Alliance Scotland
- Antisocial Behaviour Lawyers Forum
- Association of Student Residential Accommodation (ASRA)
- Central Scotland Regional Network
- Chartered Institute of Housing
- Child Poverty Action Group (CPAG)
- Church of Scotland
- Citizens Advice Scotland
- Colleges Scotland
- Common Weal
- Convention of Scottish Local Authorities (COSLA)
- Crisis in Scotland
- Crown Estates Scotland
- College and University Business Officers (CUBO)
- Disability Equality Scotland
- Engender
- Equality Network
- First-tier Tribunal for Scotland (Housing and Property Chamber)
- Glasgow Centre for Inclusive Living (GCIL)
- Generation Rent
- Glasgow & West of Scotland Forum of Housing Associations
- Glasgow City Health and Social Care Partnership
- Glasgow Disability Alliance
- Govan Law
- Healthcare Improvement Scotland
- Homeless Network Scotland
- Homes for Good
- Homes for Scotland
- Housemark
- Housing Options Scotland
- Housing Support Enabling Unit (HSEU)
- Inclusion Scotland

- Joseph Rowntree Foundation
- Law Society of Scotland
- Legal Services Agency
- LGBT Youth Scotland
- Living Rent
- National Farmers Union Scotland
- North of Scotland Regional Network
- National Union of Students Scotland (NUS)
- One Parent Families Scotland
- Police Scotland
- Positive Action in Housing
- Propertymark
- Royal Institution of Chartered Surveyors
- Scotland's Housing Network
- Scottish Agricultural Arbiters & Valuers Association
- Scottish Association of Landlords
- Scottish Court Service
- Scottish Lands and Estates
- Scottish Property Federation
- Scottish Refugee Council
- Scottish Tenants Farmers Association
- Scottish Women's Aid
- Scottish Youth Parliament
- Sensory Hub Alliance
- Scottish Federation of Housing Associations (SFHA)
- Shelter Scotland
- Simon Community Scotland
- Single Parent Families Scotland
- Society of Messengers at Arms and Sheriff Officers (SMASO)
- South East Scotland Regional Network
- South West Scotland Regional Network
- Tenant Information Service (TIS)
- Tenant Participation Service (TPAS)
- The Poverty Alliance
- The Rock Trust
- The Society of Local Authority Chief Executives (SOLACE)
- UK Finance
- UNISON
- UNITE
- Universities Scotland
- University and College Union (UCU)
- WhoCares? Scotland

Evidence was submitted from the stakeholders listed below.

- Church of Scotland
- Citizens Advice Scotland
- East Ayrshire Council
- Homes for Scotland
- L'Arche Scotland
- Living Rent
- North Lanarkshire Council
- Scottish Federation of Housing Associations
- Society of Messengers at Arms and Sheriff Officers (SMASO)
- University and College Union



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