

Cabinet Secretary for Social Justice, Housing and Local Government
Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights

Cost of Living (Protection of Tenants) Scotland Bill – Overview and Summary Paper

Priority and Purpose

1. **Immediate** - To provide you with an overview of everything to be contained in the Bill, an economic and evidenced justification for the interventions and full analysis of the issues and risks that remain.

Recommendation

2. Recommends that you note the full package of measures to be included in the Cost of Living (Protection of Tenants) Scotland Bill, the underlying justifications and the risks and issues that remain.

Context and Issues

3. Ministers have been provided with numerous individual pieces of advice and submissions on all aspects of the Bill. The attached paper attached simply seeks to pull together a summary of the final decisions that have been made by Ministers.
4. This paper continues to reflect Ministers' preferred option and will be updated and reissued should the position change.

Sensitivities

5. Law Officers will be considering the full bill on Friday and all the documents may need to be updated following any comments from them.

Quality Assurance

6. This Submission has been approved by Catriona Mackean, Deputy Director for Better Homes and Kathryn Macgregor, Deputy Director Local Government and Economy.

Conclusions and next Steps

7. Attached paper provides a summary of the overall position – to note, no decisions required.

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Better Homes Division
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Cabinet Secretaries and Ministers Copy List	For Action	For Information Portfolio interest	For Information Constituency interest	For Information General awareness
First Minister				X
Deputy First Minister and Cabinet Secretary for Covid Recovery				X
Minister for Parliamentary Business				X
Minister for Higher Education and Further Education, Youth Employment and Training				X

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COST OF LIVING (PROTECTION OF TENANTS) SCOTLAND BILL - OVERVIEW OF EMERGENCY LEGISLATION

Economic Analysis and Rational for Interventions

1. A detailed analysis considering the underlying case and argument for these actions is attached at Annex A. In summary, given the high level of inflation and ongoing upward pressure on household bills, despite the UKG Energy Cap proposals, the arguments for restrictions on rents remain valid.
2. Evidence provided in Annex A also sets out the need to provide specific support to tenants in particular given the current pressures on households and the particularly vulnerable nature of renters. It is viewed as necessary to provide additional protections to prevent both rent rises and evictions in certain circumstances during this period of extraordinary economic challenge. Such interventions are also necessary to ensure that people's health and mental health are safeguarded over this period.
3. However, given the evolving economic situation this will need to continue to be monitored to ensure the interventions remain necessary (and therefore proportionate).

Aims of the Interventions

4. The purpose of the Cost of Living (Protection of Tenants)(Scotland) Bill is to respond to the emergency situation caused by the impact of the cost crisis on those living in the rented sector in Scotland.
5. The overall package of measures provided for in the bill seeks to:
 - A. protect tenants by stabilising their housing costs;
 - B. prevent negative impacts on the health and wellbeing of tenants caused 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 cost of living crisis.
6. These aims are being achieved through a temporary restriction on rent increases, temporary moratorium on evictions, increased penalties for illegal evictions and additional powers to temporarily reform rent adjudication.
7. A temporary restriction on rent increases supports these aims by:
 - reducing the risk that a rent increase will result in a tenant being unable to meet the cost of their rent during the cost crisis or build up substantial rent arrears resulting in a risk of eviction.
8. The temporary moratorium on evictions supports these aims by:
 - preventing landlords ending tenancies in order to circumvent the rent freeze and increase rents for a new tenant; and
 - preventing the negative impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless.

- Providing more time for people to seek support and to find alternative accommodation that meets their needs at an affordable rent.
9. Temporarily improving the way in which compensation can be awarded and the method of calculating the level of compensation increasing penalties for illegal evictions supports these aims by:
 - reducing the risk of unlawful evictions being carried out during the moratorium on evictions by making it more expensive and risky for a landlord to pursue an unlawful eviction than going through the correct routes, acting as a potentially strong disincentive.
 - making it easier and more attractive for tenants to challenge an unlawful eviction and receive compensation where an unlawful eviction is found to have occurred.
 10. Temporary powers to change the rent adjudication process are also being included to support transition away from the emergency measures once the rent restrictions are lifted and landlords are able to increase rent, should these be needed.

Scope of the provisions

11. Ministers are clear that they wish to apply the protections universally to all renters to ensure no matter what tenancy you hold you are afforded the same protections. This means that, in general terms, the Bill will apply to the Private Rented Sector the Social Rented Sector and University Halls of Residence and Purpose Built Student Accommodation. Each of these sectors have different regulatory structures that necessitates different approaches to the delivery of the intention within each. The application of the legislation to each carries individual risks and issues which are outlined below.
12. All tenancies established under the Private Housing (Tenancies) (Scotland) Act 2016, Housing (Scotland) Act 2001, Housing (Scotland) Act 1988 for the rent restrictions and in addition Rent (Scotland) Act 1984 will be covered by the moratorium on evictions.
13. The restriction on rents only applies to within tenancy rent increases not between tenancy increases. This means when a new tenancy is started, landlords can increase rents to the open market rate for the new tenant.
14. *Homes with Pitch Agreements* - Pitch agreements on mobile home sites and Gypsy/Traveller Sites are regulated by the Mobile Homes Act 1983 and will not be included in the emergency legislation. [REDACTED]
[REDACTED] there is already some restriction on the amount that pitch fees can be increased under the Act.
15. **Residential Mobile Homes** – This will not be in scope of the Bill. The implied terms in the contracts between mobile home site owners and residents under the Mobile Homes Act 1983 provide certain protections for residents and the legislation is complex. In addition the Sheriff will apply the usual tests of reasonableness used

when possession is sought. Factors such as the reasons for arrears e.g. rising energy prices, may be taken into account within the courts existing discretion.

16. **Gypsy/Travellers** – Recognising the importance of equality with other social tenants, we will seek to work in partnership with COSLA (and ACHA) to agree an administrative pitch fee freeze and evictions ban for public sector Gypsy/Traveller sites but it does not come within the scope of this bill.

Details of Package of Provisions

A. Moratorium on evictions – to apply as set out under ‘scope’

- A moratorium on the execution of eviction orders or decrees applies to all grounds other than criminal/antisocial behaviour, tenant abandonment and where the property needs to be sold by a lender.
- The moratorium on evictions applies to all enforcement action initiated by landlords from the commencement of the legislation.
- The execution of any individual order or decree will not be delayed beyond a maximum 6 month period.

17. The above is the preferred option. We are awaiting view from Law Officers on whether this is within legal competence or whether additional safeguards, as detailed below, are required.

18. **Safeguards:** safeguards are required to balance the intervention with landlord property rights and, due to different regulatory structures, must be different for the different sectors.

As a result Ministers have agreed to pursue the below approach if the preferred option is considered out of legal competence.

19. The alternative approach would see 3 new additional grounds for eviction established as follows:

- i) landlord needs to sell due to financial hardship (**private sector only**)
- ii) landlord needs to live in the let property due to financial hardship (**private sector only**)
- iii) substantial rent arrears (6 months’ rent for the PRS and a defined threshold of £2,219.36 for the social sector).

20. All current applications lodged with the Tribunal/Court before the emergency legislation comes into force would not be affected by the emergency measures, and will be allowed to continue in line with current legal requirements unless notice to leave was given on or after 6th September 2022. This means the moratorium would prevent enforcement of eviction action in the social and private

rented sectors that has been prompted by the announcement of the costs crisis emergency measures.

21. With this approach:

- The measures will take effect from the date the emergency legislation comes into force
- Eviction orders which have already been granted but have not been enforced on the commencement date of the Bill **would not be caught** by the evictions moratorium;
- Eviction orders granted in proceedings which have been raised but have not concluded on the commencement date:
 - where proceedings were raised in relation to an eviction notice served prior to 6th September the eviction order **would not be caught** by the moratorium;
 - where proceedings were raised in relation to an eviction notice served on or after 6th September the eviction order **would be caught** by the moratorium
- Eviction orders granted in proceedings which are raised on or after the commencement date **would be caught** by the moratorium regardless of when the underlying eviction notice was served.
- The execution of any individual order or decree will not be delayed beyond a maximum 6 month period

22. *College and university halls and PBSA Safeguards* – [still subject to Ministerial consideration and may change] No specific safeguards are proposed for this group. The safeguards proposed on eviction action in the private rented sector in the form of three new and additional grounds for eviction are not applicable to the student sector. The third ground of “substantial rent arrears” is not appropriate for the following reasons:

- The number of evictions within the college and university halls and PBSA sector is low. Providers tend to seek recovery of rent arrears through payment plans rather than the courts.
- A recent report by Save the Student found that 6% of students across the UK (including PRS and PBSA) in the survey said they are currently in rent arrears with average debt of £635. ASRA have advised, as part of an informal consultation, that although rent arrears are an issue in PBSA (debts ranging from £200 to £7,000 providers do not move to evictions. Rather, given the nurturing environment of halls and PBSA and the support mechanisms (detailed below) in place for students, providers would rather engage with students when they encounter financial difficulties, sign posting them to hardship funds to help pay debt and then pursue payment plans through third party debt collectors. Students in financial hardship would also, in many cases, have access to discretionary / hardship funds via their institution to help pay for household bills, including rent.
- The nurturing aspects of living in halls and PBSA reflects the unique demographics of the sector. The majority of students residing in college and university halls of residence and PBSA are 21 and under and for many is their first time away from home. Institutions and providers are keen to provide a supportive environment for those students and this includes not only access to sources of financial support and guidance but also mental health and well-being services.

- The nature of the tenancies are different from the PRS and SRS – they are typically for 9 months, with total rent in the region of £7-£8 K for that period, often paid in advance or per semester. PRS and SRS tenancies tend to be for much longer periods.
- The providers are large institutions/companies which will not suffer financial hardship caused by rent arrears in the same way as an individual landlord. There is no suggestion that such companies could reasonably be expected to carry costs from non-payment of rent indefinitely, but the moratorium only applies for a maximum of 6 months in any individual case and as noted below, tenancies tend to be limited to around 9 months.
- Were student halls/PBSA to be included, in the new rent arrears exemption, it is proposed the threshold figure for substantial rent arrears is equivalent to 6 month's rent, as this would mirror the approach in the private and social rented sectors. This would equate to approximately £4,800 (taking £800 as approximate monthly rent). Given the limited and fixed duration of these tenancies, and considering the length of time it takes for rent arrears to accrue; then for the landlord to serve notice and raise proceedings; and further for the court to determine the case and issue an order (which also cannot be enforced for a certain period), it is highly likely that this would go well beyond the 9 month duration of the tenancy.

B. Rent Restrictions – to apply as set out under ‘scope’

23. Impose a rent freeze through the form of a rent cap which will be variable and apply separately to the social and private rented sectors. This cap will be initially set to 0%, and will apply to all rent increase notices served on or after 6 September. The cap will apply only to increases within a tenancy and landlords will be able to increase rents between tenancies.
24. **Safeguards:** safeguards are required to balance the intervention with landlord property rights and, due to different regulatory structures, must be different for the different sectors.

- *Private rented sector safeguards* - Private sector landlords will be able to apply to increase rent in respect of limited, prescribed, legitimate costs associated with offering the property for rent. We intend to create this route through swift development of a new application to Rent Service Scotland (RSS). This will carry significant resource implications and we will provide further advice setting out the proposed approach, financial implications and mitigation of delivery risk.

- *Social housing safeguards* - Safeguards for the social sector are different to those set out for the private sector and further consideration is needed on whether and how to apply different levels of rent cap after 1 April 2023. As social rents are set annually on 1st April and have been set for 2022 year already, this in effect means no practical change between now and 31 March 2023. However, the provisions may need to be extended and the potential impact will depend on the level of any continuing cap. In addition the sector need advance notice in order to manage their businesses and provide suitable notice and consultation with tenants.

25. Therefore the approach is to:

- work with the sector to establish the key considerations for any cap beyond 31 March 2023 between now and the end of November, with a view to providing certainty by the end of December.
- Work with the sector to establish additional safeguards (such as potential loans).
- Establish a clear partnership working approach through setting up a Short Life Task & Finish group including SFHA, GWSF, ALACHO, COSLA and the Scottish Housing Regulator and others from the Sector.
- The rent cap will apply to all Scottish secure and short Scottish secure tenancies in the social rented sector- it will not apply to regulated tenancies in the social sector.

- *College and university halls and PBSA safeguards- NOTE: Many students are in the Private Rented Sector.*

26. Whilst there are no specific safeguards for this sector, there is the ability to apply a different level of cap beyond 31 March 2023. We also expect the impact to be minimal due to how these tenancies operate. In college and university halls of residence and PBSA rent is often inclusive of energy costs and is set prior to the beginning of the academic term and contracts entered into on that basis by students. Although the majority of institutional and PBSA providers have assured us that rents will not increase mid-contract, this does not cover all providers with certainty. There is no uniform contract across all providers and not all providers are members of bodies such as ASRA nor have adopted the UNIPOL codes.

C. Unlawful Evictions

27. We are seeking to amend the 1988 Act to:

- replace the basis for the assessment of damages for unlawful eviction with a formula whereby damages are calculated by reference to a multiplier of the monthly rent;
- set the minimum and maximum level of damages that the Tribunal or Court can award at 3 times and 36 times the monthly rent respectively;
- enable the Tribunal (and the Sheriff Court in social housing cases) to set damages at a level lower than the minimum threshold where the circumstances of the case merit a lower award; and
- place an additional requirement on the Tribunal to inform i) the relevant local authority and police where a private landlord has been found to have unlawfully evicted a tenant; and ii) the Scottish Housing Regulator, where a social landlord is found to have unlawfully evicted a tenant. This would allow relevant authorities to consider whether any further action should be taken in relation to the unlawful eviction.

D. Rent Adjudication

28. The proposal for the legislation is to take powers to temporarily amend rent adjudication. Further consideration is needed on how to use it but it is considered a necessary power to support planning for transition out of the emergency measures of a 0% rent increase cap. For example in situations where a level of rent increase is being permitted, it could be used to:

- Prevent the Rent Officer, or First-Tier Tribunal, from increasing the rent above that requested by the landlord in the rent increase notice; and
- Amend the criteria used by the Rent Officer/Tribunal in determining a rent to bring other factors than market rent into the process.

E. Mechanism for longer extension and expiry of provisions

29. Subject to approval by Parliament - the general provisions of the Bill will be based on the approach taken in the Coronavirus (Scotland) Act 2020. For the Bill to commence the day after Royal Assent – expected to be 28 October - and expire on 31 March 2023, with the possibility of extending for 2 subsequent 6 month periods. There will be a requirement to review/report every 2 months (similar to those for the Coronavirus (Scotland) Acts) and immediately expire any provision that is no longer necessary. There will also be powers to suspend and revive to respond to changes in the emergency, this includes being able to expire provisions before 31 March (noting that a suspended provision can be revived, but not an expired provision).

Benefits of the overall package

30. With these measures we expect to benefit tenants by:

- reducing the number of evictions across the winter months during the emergency.
- Stabilising the rents through a 0% cap over the winter, allowing them more capacity to deal with other bills especially energy bills. This cap can be varied to respond to ongoing economic pressures if necessary with the option to have different levels of cap for social and private rented sectors.
- provide tenants with additional protection from illegal evictions and disincentives for landlords by substantially increasing the financial penalties associated with it.

31. For landlords a number of protections in place will:

- allow private landlords to enforce an eviction in certain circumstances including where there are substantial rent arrears, or the landlord needs to sell, or live in the let property due to financial hardship, in cases of anti-social behaviour or criminality and where the property has been abandoned.
- limit the moratorium on eviction to 6 months to ensure all landlords are able to plan and have certainty
- work with social landlords to explore options and understand the impact of any cap from 1 April onwards and what support may be needed by them.
- allow private landlords to apply to increase rent in respect of limited, prescribed, legitimate costs associated with offering the property for rent.

Risks and Issues

Private Rented sector

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

33. [Redacted text block]

34. [Redacted text block]

35. [Redacted text block]

36. [Redacted text block]

37. [Redacted text block]

[Redacted]

Social Rented sector

38. *Rationale* – As noted above, the rent controls in the social rented sector will have no impact until 1 April 2023 as rents will not rise over this period. In addition, as rents are not set in the same way as in the PRS, the argument for a moratorium on evictions is less clear in the social sector as this action doesn't protect people from illegal evictions to raise rents (as this doesn't happen). Therefore the justification for emergency legislation in this area would appear weaker, possibly detracting from the emergency nature of PRS application in particular where the rationale is stronger, noting the Ministers preference to apply the protections universally to all tenants.

39. [Redacted]

40. [Redacted]

41. [Redacted]

Climate Change

42. [Redacted]
[Redacted]
[Redacted]

PBSA

43. [Redacted]
[Redacted]
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Homes with Pitch Agreements

47. [Redacted]
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[Redacted text block]

Sheriff Court

50. [Redacted text block]

Rent Service Scotland

51. [Redacted text block]

Society of Messengers at Arms and Sheriff Officers (SMASO)

52. [Redacted text block]

Mortgages

53. [Redacted text block]

Impact on housing bill
54.

Human Rights/risk of Judicial Review

55. [REDACTED]

[REDACTED]
56. [REDACTED]

ANNEX A – ECONOMIC ANALYSIS
ANNEX B – LEGAL CONSIDERATIONS

END

ECONOMIC ANALYSIS - Economic background to rental freeze/eviction moratorium

1. Energy prices

Despite the decision of the UK Government to introduce the Energy Price Guarantee as from 1 October 2022, which will cap the typical household energy bill at £2,500 for the next two years, compared to the previously announced Ofgem price cap of £3,549, this represents a further increase from the £1,971 cap in April 2022, and an even larger increase from the £1,277 cap in October 2021. Even taking into account the £400 Energy Bills Support Scheme payment, which is available in Winter 2022/23 (although not beyond), the increases in energy bills will be substantial, as set out in **Table 1**, which also sets out the changes relative to a cap of £2,500 since this will continue to apply in subsequent years.

Table 1. Change in cap on typical household energy bill

% change from	For cap of £2,500	For cap of £2,100 (i.e. including £400 support payment)
Apr-22	27%	7%
Oct-21	96%	64%
Oct-20	140%	102%

The following mitigations are being provided:

- A £400 Energy Bills Support Scheme payment for all energy consumers to be paid over the period October 2022 to March 2023, discussed above.
- A £650 Cost of Living payment for those on means-tested benefits
- A £300 Pensioner Cost of Living Payment for those pensioner households who receive the Winter Fuel Payment
- A £150 Disability Cost of Living Payment
- A £150 Council Tax rebate for households in council tax bands A-D or that receive council tax reduction

However, these mitigations will not be sufficient to offset the impact of higher energy costs. The change in the energy cap from £1,277 in October 2021 to £2,500 in October 2022 equates to an increase of £1,223, which for the 2.5 million households in Scotland implies an increase in total energy spending in the region of £3 billion. The mitigations set out above are estimated to be worth in the region of £1 billion in Scotland, leaving a substantial gap.

The above impacts are based on typical household consumption levels, which in many cases fall short of what is regarded as an appropriate level of heating as set out in the Scottish Government's Fuel Poverty definition. **Table 2** illustrates the

impact of these energy price changes, net of the mitigations set out above, on estimated fuel poverty rates.¹

Table 2. Estimated fuel poverty rates based on energy price cap and taking into account mitigations in 2022-23

	Fuel poverty rate			Change in fuel poverty rate (% points)	
	2019	Oct 2021	Oct 2022	Oct 2022 on 2019	Oct 2022 on Oct 2021
Owned outright	21%	22%	28%	7%	6%
Mortgaged	12%	13%	19%	7%	6%
LA	36%	39%	52%	16%	13%
HA	39%	45%	57%	18%	12%
Private rented	36%	37%	48%	12%	11%
Scotland	25%	27%	35%	10%	8%

Note: Fuel poverty rates are normally calculated over the course of year, so the estimated rates for October 2021 and October 2022 show what fuel poverty rate would be if prices remained at these levels over the period of year.

Table 2 shows that there are significant increase in the fuel poverty rates, and that these increases are particular high in the private and social rented sectors, with around half of households in these sectors being in fuel poverty despite the Energy Price Guarantee. **Table 3** shows a similar pattern for extreme fuel poverty rates.

Table 3. Estimated extreme fuel poverty rates based on energy price cap and taking into account mitigations in 2022-23

	Fuel poverty rate		Change in fuel poverty rate (% points)		
	2019	Oct 2021	Oct 2022	Oct 2022 vs. 2019	Oct 2022 vs. Oct 2021
Owned outright	13%	15%	24%	11%	9%
Mortgaged	5%	6%	12%	7%	6%
LA	15%	18%	31%	16%	13%
HA	14%	18%	32%	18%	14%

¹ It should be noted that this modelling is based on the 2019 Scottish House Condition Survey data, since this is that latest available dataset which has all the variables required for fuel poverty modelling. The modelling updates energy prices by the percentage increase in the price cap for each time period, and for the October 2022 estimate allocates the mitigation payments to households in the dataset based on eligibility for the different benefits. Every household benefits from the £400 Energy Bills Support Scheme payment. The National Statistics on fuel poverty rates for 2022, which will be published in late 2023/early 2024, could differ from these depending on changes other than fuel prices and benefit eligibility and also because they will use average energy prices across the year.

Private rented	22%	24%	35%	13%	11%
Scotland	12%	14%	24%	12%	10%

Households on pre-payment meters will be particularly affected by the increase in energy prices, as around 80% of annual household gas consumption falls within the winter months, and these households are unable to spread the costs over a longer period. **Table 4** shows that the share of households on pre-payment meters is much higher in the private rented sector (22%) and social rented sector (43%) than in the owner occupier sector (6%).

Table 4. Presence of pre-payment meters by tenure

Prepayment meter present?	Owner Occupier		Private Rented		Social Sector		Scotland	
	Count	% of tenure	Count	% of tenure	Count	% of tenure	Count	% of tenure
No	1,470,000	94%	240,000	78%	360,000	57%	2,070,000	83%
Yes	80,000	5%	70,000	22%	270,000	43%	430,000	17%

Table 5 shows that within each tenure, households on pre-payment meters are more likely to be in fuel poverty than those paying by other means, with around three-fifths of households who live in the rented sectors and who have a pre-payment meter being in fuel poverty.

Table 5. Fuel poverty by tenure and pre-payment meter

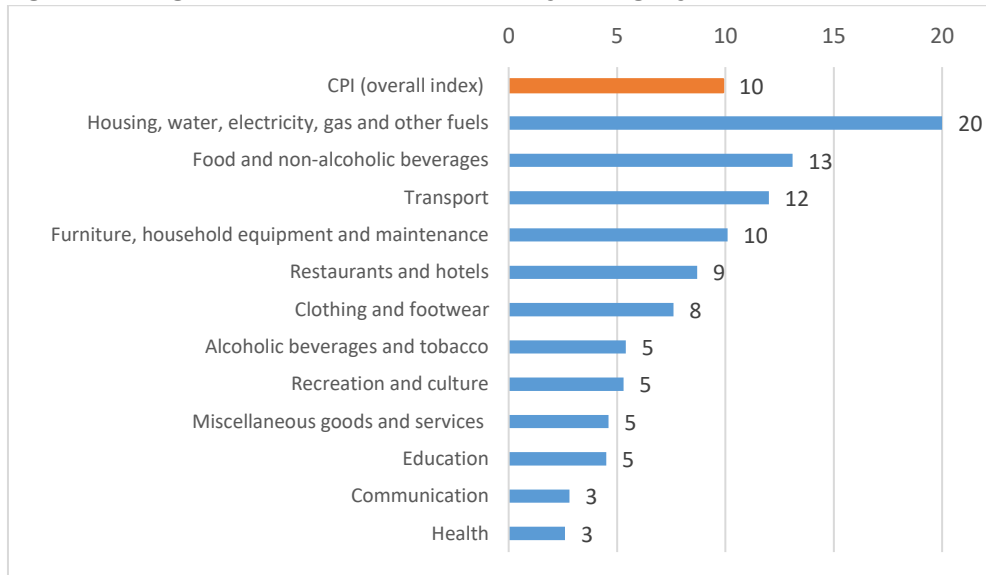
	Prepayment meter present?	Total Households in fuel poverty	Fuel Poverty Rate
Owner Occupier	No	350,000	24%
	Yes	30,000	30%
Private Rented	No	110,000	44%
	Yes	40,000	60%
Social Sector	No	190,000	52%
	Yes	160,000	57%
Scotland		860,000	35%

2. Wider inflationary pressures

As set out above, households are facing very large increases in fuel bills despite the mitigation payments, and will therefore need to use more of their household income to pay their energy bills. However, this impact is being felt at the same time as a large increase in other types of inflation. CPI inflation, which averaged 4% in 2021-22, has accelerated to 10% in August 2022. Although the Energy Price Guarantee has caused commentators to revise down their estimates for a peak of measured inflation of well over 10% in the short term, they still expect an extended period of high inflation, with, for example, the Resolution Foundation forecasting that inflation will remain around double digit levels throughout Winter 2022/23.

As **Figure 1** shows, although the increase in energy prices is a particularly important contributor to high levels of inflation, there are inflationary pressures across all goods and services, with very high levels of inflation affecting other types of necessities, such as food (13%), transport (12%) and clothing (8%). As result, even excluding energy, CPI inflation was 7% in August 2022.

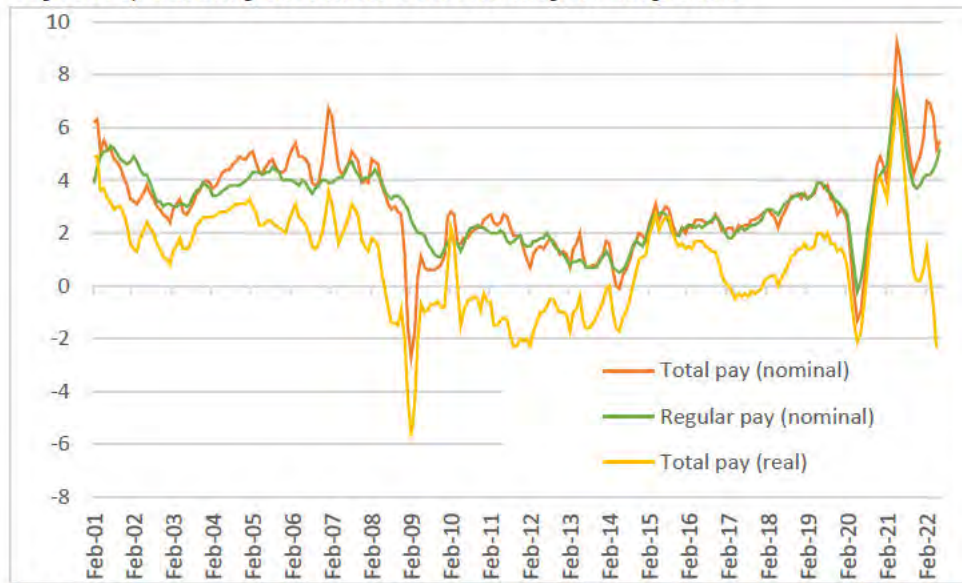
Figure 1. August CPI annual inflation, by category.



3. Trends in earnings

Increases in wages and benefits are not keeping pace with the higher inflation rate, meaning that in real terms households are worse off. The latest Scottish Fiscal Commission forecast (May 2022) was that real average earnings would fall by 3% over the course of 2022-23. More up-to-date data shows the extent of the squeeze on real earnings. The most recent data (May-July 2022) shows that across Great Britain, while total pay (5.5%) and regular pay (5.2%) were rising in nominal terms, these increases are insufficient to offset the increase in inflation, such that in real terms total pay fell by 2.6% and regular pay by 2.8% (**Figure 2**).

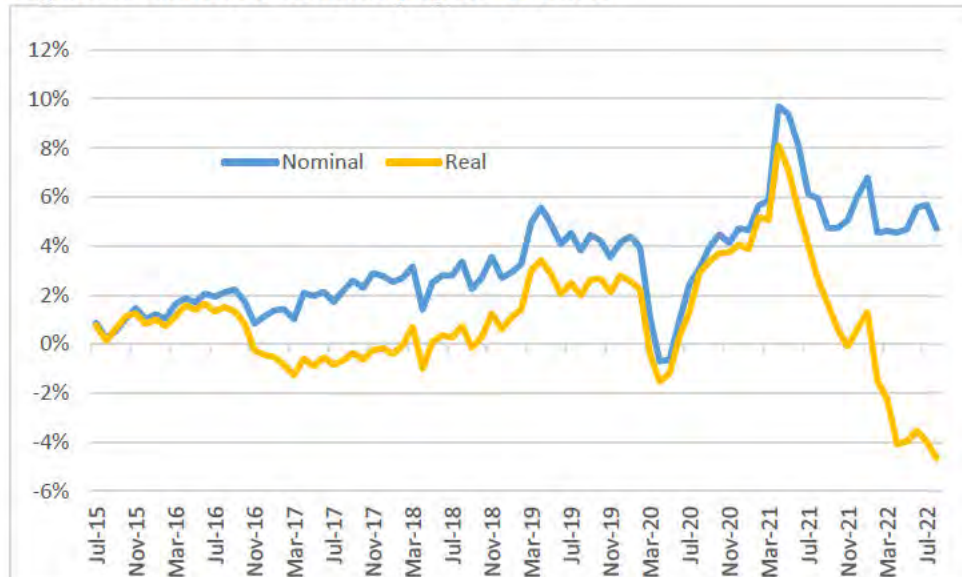
Figure 2. Average weekly earnings annual growth rates in Great Britain, seasonally adjusted, January to March 2001 to May to July 2022



Source: [Average weekly earnings in Great Britain - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

Figure 3, which uses pay data for Scotland taken from HMRC PAYE records, tells a similar story

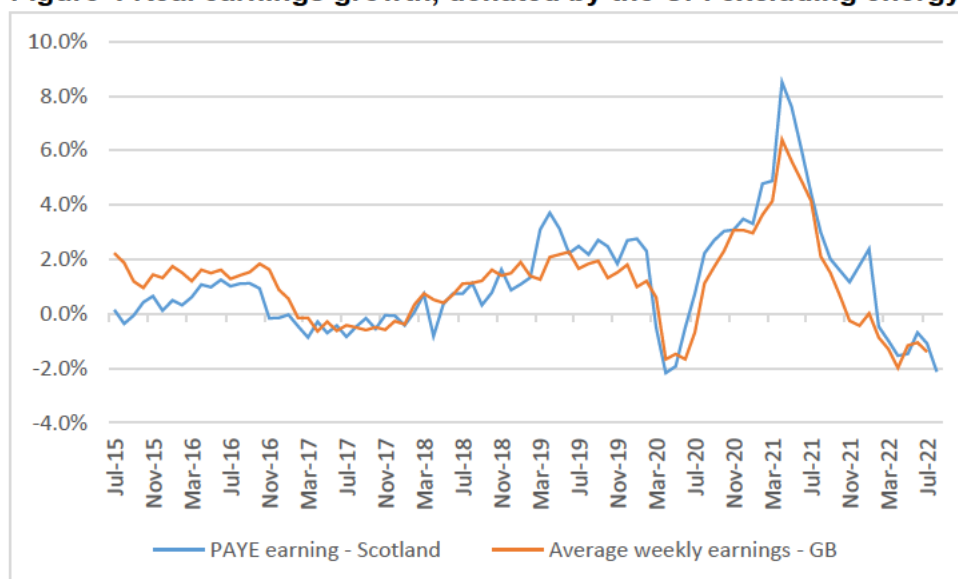
Figure 3. Growth in median pay in Scotland



The fact that the squeeze on household budgets is not just related to energy costs is illustrated by **Figure 4** which deflates average weekly earnings for Great Britain and median pay in Scotland from PAYE records by the CPI excluding energy costs. This shows that both measures of earnings have moved into negative territory in recent months. As a result, households will struggle to cover non-energy related inflation, even before attempting to pay for energy bills, meaning they will either need to draw

reduce savings or cut back on consumption, particularly poorer households who have low or no savings.

Figure 4 Real earnings growth, deflated by the CPI excluding energy costs



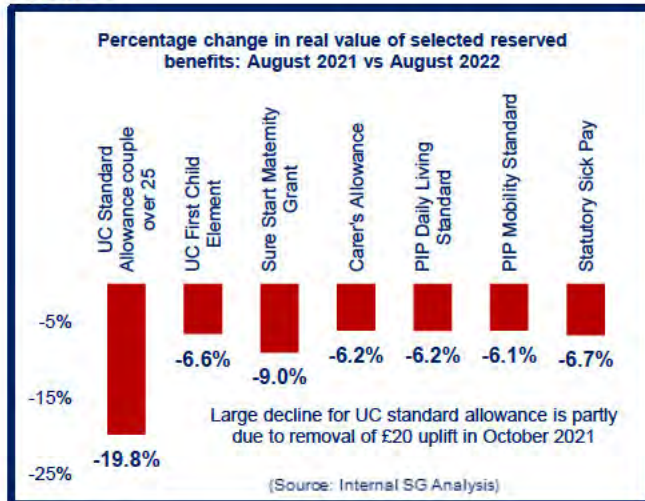
4. Trends in benefits

For those households who depend partly or fully on benefit income, the situation is even more challenging. The UKG Government uprated allowances on reserved benefits in April 2022 using the September 2021 inflation rate, which at 3.1% is significantly below the 10% inflation rate currently being experienced. Table 6 and **Figure 5** show the change in the real value of the maximum value of universal credit awards. These show substantial reductions, both due to the level of uprating, and also due to the decision to revise the uplift during covid.

Table 6 Change in real value of UC award by family type vs August 2021

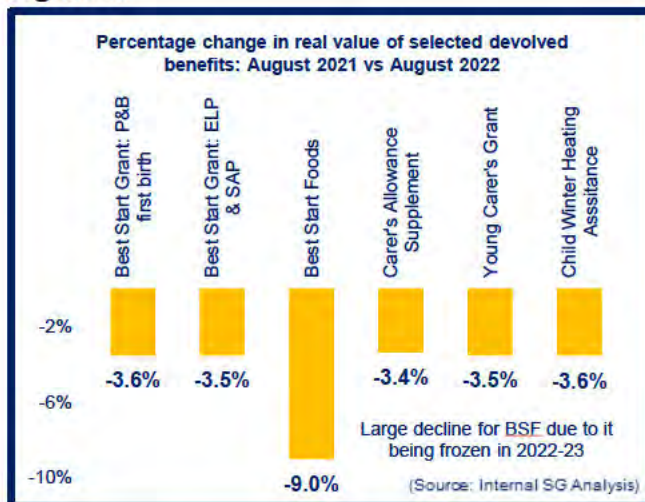
Family type	% change	Loss in real value in month
Single parent <25, 2 children	-15.7%	-£136
Couple <25, 1 child	-16.9%	-£130
Single >25, no children	-25.9%	-£107
Couple >25, 3 children	-13.6%	-£151

Figure 5



The Scottish Government uprated most devolved benefits by 6% in contrast to the UK Government's 3.1%, but despite this additional protection, the spike in inflation means that the value of these benefits has also fallen in real terms, albeit by less than reserved benefits (Figure 6).

Figure 6.

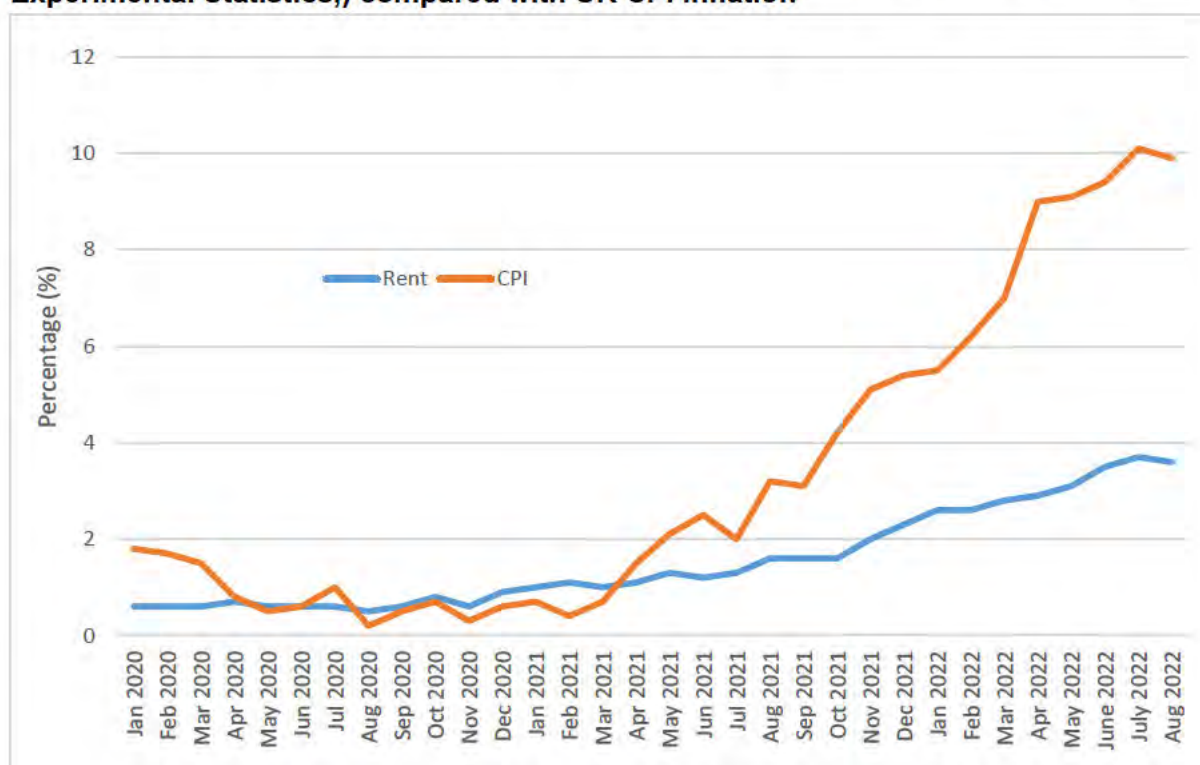


With respect to housing benefit, or the housing element of universal credit, it should also be noted that Local Housing Allowance rates, which set the maximum amount of rent that can be covered by benefit payments, have been frozen for two years, after having being reset to the 30th percentile during covid.

5. Trends in rents

Figures from the ONS Private Rental Index show that the annual increase in private rents across all tenants in Scotland is estimated to have been rising significantly over recent months. The increase of 3.7% in July 2022 was the highest since the series started in 2012, and it remained at an elevated level of 3.6% in August 2022.

Figure 7. Annual increase in private rents in Scotland (ONS Private Rental Index, Experimental Statistics,) compared with UK CPI inflation



Note that the ONS figures are experimental statistics incorporating an assumption of average tenancy length to account for sitting tenants, and therefore will differ to separate recent industry based figures that cover advertised rents only. The ONS series also reports on national level increases only, and beneath this increases in rents in some areas of the country are likely to vary.

Therefore, looking at latest data from letting agents (noting that they will not have complete market coverage) for the latest quarter Apr-Jun 2022 compared with Apr-Jun 2021, Citylets have reported that advertised rents have increased by 15.1% in Edinburgh, 13.0% in Glasgow, and 4.4% in Aberdeen. Rightmove have reported that advertised rents in Scotland have increased by 12.5% over the same time period.²

With respect to the issue of how often rents are increased, a variety of anecdotal and survey evidence suggests that a significant share of sitting tenants do not experience a rent increase each year. A survey undertaken for the Nationwide RentBetter Project found that over half³ of tenants responding to the survey had not experienced a rent increase during their current tenancy. This is due to a combination of high levels of turnover in the private rented sector (Scottish Household Survey data shows that around a third of tenants have been in their property for less than a year) and landlord rent setting approaches. A survey of landlords and letting agents undertaken for the RentBetter project reported that of those responding to the

² Sourced from [ONS Private Rental Index results to July 2022](#), [Citylets Quarterly Reports](#), and [Rightmove Rental Price Tracker](#).

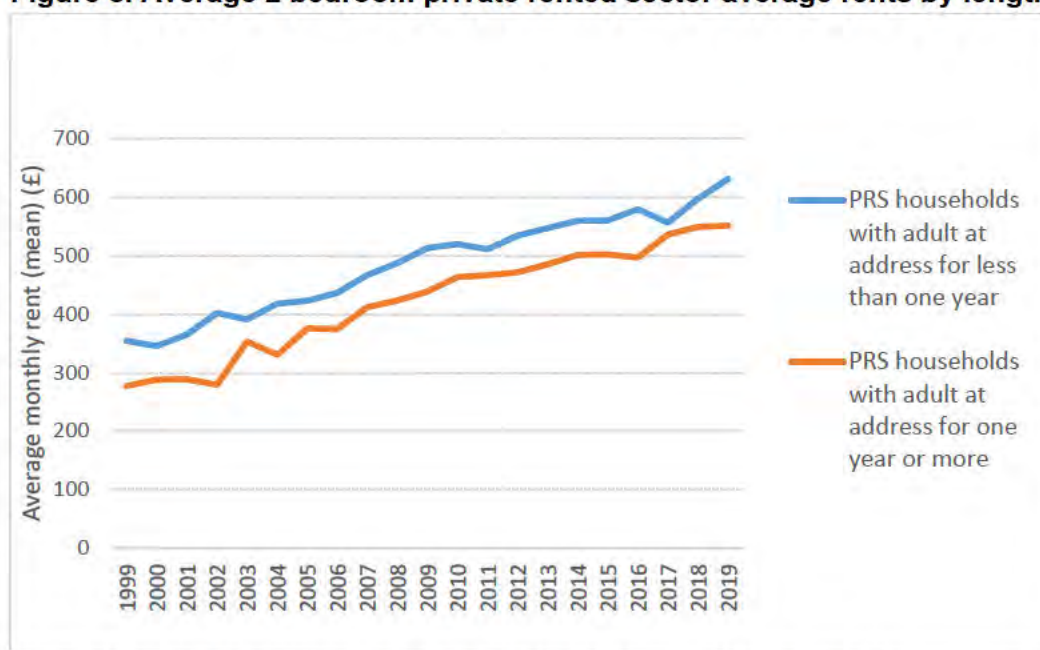
³ 59% of tenants reported not having experienced an increase, and this increases to 63% if the “no answers” are excluded.

survey, around half reported never increasing rents or only on change of tenancy.⁴ Of the remainder, only around a third reported that they increased rents each year, and for landlords who increase rents less frequently than each year, only a portion of their tenants will experience a rent increase in any given year.

Taken together, the evidence suggests that significantly less than half of sitting tenants would expect to have a rent increase during the course of a year. Assuming that the starting dates of tenancies are approximately equally distributed over the course of a year, this would suggest that significantly less than a quarter of sitting tenants would experience a rent increase over a 6-month period.

Data from the Scottish Household Survey (**Figure 9**) which shows that average rents to tenants who have been in their property for more than a year are consistently below average rents for those who have been in their property for less than a year is consistent with this analysis.

Figure 8. Average 2 bedroom private rented sector average rents by length of tenure



Source: Scottish Government analytical of Scottish Household Survey data

It should be noted that the RentBetter research found that landlords were much more likely to raise rents regularly in Edinburgh,⁵ where rents have been rising faster than in Scotland as whole. This suggests that while, when market rents are not growing too fast, landlords may prefer to wait to the end of what are often relatively short tenancies before they reset rents, since the gap between the rent paid by their sitting tenant and the market rent will not be too large, and they may be reluctant to disturb their relationship with their tenant,⁶ they do adapt their behaviour when market rents

⁴ Around 17% reported never increasing rents and around 32% reported increasing rent only when the tenancy changes.

⁵ For example, 30% of respondents in Edinburgh reported increasing rents annual, compared with 15% of all survey respondents.

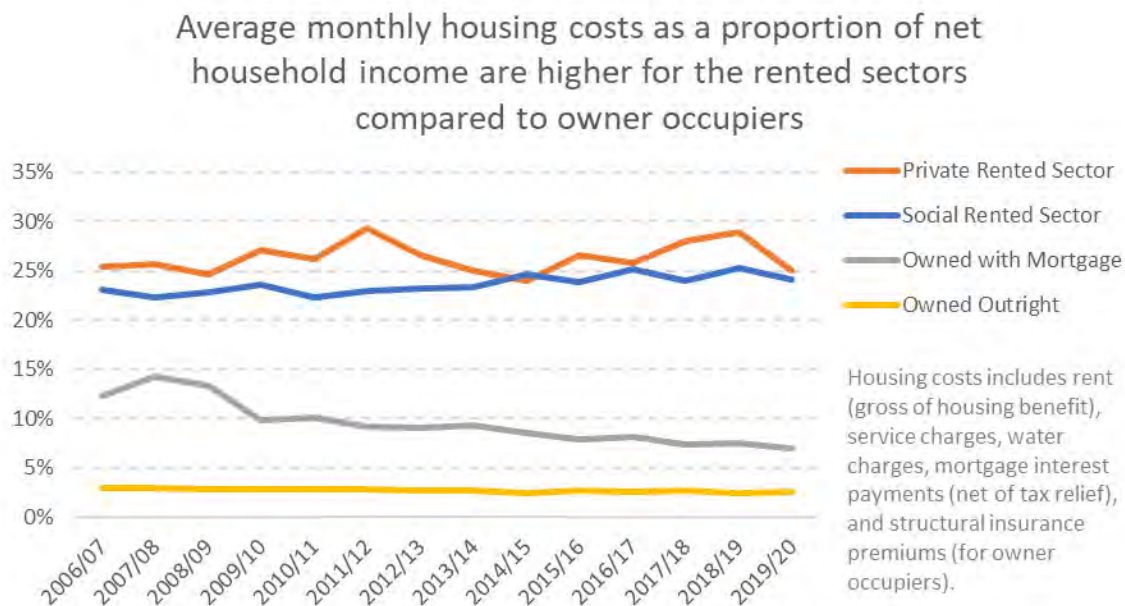
⁶ If landlords are happy with their current tenant, they may be concerned that a rent increase might increase the probability that the tenant will move, with the associated void costs to the landlords and

are rising more significantly. This would suggest that the share of tenants who would experience a rent rise over the next six months in the absence of legislation may be higher than would usually be the case, given the acceleration in average Scottish rents reported by the ONS Private Rental Index.

6. Level of vulnerability of households in rental sector

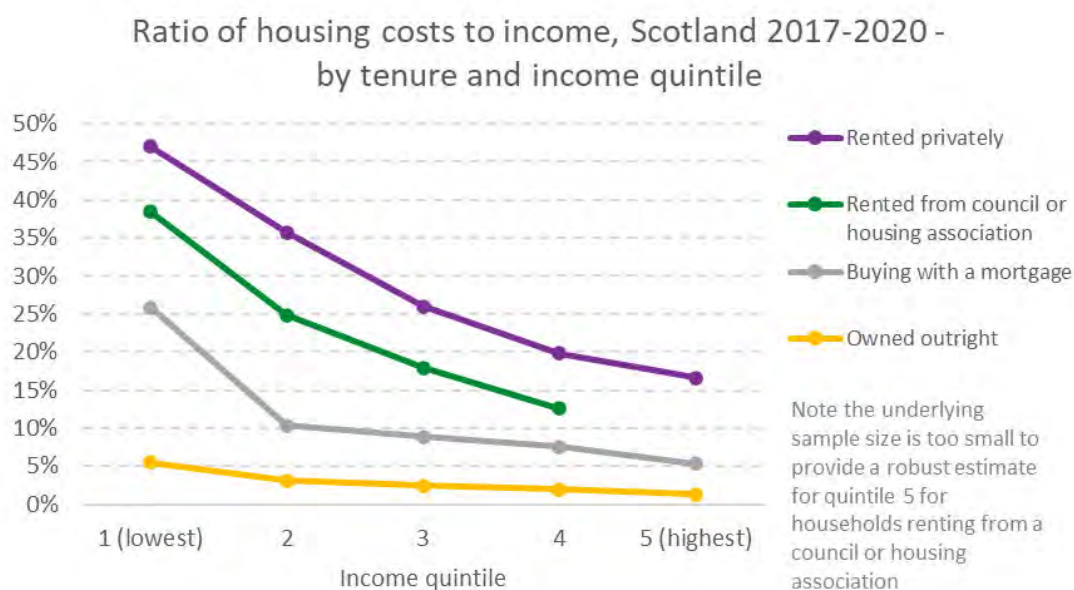
In general households living in the rental sectors have less flexibility than owner occupiers, because their housing costs, relative to their incomes, tend to be higher. This is illustrated by **Figure 9**, which shows that housing cost to income ratio is higher on average in the rented sector, and **Figure 10** which shows that households towards the lower end of the Scottish income distribution who live in the rented sector tend to spend a substantial portion of their income on housing costs.

Figure 9



the possibility that the new tenant may not be as satisfactory in terms of rent payments and other aspects.

Figure 10



(Source: Family Resources Survey, as reported on in [New Deal for Tenants draft strategy consultation](#))

The rented sectors have a higher proportion of people who are in relative poverty (39% of in social rented households and 34% in private rented households, compared to 7% in households buying with a mortgage and 14% in households who own outright), as well as children in relative poverty (47% in social rented households and 40% in private rented households are, compared to 10% in households buying with a mortgage and 18% in households who own outright).⁷

Households in the rented sector are also more likely to be financially vulnerable⁸ (63% of social rented households and 40% of private rented households in Scotland categorised as financially vulnerable, compared with 24% of households buying with a mortgage and 9% of households owning outright), which reduces their ability to cope with rental increases and other inflationary shocks.

7. Evidence related to security of tenure and wellbeing

Findings from evidence reviews and research studies undertaken in the UK (including Scotland) suggest that feelings of insecurity related to tenure have impacts on tenants' health and wellbeing.⁹ Research notes that negative psychosocial effects of living in insecure and precarious (as well as unaffordable housing) impact on tenant wellbeing and mental health. These studies conclude that the negative impacts of housing insecurity are complex and effect tenants in several different

⁷ The latest available figures across the period 2017 to 2020 and are sourced from [Poverty and Income Inequality in Scotland Tables](#)

⁸ Financial vulnerability is defined as households with savings which would cover less than one month of income at the poverty line. Data covers the 2018 to 2020 and is sourced from [Scottish Government Statistical publication on Wealth in Scotland 2006-2020](#)

⁹ [HW-in-PRS-Part-2-final.pdf \(housingevidence.ac.uk\)](#) ; [Health and wellbeing in the private rented sector Part 1 | Literature review : CaCHE \(housingevidence.ac.uk\)](#) ; [McKee-et-al-HousingStudies-2020.pdf \(stir.ac.uk\)](#) ; [cache03192.pdf \(thinkhouse.org.uk\)](#)

ways including by causing financial distress (including around potential expenses related to moving); causing concerns over finding a new property; making it difficult for tenants to feel at home and connected to place when insecure; and by causing stress over the potential of being separated from local support networks; among other mechanisms.

While much of this research is qualitative and based on the lived experience of tenants (particularly those on a low income), a larger study that linked data from the UK Household Longitudinal Study to measurable health outcomes found that desire to remain in current home was one element that led to significantly increased levels of biomarkers associated with infection and stress.¹⁰

In their interviews with tenants, McKee et al¹¹ (2019) conclude that feelings of insecurity were commonly reported amongst those on low incomes, and it is reasonable to suppose low income tenants are also most likely to be additionally impacted by the current cost of living crisis. Additionally, a 2018 report by the Joseph Rowntree Foundation on forced evictions in England and Wales concluded that “the experience of forced moves and evictions were extremely stressful for low-income households as they struggled to find alternative properties because they are often seen as undesirable by private landlords and are often unable to access social housing”¹²

Recent survey (unpublished – current anticipated publication date 28.09.22) research carried out in 2021/2022 with predominantly low-income tenants in the PRS in Scotland undertaken by researchers on behalf of the Joseph Rowntree Foundation and the Scottish Government found that 78% of surveyed tenants identified “feeling secure in my property” as one of the most important things to them when it came to their rented housing.

¹⁰ [Housing and health: new evidence using biomarker data | Journal of Epidemiology & Community Health \(bmj.com\)](https://www.bmj.com/content/366/bmj.n1111)

¹¹

¹² [poverty-evictions-and-forced-moves-2018-jrf.pdf \(yhphnetwork.co.uk\)](https://www.yhphnetwork.co.uk/wp-content/uploads/2018/07/poverty-evictions-and-forced-moves-2018-jrf.pdf) p4

Legal Considerations

1.

From: MacKean C (Catriona)
Sent: 23 September 2022 19:43
To: Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights
Cc: Cabinet Secretary for Social Justice, Housing & Local Government; Minister for HE, FE, Youth Employment and Training; Minister for Parliamentary Business; Permanent Secretary; Lord Advocate; Solicitor General; DG Communities; Director for Local Government and Housing; FM Policy Team Mailbox; [REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] SGLD Head of Economy & Social Protections;
[REDACTED]
[REDACTED] SGLD Emergency Bill Team; Campbell J (Jeanette) (Special Adviser); Corbett GN (Gavin); Communications Social Justice, Housing & Local Government; [REDACTED]
[REDACTED]
Subject: RE: IMMEDIATE: Cost of Living (Protection of Tenants) Bill Pack - for clearance
Attachments: Emergency Rental Sector Bill - POLICY MEMORANDUM MASTER VERSION - sent to Minister 23 Sept 7pm.docx; Emergency Rental Sector Bill - Accompanying Docs - Financial Memorandum - sent to Minister 23 Sept 7pm.docx; Cost of Living (Tenant Protection) Bill as at 1730 - 230922.pdf

With apologies now copying spads and comms. Please reply to this copy list.

Catriona MacKean | Deputy Director for Better Homes | Scottish Government
Mobile: [REDACTED]

[REDACTED] If you need to contact me urgently outwith these times please call the mobile number above.

From: MacKean C (Catriona)
Sent: 23 September 2022 19:40
To: Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights <MinisterZCBATTR@gov.scot>
Cc: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Minister for HE, FE, Youth Employment and Training <MinisterHEFEYET@gov.scot>; Minister for

Parliamentary Business <MinisterPB@gov.scot>; Permanent Secretary
<PermanentSecretary@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General
<SolicitorGeneral@gov.scot>; DG Communities <DGCommunities@gov.scot>; Director for Local
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[redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]
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[redacted]@gov.scot>; [redacted]@gov.scot>; SGLD Head of Economy &
Social Protections <[SGLD Head of Economy & Social Protections@gov.scot](mailto:SGLDHeadofEconomy&SocialProtections@gov.scot)>; [redacted]
[redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]
[redacted]@gov.scot>; [redacted]@gov.scot>; SGLD Emergency Bill Team
<SGLDEmergencyBillTeam@gov.scot>

Subject: IMMEDIATE: Cost of Living (Protection of Tenants) Bill Pack - for clearance

MPO/Minister ZCBATTR

Please find attached the **Bill Print**, **Policy Memorandum** and the **Financial Memorandum** for the Cost of Living (Protection of Tenants) Bill.

Please note that whilst we have taken as much care as possible in the time available these documents are still subject to full review for accuracy and consistency, including by SGLD, over the course of this weekend and minor changes may be required.

Unfortunately it has not been possible to provide the suite of **Impact Assessments** alongside these documents as we would normally do. Although drafting is very well advanced given the circumstances, these require further development to fully reflect the final policy position agreed this week and today and to ensure consistency across the different assessments.

Following discussions with MPO and Spads we propose to provide you with the Impact Assessments for your review on Sunday evening.

With apologies for these timescales, we will welcome your **clearance on Monday morning** so that these can be included in the final Bill Pack being sent to FM for clearance.

Additional points to note

- The Bill Draft still includes the **safeguards in [square brackets]** recognising that Ministers had previously requested we test the Bill with Law Officers in this way, albeit recognising that Sol Gen's response [REDACTED]
[REDACTED]
- **Sol Gen's feedback** on the CSCL paper also highlighted [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Many thanks
Catriona

Catriona MacKean | Deputy Director for Better Homes | Scottish Government
Mobile: [REDACTED]

[REDACTED] If you need to contact me urgently outwith these times please call the mobile number above.

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

TOP LINES – STAGE 3

- We are grateful for the contributions from across the Chamber and the engagement in the Stage 2 debate yesterday.
- We are committed to the measures in the Bill and the difference we know they can make to people who rely on the rented sector for their home, tenants who are more exposed to the exceptional circumstances we face. We are pleased that this urgent Bill has successfully reached Stage 3.
- As was the case for Stage 2, we have carefully considered the intent behind the amendments lodged at Stage 3 and have taken these on board where they will strengthen the measures in the Bill.

To note we have worked with Members on the following amendments:

Stage 2 Amendments 9/10 – Pauline McNeill

Effect – requires landlords to provide additional information to tenants when they make an application in respect of prescribed costs

This will ensure that tenants must be advised that the increased rent proposed is not payable until such time as an Order confirming the amount is made by either the Rent Officer or FTT, as appropriate.

Lines to take

- We supported the intention of these amendments and appreciated the discussions with the member which have informed these amendments, which we are happy to support.
- We fully endorse tenants having the information they need on when and how any increased rent might be owed, in relation to an application by their landlord to raise their rent in relation to prescribed costs.

Stage 2 Amendments 47, 49, 55 & 64 – Mark Griffin

Effect - requires landlords to provide specific types of evidence of financial hardship to the First Tier Tribunal.

Lines to take

- We supported the intention of these amendments and appreciated the discussions with the member which have informed these amendments, which we are happy to support.
- We acknowledge the benefits of providing some additional examples of the evidence that the Tribunal may consider when determining an eviction application on the basis of one of the new grounds for financial hardship.

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

In addition we are introducing government led amendments in two areas

1) Committing to set out the Government decision on whether to retain, increase or expire the 0% cap in respect of the social rented sector

Amendment [2]

In section 8, page 4, line 37, at end insert—

In the report in respect of the period ending 31 December 2022, the Scottish Ministers must, in considering the application of the permitted rate (within the meaning of section 24A(1) of the Housing (Scotland) Act 2001) of 0%, explain whether they propose to—

- retain the permitted rate at 0%,
- increase the permitted rate,
- make regulations under section 7(1) to provide for the expiry of paragraph 3 of schedule 1, or
- make regulations under section 5(1) to suspend the operation of that paragraph.>

Key messages

- We are bringing forward this amendment to respond to two key points that have been made about the importance of early certainty for the social sector to inform their consultation with tenants and planning for rent setting from 1 April onwards; specifically to ensure that if rents are raised from 1 April onwards then social landlords can do that ahead of time, as they are required to do.

2) To include an additional exemption to the moratorium where a tenant is no longer an employee of the landlord.

Amendment [7]

In schedule 2, page 25, line 17, at end insert— paragraph 8 (not an employee),>

Amendment [9]

In schedule 2, page 25, line 32, at end insert— paragraph 14 (islands council as education authority),>

Amendment [11]

In schedule 2, page 35, line 38, at end insert— <() ground 17 employment with landlord ceases)>

Amendment [12]

In schedule 2, page 26, line 4, at end insert— <() case 7 (employment with landlord ceases)

Key messages

- We recognise the importance of employers being able to recover a property which is linked to employment, where a tenant is no longer employed to free up the accommodation for a new employee, particularly during the current economic crisis.
- We do not think that it is appropriate to create a new ground at this time, as was proposed by Jeremy Balfour yesterday, and have therefore based the exemption on the existing grounds for repossession.

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

- I am aware that some stakeholders are keen to see the current ground within the private residential tenancy be amended, however, any long term changes must be taken forward as part of our review of repossession grounds and the future Housing Bill.

STAKEHOLDER VIEWS

Supportive Quotes

Scottish Association of Landlords

John Blackwood, chief executive of the Scottish Association of Landlords said today:

QUOTE: *“I think we all support the idea that tenants do need protection... we want our tenants to continue to stay in our homes and be able to afford to live in our homes. The issue is what protections are available to landlords who equally are facing the cost of living increases... certainly we do welcome the mitigations within the bill” [5 Oct, comments on Radio 5 Live]*

Shelter

Whilst they highlight that the Bill cannot solve the housing emergency on its own, Shelter Scotland say the emergency Bill: **QUOTE** *“is bold legislation, filled with good intentions, that will provide comfort and security for thousands of tenants across Scotland.” [Twitter 4 Oct]*

Living Rent

Caroline Crawley from Living Rent, made clear the need for these emergency measures, speaking of rent increases she said: **QUOTE** *“It’s just truly unaffordable. It’s unsustainable for anyone to be able to put up with these kinds of prices” [5 Oct, Press and Journal]*

Glasgow and West of Scotland Forum of Housing Associations

QUOTE: *“We strongly welcome the assurance we have been given that the legislation will make provision for the social housing sector to be treated differently from the private rented sector (PRS). This is critical, and would allow – as an example – for a rent freeze or cap in the PRS from April 2023 but no intervention in social sector rents.*

COSLA

QUOTE: *“An eviction moratorium outlined in the PfG will reduce homeless presentations from the private rented sector. As a result, this will help to ease some of the pressures that local authority Homelessness Services are currently under.” [COSLA briefing paper, 3 Oct]*

ISSUES AND RESPONSES

Crisis warned measures are a sticking plaster on a much bigger longer-term problem – with the number of being helped with homelessness at the highest level ever.

- We know the number of households in temporary accommodation is too high and we are firmly committed to reducing it.
- We are working tirelessly with our local government and third sector partners to end homelessness and rough sleeping in Scotland.

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

- Our 2020 Ending Homelessness Together action plan renewed our commitment to ending homelessness, and our last annual progress report (published 7 Oct 2021) showed that, with the right approach and funding, local councils and third sector partners have the means to end rough sleeping in Scotland.
- On top of funding provided through the local government settlement, we are providing a total of £100m from our Ending Homelessness Together Fund.
- We have already legislated to improve the quality of temporary accommodation and we will continue to do all we can to improve people's experiences and to support local authorities to reduce the use of temporary accommodation.
- The Cabinet Secretary has asked an expert group, chaired by Shelter Scotland and the Association of Local Authority Chief Housing Officers, for an action plan to reduce the numbers of people in temporary accommodation, with a strong focus on households with children. The group will report initial recommendations early next year.

Living Rent concerned that the emergency bill still allows rents to increase by 3% and that any further increases are unaffordable for tenants

- The emergency measures must be robust and we have taken a balanced approach to make sure the rent cap measures included in the Bill are proportionate. Taking account of landlords' individual circumstances – albeit in defined and limited situations - is necessary to make the legislation robust.
- Whilst our primary focus is on protecting tenants, we recognise the impacts of the cost crisis may also be felt by some landlords. That is why we have included safeguards in the emergency measures to allow for consideration of increases in a limited range of landlord costs associated with offering a property for rent.

SAL warn that landlords are concerned about mortgage interest rate increases and that mitigations in the Bill to pass on costs are 'incredibly limiting'

- Whilst our focus is on protecting tenants, we recognise that the impacts of the cost crisis may also be felt by some landlords. That is why we have included safeguards in the emergency measures that allow for consideration of landlords' prescribed property costs.
- Allowing for rent increases in relation to prescribed costs recognises the potential increase in costs for some landlords and aims to support them to continue to offer properties for rent.
- The emergency measures will be kept under review and we will work with the private rented sector to understand the impacts.
- The provisions strike a fair balance with the individual rights of landlords because
 - The provisions are time limited (even if extended by regulations under s6(3))
 - The provisions can be suspended under s5
 - The provisions can be expired early (s7(1)) and must be expired early if no longer necessary or proportionate (s7(2))

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

- Ministers must review whether the provisions are necessary under s8
- The rent cap can be adjusted to a rate higher than 0% by regulations in respect of each sector to which it applies – with the possibility of different rates applying to different sectors
- There are sufficient safeguards in place to allow landlords to increase the rent payable to reflect the increase in prescribed property costs over the preceding six months, this is limited to 50% of the increase in costs or 3% of the rent (whichever is lower).

Shelter warn ‘relatively modest’ rent arrears could lead to more evictions in the PRS and SRS.

- The definition of substantial rent arrears set out in the Bill is:
 - PRS: the cumulative amount of rent arrears equates to or exceeds an amount that is the equivalent of 6 months’ rent under the tenancy.
 - SRS: the rent lawfully due from the tenant which has not been paid is equal to or greater than £2,250 – this is equal to or slightly in excess of 6 months’ average rent in the Scottish social rented sector.
- We have sought to strike an appropriate balance between giving significantly greater protection to tenants in rent arrears and protecting landlords and tenants from accumulating substantial rental debt. We recognize that mounting arrears for tenants simply leads to greater debt which can impact on their future access to housing.
- We believe we have achieved that balance.
- We have also listened to concerns that a blanket moratorium with no exceptions does not take account of landlords who themselves are in financial hardship, or have accumulated substantial rental debt because of rent arrears.
- Tenants who are struggling to pay their rent should seek support as soon as possible to avoid going into arrears.
- This includes through key support measures that this government has put in place, including the Tenant Grant Fund and Fuel Insecurity Fund.

Scottish Lands and Estates are reportedly consulting with its legal advisor on whether the Bill is compliant with other legislation – including the ECHR, which states that everyone “is entitled to peaceful enjoyment of his possessions”

- Whilst our focus is on protecting tenants, we recognise that the impacts of the cost crisis may also be felt by some landlords.
- That is why we have included safeguards in the emergency measures to allow for consideration of increases in a limited range of landlord costs associated with offering a property for rent.
- The emergency measures must be proportionate and we have taken a balanced approach to make sure the rent cap measures in the Bill are proportionate.
- Taking account of landlord circumstances – albeit in defined and limited situations – is necessary to make the legislation robust against challenge.

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

CIH warn that in the social rented sector, landlords reported the highest level of rent arrears since the introduction of the Scottish Social Housing Charter, currently just under £170 million.

- Social landlords have already said they will only take eviction action as a last resort. Supporting tenants remains core to what they already do by providing them with advice and support to help them sustain their tenancy and to access benefits.
- Tenants should, of course, continue to pay their rent, and those who have difficulty paying their rent should speak immediately to their landlord who will support them to access all the help and advice available.
- There are pre-action requirements for landlords, whether in the social or private rented sector, and it is in everyone's interest to address any rent arrears, rather than letting them build up.
- For tenants who are struggling to pay their rent, we are putting in place flexibility around the Tenant Grant Fund.
- We are expanding the Discretionary Housing Payments, the Fuel Insecurity Fund, all of which helps household budgets and will help to deal with the pressures of rent.
- We have just launched a new website providing information on the wide range of advice and financial support available to people in Scotland.
- This includes information on help available for households to meet rising energy, housing and other costs.
- It also provides details on accessing Scottish and UK social security payments, including online benefit calculators, as well as wider health and wellbeing information.

Glasgow and West of Scotland Forum of Housing Associations ask members to avoid voluntarily agreeing a cap with Ministers beyond 1 April as it would marginalise tenant input and limit the effectiveness of HAs.

- No decision has been taken about the use of emergency measures after the initial period to 31 March.
- We will work in very close partnership with the sector to determine the best way forwards from 1st April onwards, monitoring the situation in the coming weeks and months to determine what action will be appropriate.
- A Short Life Task and Finish Working Group, bringing together leaders from across the Social Rented sector, had its first meeting last Tuesday (27 Sept) and met again on Friday (30 Sep).
- This group will help bring together evidence from across the sector to identify and consider the options available to support households and minimise the impact of rent increases on tenants next year.

SFHA note that without clarity on when the cap will be varied or removed it is difficult to undertake consultation with tenants

- We recognise there are critical differences in how rents are consulted on and agreed in the social rented sector. The vital importance of tenant participation

STAGE 3 BRIEFING – TOP LINES, STAKEHOLDER VIEWS AND FMQ

and consultation in that rent setting is a hugely valuable part of our current system.

- We have set out our intention to work in partnership with the social sector over the coming months to consider the implication of rent controls after 31 March and the need to allow for social landlords to give 4 weeks' notice of any rent increase. Supporting social landlords to carry out their rent consultations with tenants is a key part of that.

FMQ: EXTRA NOTE PROVIDED TO FM 06/10/22

CONSERVATIVES

Roz McCall

- Concerned about the significant **contraction in the size of the rental market**, which is **directly affecting students**.

Miles Briggs/Jeremy Balfour/Edward Mountain/Murdo Fraser

- Impact of measures on **private landlords** leaving the market or institutional investors leaving the market.

The private rented sector has grown from 120,000 tenancies in 1999 to 340,000 in 2019-20 through a period of significant new regulation.

- The measures in the Bill are temporary, to be followed up by a Housing Bill in 2023.

The emergency Bill ensures parity of protection for students, both in private renting and purpose built accommodation.

- We are conducting a review of student accommodation which will directly feed into future proposals.

We have produced a balanced package which reflects the circumstances which some landlords might face as well.

- The Scottish Association of Landlords has welcomed the mitigations.
- Institutional investors have said publicly the prospects for investment in the rental sector remain sound.
- **[QUOTE]** Springfield Properties have said that they recognise that the measures announced are “*a temporary measure designed to support families facing fuel poverty this winter*”, and that the group “*continues to believe that the delivery of PRS housing offers a viable revenue stream in the longer term*”. [September 20, 2022]

Various

- **Claims that international experience is negative.** Citing Irish introduction of rent controls in 2016, and they have seen the number of homes available to rent plummet.

We have reviewed international experience as part of our New Deal for Tenants work.

- That work reflects the diversity of experience with high levels of private renting sitting within much more regulated markets, for example Germany.
- The international examples cited by the Tories are cherry-picked and also reflect permanent arrangements in other states.
- Our Bill covers temporary measures, to be followed up by a Housing Bill in 2023.

Various

- Echoing concerns raised by housing associations and councils of the **impact on social landlords** if rents are frozen beyond 31 March.

Social landlords won't be raising rents until after 31 March.

- We have had very constructive engagement with representatives of councils and housing associations over the last 2 weeks on our shared commitments to rent affordability, new affordable homes and improved housing quality
- We have submitted an amendment at stage 3 today following further dialogue with the social housing sector which gives the sector greater confidence and certainty about how we will come to decisions about rent options beyond 31 March.

Social landlords won't be able to raise rents on 1st April even if the cap expires on 31st March

- We recognise the unique position of the social sector – our amendment will give the sector certainty and in considering the position in our January report, we will take account of the need for social landlords to provide 28 days' notice of any rent increase.
- The timeframe for reporting in January, under our amendment, provides time for the necessary regulations to enable rent increase notices to be served in time to take effect to take place on 1 April (if that is considered appropriate).

Jeremy Balfour amendment

- If Bill passed, **Churches** will not put properties up for rent in case they cannot regain the property for a Minister, leaving them empty.

Given the cost of living crisis, religious organisations will rightly be thoughtful about the needs of their existing tenants during these temporary provisions.

- The amendments suggested would have enabled a tenant to be evicted from their home in favour of a religious worker.
- This would have fundamentally undermined the protections we are bringing in for those tenants.
- These are tenants' homes and they deserve the same certainty and protection as everyone else gets from this emergency legislation.

Stephen Kerr amendment

- Cited concerns in University Scotland briefing issued before the Bill was published that universities **may not be able to evict students** who posed a risk to other students.

We spoke to Universities Scotland who confirmed that having now seen that the Bill allowed eviction for anti-social behaviour to continue, are content that their concerns are being taken into account and have written to us to seek our confirmation that the Bill allows for action to be taken on anti-social behavior not just criminal conduct

LABOUR

- Labour voted with the Government on most amendments. They supported the Bill at Stage 1 and will do so at Stage 3.
- SG accepted a number of Labour amendments e.g. on providing more information and advice to tenants and is working with Pauline McNeill and Mark Griffin on handout amendments for Stage 3 on strengthening measures related to financial hardship.

Main issues

- Claim that the rent cap should be **backdated to 6 June** rather than 6 September to make good on the FM's pledge that no rent rises after PFG date.
- Argued that the Bill **should apply to rent rises between tenancies** not just within tenancies.
- Seeking to **add care home fees to the rent freeze** (Note: Miles Briggs may seek to raise with FM the same issue WRT to residencies for ex-forces personnel).

On rent cap backdating, the Bill is framed, as we said it would be, to ensure that no new rent notice is valid since 6 September.

- Notices issued before that date will continue to apply once their 3 month lead in period has ended.

On rises between tenancies, there are significant practical issues on availability and access to information on rents which mean that this was not achievable in emergency legislation.

In a care home, the purpose of the accommodation is the provision of a service and therefore their charges are an amalgamation of service and accommodation – this covers food, heating, care and support and other workforce costs etc.

- Care homes do not offer tenancies.
- Instead residents have a residency agreement that sets out amongst other things, the service that will be provided, payment of fees and charges and notice and termination periods for the residency agreement.
- There is the potential to impact on market sustainability and care home capacity at a time that we are trying to increase this to support with delayed discharge and winter pressures.
- Care homes do not operate under the same housing regimes as statutory or common law tenancies. Legislating for them in the same way is inconsistent and complex for an emergency bill.

From: [REDACTED]@gov.scot>

Sent: Monday, October 3, 2022 6:16 PM

To: Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights

<MinisterZCBATTR@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet

Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; MacKean C

(Catriona) <Catriona.MacKean@gov.scot>; [REDACTED]@gov.scot>;

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(Special Adviser) <Jeanette.Campbell@gov.scot>; [REDACTED]@gov.scot>;

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[REDACTED]@gov.scot>; [REDACTED]

[REDACTED]@gov.scot>; Director for Local Government and Housing

<DirectorForLocalGovernment&Housing@gov.scot>

Subject: RE: Cost of Living (Tenant Protection) (Scotland) Bill: Draft Stage One Briefing Pack

PS/Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights

Cc: As above

Cost of Living (Tenant Protection) (Scotland) Bill: Draft Stage One Briefing Pack

Please find attached the following documents relating to Stage 1. Please note that these documents have been left in tracks so you can see where changes have been made since Friday and any new sections have their heading highlighted in yellow:

- Opening speech for your 4 October Committee appearance;
- Opening speech for the Stage 1 debate;
- Closing speech for the Stage 1 debate;
- Annex A (top lines, rationale for intervention, lines of attack and rebuttals, bill handout and Rental Sector FMQ);
- Annex B (key provisions briefing);
- Annex C (Issues not covered in Bill);
- Annex D (wider housing briefing);
- Annex E (wider costs crisis briefing);

Please also find attached for your information:

- a 'policy explainer' document, now published on the Scottish Government website; and

- text amending the existing rental sector Scottish Government webpages (which have also gone live).

Finally, as discussed at this morning's Daily Bill drop in meeting, we would be extremely grateful if additional packs could be printed off for the officials who will be attending Parliament over the course of the next few days.

Regards,

[Redacted]

[Redacted] | Better Homes
Division | The Scottish Government | Telephone: [Redacted]



C1 – HOMES WITH PITCH AGREEMENTS - RESIDENTIAL MOBILE HOMES

ISSUES:

- It would be very complex to include site agreements in the emergency measures given their unique nature and the age of the underlying legislation.
- Scottish Confederation Of Park Home Residents Associations is supporting an official RPI to CPI rally by the Park Home Owners Justice Campaign in Westminster on 24 October. We understand that Sir Christopher Chope's private members bill which amends RPI to CPI in England is due to have its second reading on 28 October.
- Changing the basis of uprating from RPI to CPI for existing contracts requires primary legislation and there is a statutory duty to consult before making any changes to the agreement. The Park Homes industry has a track record of challenging legislative change where due process has not been followed.

LINES TO TAKE:

Pitch agreements are different to tenancies and are regulated by the Mobile Homes Act 1983. They will not be included in the emergency legislation.

- Mobile home pitch fee increases are already regulated. Under the Mobile Homes Act 1983, there is a presumption that pitch fees will rise by a maximum of RPI annually, unless it would be reasonable to increase the fee beyond this level because of expenditure to improve the site.
- We have heard concerns from residents that the gap between RPI and CPI is growing, with the effect that pitch fees are growing faster than pension incomes.
- We will therefore undertake the required consultation on the impact of moving the basis of pitch fee uprating from RPI to CPI, in time to make the change in the 2023 Housing Bill.
- This change would have a permanent effect, slowing the rate of pitch fee increases in future years.

There are key protections for residents under the Mobile Homes Act 1983.

- The site owner must issue a proposal for the new pitch fee 28 days in advance of the increase. If the occupier does not agree the proposed fee, they can apply to the Court to determine the new pitch fee. The pitch fee remains unchanged while this process is in progress.
- If the owner of a Mobile Home Site wants to terminate a contract for a pitch on one of the grounds set out in the contract, they must apply to the Court. A Sheriff will decide whether it is reasonable to do so and, if so, what the appropriate date would be to end the contract. The Sheriff will apply the usual tests of reasonableness used when possession is sought. Factors such as the reasons for arrears e.g. rising energy prices, may be taken into account by the courts when exercising discretion.

The Scottish Government is committed to making sure that those living in mobile homes on sites licensed for permanent residents have appropriate rights and protections.

- We will carry out a post implementation review of the Residential Mobile Homes Site Licensing scheme before the end of this Parliament.
- We do not have adequate up to date evidence of how legislation to improve protections for renters has impacted on those who rent mobile homes as their main residence. To inform the Rented Sector Strategy, we have gathered

ANNEX C – ISSUES NOT COVERED IN BILL

information to improve our understanding of this sector and identify potential gaps in protections to inform future policy.

BACKGROUND

The Mobile Homes Act 1983 (and related regulations) control the consumer rights of mobile home owners. It sets out terms which must appear in the “written statement”, including a presumption that pitch fees will rise by a maximum of RPI. These terms are implied into all agreements between site owners and residents and have been tailored for Scotland.

Impact - Stakeholders report 6-7k people with a mobile home as their main home. The majority of whom tend to be older and reliant on pension or benefit incomes. Pitch fees are typically lower than housing rents so the benefit of a pitch fee freeze would be more limited (average in England £172 per month). The market is narrower with less movement than the PRS as homes need to be physically moved. We have not heard concerns about evictions for rent arrears.

Contact: [REDACTED]

C2 – HOMES WITH PITCH AGREEMENTS - GYPSY / TRAVELLERS

ISSUES:

- Homes with Pitch Agreements under the Mobile Homes Act 1983 will not be included in the emergency legislation.
- While we are pursuing an administrative agreement with COSLA to give Gypsy/Travellers parity with other social tenants, stakeholders may highlight that this is a weaker than a legal protection.
- It would be very complex to include site agreements in the emergency measures given their unique nature and the age of the underlying legislation.

LINES TO TAKE

Gypsy/Traveller pitch agreements are different to tenancies and are regulated by the Mobile Homes Act 1983. They will not be included in the emergency legislation.

- Gypsy/Travellers on public sites should have the same protections as other social tenants. We will work with social landlords as part of our partnership under the Gypsy/Traveller Action Plan, to agree an administrative pitch fee freeze and evictions ban in line with that for their other tenants.
- COSLA and Scottish Government have a strong track record of partnership working to provide support during Covid lockdowns. We will work together to make sure that Gypsy/Travellers feel safe in their homes during the cost of living crisis.

To inform the Rented Sector Strategy, we are gathering information to improve our understanding of the issues for Gypsy/Travellers relating to their pitch agreements.

- We will work with local authorities to examine pitch agreements and rent affordability through the demonstration projects under the Gypsy/Traveller Accommodation Fund to share good practice and inform future policy.

BACKGROUND

Parts of the Mobile Homes Act 1983 apply to public sector Gypsy/Traveller sites. Pitch agreements on these sites should also comply with the Minimum Standards for Gypsy/Traveler Accommodation. Research in 2019 found 29 public Gypsy/Traveller sites across Scotland, providing a total of 397 active permanent, seasonal or transit pitches. All sites are run by Local Authorities except for two in Argyll and Bute which are run by Argyll Community Housing Association.

Impact - Rents are set once a year in line with the council rents so the initial proposed rent freeze (due to end on 31 March) would not have a practical effect until 1 April 2023. ALACHO reported an average pitch rent of £77.90 per week and an increase in public sector Gypsy/Traveller pitch rents in 2021-22 of 1.33%, with a number of social landlords holding rents level this year in recognition of cost of living challenges for this community. We do not have data on eviction rates from public sector sites but stakeholders did not give any examples when asked.

Officials have highlighted the need for equality for Gypsy/Travellers to COSLA officials and will work with them on practicalities of implementation once the Bill has passed.

Contact: [REDACTED]

C3 – RENT CAP – EXCLUDED TENANCY TYPES

ISSUES:

- Ministers desire as many tenancies as possible to be covered by the rent cap measures
- The majority of tenancies will be covered by the emergency measures but there are a limited number of tenancy types that have not been included

LINES TO TAKE

We are making sure that the majority of tenants are protected by the emergency measures

- All assured tenancies under the Housing Scotland Act 1988, social tenancies under the Housing (Scotland) Act 2001 and private residential tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 are included in the measures.
- There are a small number of older tenancies that have been excluded, although many of these will already have increased protection in terms of rent increases.
- Common law tenancies have not been included eg agricultural tenancies

We have not included two types of tenancy under existing legislation

Rent (Scotland) Act 1984

- There are only small numbers of tenancies left that are governed by the 1984 Act and, for these tenancies, rent increases can only occur every 3 years and the restrictions on rent increases already built into the system operate to ensure rents in respect of the 1984 Act are raised at fair levels.
- The Act is now two generations old, having been largely overtaken by subsequent legislation.
- The complexity of the regime, coupled with its age, make amending it complex and given the very small numbers of remaining tenancies that are subject to its requirements it has been excluded.
- There is precedent for this approach as the provisions in the Coronavirus Acts on eviction (extended notice periods, discretionary grounds of eviction) were applied to the 1984 Act but the provisions on rent (pre-action protocols) were not applied.

Housing Scotland Act 1988

- Assured Tenancies where rent increases are governed by contractual terms have been excluded.
- These are currently excluded from the statutory process for increasing rent and the appeals process by section 24(5) of the Act. They are not governed by statutory requirements at the moment and making any changes to how they functions would be complex and potentially costly
- We believe that the number of these tenancies is likely to be extremely small and the extensive new processes that would require to be set up are unlikely to be used.

Common Law Tenancies

- *Tenancies that are not covered by statutory requirements on rent increases within housing legislation have not been included.*
- *For example agricultural tenancies where the rental agreement relates to the wider agricultural holding rather than a residential property.*

From: MacKean C (Catriona)

Sent: Monday, September 26, 2022 7:53 PM

To: Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights

<MinisterZCBATTR@gov.scot>; Cabinet Secretary for Social Justice, Housing & Local Government
<CabSecSJHLG@gov.scot>

Cc: Campbell J (Jeanette) (Special Adviser) <Jeanette.Campbell@gov.scot>; Corbett GN (Gavin)

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Subject: Immediate: Cost of Living (Tenant Protections) Bill - Stakeholder engagement

MPO/Cabinet Secretary SJHLG

MPO/Minister ZCBATTR

Emergency Legislation: Stakeholder engagement in the next fortnight

We recognise that the swift announcement of the policy ahead of full confirmation of details has led to handling difficulties with stakeholders – particularly making it difficult to respond quickly to calls for further information and clarity. Now that the intended approach is confirmed in further detail we can do more in this space including sharing key messages as provided by [REDACTED] earlier this evening. We have noted in particular Minister's ask to look at what further information can be provided to tenant facing organisations like Shelter.

We recognise in particular that the decision to include the social rented sector in the emergency measures has created a shift in the relationship with stakeholders in this space. As Sally Thomas has written in a recent article for Inside Housing: *Government control of rents is an entirely new proposition in Scotland.* Ministers may also wish to note the **attached briefing issued by SFHA** to their membership last week which indicates that SFHA's current position is that they are opposed to any SG rent control after 31st March; that they have had discussions with political parties and that they have provided a template to members to write to their MSPs. They have also asked their members to provide evidence of the impact of a rent cap.

[REDACTED] has separately set out a number of suggested meetings for Cab Sec and Minister to schedule in for next Tuesday (day of introduction) which we will look to support as part of the close work required around managing the Bill.

In addition, while recognising the limited time available, we would advise that **additional stakeholder engagement this week** would be beneficial - if at all possible for Minister and Cab Sec's diaries - to allow for a continued dialogue and to seek to allay some of stakeholders' key concerns with some clear water before introduction of the Bill.

What we would suggest would be 30 minute meetings for Minister and/or Cab Sec to consider for this week are:

- Sally Thomas, SFHA (noting this has already been suggested via [REDACTED] last week)
- Jon Turner, CEO Link & Stephen Henderson, CEO Wheatley (as heads of the two main Housing Associations)
- George Walker and Michael Cameron, Scottish Housing Regulator
- John Blackwood, SAL

This would be in complement to plans for official level engagement set out below.

- As set out in advice shared by [REDACTED] on Friday, the first meeting of the **Social Rented Sector Rent Freeze Short Life Task & Finish Group** is taking place tomorrow morning. This will focus on sharing the direction of travel for the emergency legislation; and 2) the approach to rent in the social rented sector beyond March 2023. Following this meeting we will update Ministers on the discussions and emerging options for post March 2023 to inform the next meeting of that short life group.
- In addition to this Group we will be looking to meet in parallel with a number of PRS and tenant stakeholders at official level. We hope that in the time available this will include **SAL, Propertymark and Shelter**.
- Ongoing discussions with **Scottish Housing Regulator**
- Ongoing discussions with **SCTS; FTT and SMASO**

We would welcome Ministers' thoughts on this proposed approach and indication of whether there is any possibility of stakeholder meetings this week.

Kind regards
Catriona

Catriona MacKean | Deputy Director for Better Homes | Scottish Government
Mobile: [REDACTED]

[REDACTED] If you need to contact me urgently outwith these times please call the mobile number above.