

Proposed extension of Section 10 of the Cost of Living (Tenant Protection) (Scotland) Act 2022

Statement of Reasons

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Proposed extension of Section 10 of the Cost of Living (Tenant Protection) (Scotland) Act 2022: Statement of Reasons

1. Introduction

1.1 The Cost of Living (Tenant Protection) (Scotland) Act 2022¹ (“the 2022 Act”) is a response to the impact of the cost crisis on those living in the rented sector. Part 1 of the 2022 Act introduced a temporary rent cap (initially set at 0% and then increased to 3% on 1 April 2023²) and a temporary moratorium on the enforcement of evictions, along with simplifying the process for claiming unlawful eviction damages and increasing the level of damages that can be awarded. It also contains powers to temporarily reform rent adjudication in connection with supporting transition away from the emergency rent cap measures in the private rented sector.

1.2 Part 1 of the 2022 Act was initially due to expire on 31 March 2023, however Scottish Ministers used the powers available to them under section 7(3) of the 2022 Act to extend Part 1 on two occasions.³ Part 1 of the 2022 Act will now expire on 31 March 2024. Section 10 and schedule 3 of the 2022 Act will also expire on 31 March 2024 unless extended.

1.3 This Statement of Reasons is laid before the Scottish Parliament alongside a set of draft regulations⁴ which seek to extend the expiry of section 10 (and by virtue of that, schedule 3) of the 2022 Act, until 31 March 2025. Extension of section 10 and schedule 3 is being sought to enable the powers to be exercised as intended to smooth the transition away from the rent cap. This Statement sets out the reasons as to why the Scottish Government believes the regulations should be made.

1.4 Schedule 3 of the 2022 Act contains a power to modify the law in relation to rent adjudication on the expiry of the rent cap. By temporarily modifying rent adjudication the aim is to smooth the transition away from the emergency rent cap. If approved, this will aim avoid the unintended consequence of very steep and unmanageable rent increases which could arise if rents that had been suppressed by the rent cap were immediately able to be adjudicated anew with reference to the open market rent upon expiry of the rent cap.

1.5 As noted, schedule 3 of the 2022 Act would expire on 31 March 2024 (coinciding with the end of the rent cap) unless extended meaning it would not be possible to seek to utilise the powers in Schedule 3 as part of the transition away from the rent cap without this extension. For this important practical and technical reason, therefore, this extension is necessary. If an extension is not secured then

¹ [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022](#).

² [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Dates and Rent Cap Modification\) Regulations 2023 \(legislation.gov.uk\)](#)

³ [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Dates and Rent Cap Modification\) Regulations 2023 \(legislation.gov.uk\)](#); and [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Date\) Regulations 2023 \(legislation.gov.uk\)](#)

⁴ The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024

there would be no opportunity to manage the transition out of the rent cap via a modification to rent adjudication using the powers in schedule 3 of the 2022 Act.

2. Background

2.1 The 2022 Act, which came into force on 28 October 2022, aims to:

- protect tenants by stabilising their housing costs through the introduction of a temporary, variable rent cap;
- where possible, during the cost 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 from the private sector by a landlord wanting to raise rents between tenancies during the temporary measures of a moratorium on evictions and raising the level of damages that may be awarded.

Background to the Rent Adjudication process

2.2 Under the Private Housing (Tenancies) (Scotland) Act 2016 ('the 2016 Act'), tenants with a private residential tenancy may make an application to a Rent Officer (Rent Service Scotland) for a rent adjudication assessment, if they feel a rent increase is not reasonable.

2.3 A Rent Officer will make a determination on what the rent for the property should be, by comparing the rent to market rent for similar properties in the same locality ('open market rent'). A similar rent adjudication process exists for tenants with assured tenancies and short assured (under the Housing (Scotland) Act 1988 ('the 1988 Act')), although applications are made to the Tribunal rather than to a Rent Officer.

2.4 Whilst the emergency Act is in force, this process has temporarily been stopped but it will come back into force on 1 April 2024.

3. Proposal to extend

3.1 When the 2022 Act was introduced, the Scottish Government recognised the potential for some unintended consequences when the rent cap ends if no transitional measures were put in place to mitigate this.

3.2 Given that the emergency legislation is - by its nature - temporary, it was acknowledged that the termination of the rent cap may lead to a large number of landlords seeking to increase their rent, and setting rent again solely by reference to the open market rent immediately could result in very steep and unmanageable rent increases for tenants. In these circumstances, the existing rent adjudication process would not provide an appropriate mechanism for determining a reasonable rent increase in the event that a tenant refers their rent increase the adjudication process.

3.3 The 2022 Act contains a power to modify the law on adjudication of rent disputes on, or in anticipation of, the expiry or suspension of the temporary rent cap. Section 10 of the 2022 Act introduces schedule 3 of the 2022 Act, which inserts a regulation-making power into both the 2016 Act and the 1988 Act, to modify the rent adjudication process in connection with the determination of the rent payable under private residential tenancies, assured tenancies and short assured tenancies.

3.4 Section 11(1) of the 2022 Act expires section 10 and schedule 3 at the end of 31 March 2024. There is, however, a power for Scottish Ministers to lay regulations along with a statement of reasons seeking to extend the expiry of section 10 by a period of up to one year at a time. We are seeking such an extension.

Economic context

3.5 The Scottish Government’s [latest report](#) to the Scottish Parliament on the operation of the Cost of Living (Tenant Protection) (Scotland) Act 2022 from October 2023 to December 2023, provides an update on the evolving economic context impacting on those who rent their home in the private rented sector (see Annex B for key points).

3.6 While there have been some signs of improvement in economic conditions for households in recent months, these improvements follow a period of significant pressure such that that, on average, households continue to face economic and financial conditions which are significantly more challenging than they were prior to the cost of living crisis.

3.7 The Scottish Government published its annual private rent statistics publication in November 2023. A breakdown of rent growth by bedroom size is set out below.

Average private rent levels and annual changes by bedroom size, Scotland, year to September 2023

	Average monthly rent	Annual change (£)	Annual change (%)
1-bed shared	490	64	15.1%
1-bed	648	68	11.7%
2-bed	841	105	14.3%
3-bed	1,026	121	13.3%
4-bed	1,656	196	13.4%

3.8 Average 2-bedroom rents (the most common size) increased in all 18 Broad Rental Market Areas of Scotland compared with the previous year. Increases in 11 of these areas were above the average 12 month UK CPI inflation rate for the corresponding period of 9.0%. The increases ranged from 1.5% in Dumfries and Galloway up to 22.3% in Greater Glasgow.

3.9 These figures show increases in market rents which suggest that if market rents alone are used as a comparator under an unmodified rent adjudication system, individual tenants could face very high rent increases in some cases.

3.10 The proposed use of the schedule 3 powers, which is distinct from this extension being sought, is contained in a separate set of regulations which are separately also subject to Parliamentary approval.

4. Conclusion

4.1 Without extending section 10 of the 2022 Act beyond 31 March 2024, it would not be possible for the regulation-making powers to be used to support the transition out of the emergency rent cap once Part 1 of the 2022 Act expires. There is therefore an important practical and technical reason for seeking this extension as outlined.

4.2 Scottish Ministers have also carefully considered the wider economic context and feedback from stakeholder engagement, and accordingly – subject to approval by Parliament - have decided that it is necessary that the expiry of Section 10 of the 2022 Act be extended to 31 March 2025.

Further background to Cost of Living (Tenant Protection) (Scotland) Act 2022

1. On 27 January 2023, Scottish Ministers laid regulations⁵ and a Statement of Reasons⁶ before the Scottish Parliament in order to extend and vary the remaining provisions within Part 1 of the 2022 Act for a further 6 months to 30 September 2023.

2. That Statement of Reasons set out that the economic position had not yet changed fundamentally and many households on low and modest incomes, continue to struggle. After taking the wider economic context and stakeholder engagement into account, Scottish Ministers proposed that whilst the 2022 Act should be extended for a further 6 month period, it was recognised that the ongoing impacts of the cost crisis may also be experienced by some private landlords, and therefore it would be proportionate to raise the rent cap in the private rented sector to allow within-tenancy rent increases of up to 3%.

3. The voluntary approach to rent setting taken by landlords in the social sector was intended to achieve an average rental increase of less than £5 a week across the sector as a whole. A Scottish Housing Regulator (SHR) report⁷ published 15 March 2023 confirmed that this was the case, with an average rent increase across the social sector for 2023-24 of 5.07%, equivalent to £4.38 per week (or just under £19 per month). The average increase is 3.80% (£3.07 per week) for local authorities and 5.34% (£5.05 a week) for housing associations. As rents in the private rented sector are generally significantly higher⁸ than those in the social sector, allowing a maximum rent increase of 3% for rents in the private rented sector equates to a similar average rent increase for tenants in two-bedroom properties (the most common property size in the private rented sector).⁹ The Scottish Government considers that this gave a measure of parity to landlords in the private and social sectors in monetary terms, whilst continuing to protect tenants from unaffordable rent increases whilst the pressures of the cost crisis continue. It should be noted that social sector rents are set for each fiscal year, so these rent increases will apply for a full 12 months, from 01 April 2023 to 31 March 2024 in most cases, reinforcing the parity of treatment of the social and private rented sectors.

4. In recognition of the increase in the rent cap from 1 April 2023, the safeguard for landlords introduced by the 2022 Act – in the form of the ability to apply to a Rent Officer to increase the rent for a let property above the rent cap in connection with defined ‘prescribed property costs’ – was also increased from 3% to 6%. The

⁵ [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Dates and Rent Cap Modification\) Regulations 2023.](#)

⁶ [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 - proposed extension: statement of reasons.](#)

⁷ Scottish Housing Regulator, [Rent increases by Scottish social landlords 2023/24 - March 2023.](#)

⁸ Scottish Government, [Cost of Living Bill - Key Statistics.](#)

⁹ The average two-bedroom private rent was £736 in the 12 months to September 2022 (see Table 6 in Section 8 of Scottish Government, [Private Sector Rent Statistics, Scotland, 2010 to 2022.](#)) This dataset is primarily based on new let rents, but even when reducing this figure by 10% to reflect that rents for existing tenants tend to be lower than new let rents (see discussion in Annex C of the [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 - proposed extension: statement of reasons](#)), a 3% increase would equate to £19.87 per month and a 6% increase to £39.74 per month.

previous extension regulations also extended the following provisions in the 2022 Act for a further 6 month period to 30 September 2023:

- Eviction from residential properties: Restrictions on enforcement (schedule 2 – paragraphs 1, 2, 3, 4, 5 and 6); and
- Protection against eviction: Unlawful evictions (notification and determination of damages) (schedule 2 – paragraph 7).

5. On 1 June 2023, Scottish Ministers laid regulations¹⁰ and a Statement of Reasons¹¹ before the Scottish Parliament in order to extend Part 1 of the 2022 Act for a further, and final, 6 month period to 31 March 2024.

6. That Statement of Reasons set out that the economic position had not yet changed fundamentally. In reaching the decision to extend Part 1 of the 2022 Act, Scottish Ministers gave careful reflection to balancing the views expressed by many stakeholders and partners against the commitment given when the 2022 Act was introduced and the statutory duty that the provisions will not remain in place unless necessary. Taking account of the overall evidence on the impact of the cost crisis at the time, the rent cap provisions were deemed to be necessary and proportionate, and were extended at the existing rates i.e. 3% rent cap on within-tenancy rent increases or up to 6% for prescribed property costs.

7. The previous extension regulations also extended the following provisions in the 2022 Act for a further 6 month period to 31 March 2024:

- Eviction from residential properties: Restrictions on enforcement (schedule 2 – paragraphs 1, 2, 3, 4, 5 and 6); and
- Protection against eviction: Unlawful evictions (notification and determination of damages) (schedule 2 – paragraph 7)

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¹⁰ [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Date\) Regulations 2023 \(legislation.gov.uk\)](#)

¹¹ [2nd proposed extension of the Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022: Statement of Reasons \(www.gov.scot\)](#)

Further Economic Context

As set out in the [latest report](#) to Parliament on the operation and necessity of the Cost of Living (Tenant Protection) (Scotland) Act 2022, the key updated economic data is as follows:

- Households in the rented sector entered the cost of living crisis in a more vulnerable position than owner occupiers, and the most recent (November 2023) YouGov polling for the Scottish Government shows that private renters continue to be more likely to report concern about paying mortgage/rent than households generally (15% vs. 9%) as well as more likely to say that they were struggling at least a little to pay for household bills (65% vs. 47%).
- While consumer price index (CPI) inflation has fallen from 11.1% in October 2022 to 3.9% in November 2023, it remains above the Bank of England's 2% inflation target, and the level of prices remains much higher than it was prior to the cost of living crisis: over the two years from November 2021 to November 2023, the overall CPI is 15% higher, and the CPI subindex for the category "electricity, gas and other fuels" is 48% higher.
- As a result of the continuing high level of energy prices, it is estimated that the fuel poverty rate in the private rented sector will stand at 47% during the January-March 2024 Ofgem price cap period, as compared to the 36% in 2019 prior to the cost of living crisis.
- While there have been increases in real pay in recent months, this follows a period of sustained falls; for example, median real pay in Scotland based on HMRC PAYE records was 2.6% lower in the period September-November 2023 than at its peak in March-May 2021.
- The Scottish Fiscal Commission (SFC) expects that overall living standards in Scotland will fall slightly in 2023-24, which after the large fall in 2022-23, will result in a cumulative fall of 2.7% from 2021-22 to 2022-23, the largest since records for Scotland began in 1998. The SFC expects that it will take until 2026-27 for living standards to return to their 2021-22 levels.
- The decline in inflation in recent months has led to a fall in interest rates, including on buy-to-let mortgages, although rates remain significantly above pre-crisis levels.



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