

**From:** MacKean C (Catriona)  
**Sent:** 23 September 2022 12:32  
**To:** First Minister; Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights; Cabinet Secretary for Social Justice, Housing & Local Government  
**Cc:** Deputy First Minister and Cabinet Secretary for Covid Recovery; 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; SGLD Head of Economy & Social Protections; Legal Secretariat to the Lord Advocate; Campbell J (Jeanette) (Special Adviser); Corbett GN (Gavin); McAllister C (Colin); Communications Social Justice, Housing & Local Government; SGLD Emergency Bill Team  
**Subject:** RE: IMMEDIATE: Cost of Living (Protection of Tenants) Scotland Bill – Overview and Summary Paper

MPO/First Minister

As just discussed, please find below additional advice FM has asked for on the suggestion [REDACTED]

[REDACTED]

[REDACTED]

Many thanks  
Catriona

Catriona MacKean | Deputy Director for Better Homes | Scottish Government

### **B1 – RENT FREEZE - Private residential tenancies, assured tenancies and short assured tenancies**

#### **Short summary / purpose of provisions**

The purpose of the provisions is to protect tenants by stabilising their housing costs during the cost crisis. There is evidence that tenants have less resilience against rising costs than other groups

The temporary rent cap in the private rented sector will:

- Apply to existing private residential tenancies, assured tenancies and short assured tenancies.
- The rent cap does not apply to:
  - i) 1988 Act exempt tenancies: these tenancies are exempted from the existing statutory requirements on rent increase, as rent increases are governed by contractual terms. We believe there are very few tenancies in this category.
  - ii) Regulated tenancies under the Rent (Scotland) Act 1984: the Act is two generations old and legislation has phased out entering into new regulated tenancies to the point that there will be very few of these tenancy types left. These tenancies have protections under the Act with rent increases restricted to once every 3 years.
  - iii) Common law tenancies e.g. agricultural tenancies: these are exempted from statute, with rent increases governed by contractual terms.
- Landlords will be able to re-set rent levels between tenancies.
- Ministers will set a permitted rate of rent increase (“rent cap”), which can be varied whilst the emergency measures are in force. In the period up to 31 March 2023, the cap will be set at zero to prevent rent increases.
- Landlords will only be able to issue rent increase notices if the rent cap rises above zero.
- Rent increase notices issued on or after 6 September 2022, but before the emergency measures come into force, will be void.
- Existing rights of tenants to challenge a rent increase and appeal to the First-tier Tribunal will be maintained for rent increase notices issued before 6 September 2022.
- To ensure that landlords comply with the rent cap if it rises above zero, tenants will be able to apply to a Rent Officer for verification that any rent increase notice they receive does not exceed the permitted rate.
- As a safeguard for landlords, whilst the rent cap is in force (at any level) they will be able to apply to Rent Service Scotland to increase rent to recover up to

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50% of the defined prescribed property costs, where the increase in costs has occurred in the previous 6 months.

- The prescribed property costs are, for the time being:
  - i) the interest payable in respect of any mortgage or standard security over the rental property;
  - ii) any insurance premium payable by a landlord relating to insurance connected to offering the property for rent, for example 'landlords' insurance' (excluding general building and property insurance);
  - iii) any 'service charge(s)' related to the rental property that are recoverable from the tenant via their rent as part of the contractual arrangement between tenant and landlord.
- To provide a safeguard for tenants we have limited the level of increase in respect of prescribed costs such that rents cannot increase by more than 3% of the existing rent (regardless of the level of the landlord's prescribed property costs).
- In considering how to set an appropriate limits on both the portion of costs that are eligible to be passed on, and the maximum permitted in rent, we have sought to balance the need to ensure the emergency measures achieve their purpose, with the recognition that some landlords will be affected by the cost crisis, particularly in relation to prescribed costs associated with offering their property for let.
- Allowing for 50% of prescribed costs to be passed on as a rent increase is appropriate as it offers protection to both the tenant and the landlord, ensuring neither bears the full cost of any increase while the emergency measures are in force. By sharing the cost increase between landlord and tenant, this protects tenants who are already bearing the increase in their own living costs already.
- The rationale for setting an overarching limit on the level of prescribed costs that can be passed on is to provide tenants with stability during incredibly uncertain times. We consider 3% to be appropriate. 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, with a 3.7% increase in July 2022, the highest since the series started in 2012.
- At present this strikes a proportionate balance between increases in applicable costs for landlords, and making sure the emergency rent cap achieves its purpose of stabilising costs across as many tenancies as possible.
- To set the 3% cap at a different level would risk tenants being liable to increases to the extent that the rent cap could provide little or no benefit where the landlords prescribed costs have increased significantly. Households in the rented sector generally pay more of their income on housing costs than owner occupiers and are more likely to be in relative

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poverty, including fuel poverty, and to be classed as financial vulnerable, meaning they are less able to cope with increased costs.

- Scottish Ministers have powers to vary both the 3% and 50% caps as appropriate in order to respond to the evolving cost crisis in a proportionate manner.

### **Likely angles and rebuttals / Lines to take**

**The rent cap should be backdated given the cost crisis has been ongoing for months.**

- We have acted to protect tenants from rent rises from the announcement of the emergency measures in the Programme for Government. This protects tenants where action might have been taken by landlords in response to the PFG.
- Any rent increase proposed by a landlord since 6<sup>th</sup> September will be void.
- The emergency measures must be proportionate and we have taken a balanced approach to make sure the rent cap measures included in the Bill are robust against challenge.

**In order to protect tenants the Scottish Government should be freezing rents for the duration of the crisis.**

- By definition emergency legislation must be temporary but given the huge uncertainty as to what the next 6 months holds, the ability to extend needs to be available.
- Rents for most tenants are expected to be frozen until 31 March 2023 which provides stability in rent costs at a time of wider financial uncertainty.
- Flexibility and ongoing monitoring/reviewing of the level of cap is essential to allow the emergency measures to respond to the ongoing uncertainty in the wider economic circumstances.
- If the emergency measures are to be extended beyond 31 March, we will review the level of the rent cap to ensure that it is a proportionate response to those circumstances.

**In order to provide clarity and stability for tenants and landlords the Scottish Government should be clear on the duration the measures from the outset.**

- By definition, emergency legislation must be temporary but given the huge uncertainty as to what the next 6 months holds, the ability to extend needs to be available.
- We will keep the measures under review and extended them only if this is required as a result of wider economic circumstances and with the agreement of Parliament.

**This is not a rent freeze as rents will still be able to rise for some tenants.**

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- The emergency measures must be proportionate and we have taken a balanced approach to make sure the rent cap measures included in the Bill are proportionate. Taking account of individual circumstances – albeit in defined and limited situations - is necessary to make the legislation robust.
- Whilst our 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.

### **The costs crisis is not driven by rents but the measures are seeking to make private landlords responsible for the impact of the wider cost crisis on tenants.**

- This emergency legislation is necessary to support those who rent their homes to mitigate the impact of the cost crisis on tenants that have less resilience against rising costs than other groups.
- Households in the rented sector generally pay more of their income on housing costs than owner occupiers. They are also more likely to be in relative poverty, including fuel poverty, and to be classed as financial vulnerable, meaning they are less able to cope with increased costs.
- We are satisfied that there is a strong justification for the measures included in the Bill and that they are appropriate and proportionate.

### **The measures do not adequately take account of the impact of the cost crisis on landlords, especially in relation to the costs directly associated with offering a property for rent.**

- 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))
  - 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 where prescribed property costs have increased over the relevant period by up to 50% of any prescribed property costs or 3% of the rent payable – when taken with the other measures above this strikes a fair balance.

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**There is already a shortage of properties for rent in the PRS and these measures will result in landlords leaving the sector as soon as they can, with negative consequences for tenants and increased pressure on social housing and homelessness services**

- These are exceptional measures developed to reflect a rapidly worsening cost of living crisis.
- We believe that a well-regulated private rented sector which maximizes affordability is in the interests of both landlords and tenants.
- The measures are temporary, will be kept under review and only be maintained or extended if required as a result of wider economic circumstances.

### **Issues raised by Stakeholders**

**Crisis** - *The rent cap is a blanket measure that protects all tenants regardless of circumstances, the policy is not focused on providing help to those who are most in need.*

- We will broaden the scope of our £10m Tenant Grant Fund so that it can also support people who are struggling with the rising cost of living.
- We have taken other action to support tenants with their housing costs, providing a total of £88.2m for Discretionary Housing Payments this year, building on the £39m of additional funding already provided to protect tenants as a result of the pandemic.
- This includes £68.1m to mitigate the bedroom tax helping over 91,000 households in Scotland to sustain their tenancy.
- And an additional £15.1m has been made available to mitigate against the impact of other UK Government welfare cuts, including to mitigate the Benefit Cap as far as we can within our powers, and changes to the Local Housing Allowance rates.
- We will be investing a further £5m in Discretionary Housing Payments, subject to the emergency budget review, so that local authorities can help people on low incomes who are struggling with rising energy bills.
- This additional funding will help local authorities deal with increased demand for Discretionary Housing Payments and will be a lifeline for those who need help to heat their homes.

**Living Rent** - *The rent freeze and the continuing uncertainty around longer term plans for rent control in Scotland will see landlords raise rents at the first opportunity after the measures are lifted.*

- We recognise that there may be some unintended consequences from introducing a rent cap, including the potential for significant rent increases when the emergency measures are lifted.
- To support the future transition out of the emergency measures we have taken steps to make sure that we have powers to temporarily amend the rent

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adjudication process so that we can ensure that rent increases remain reasonable when the cap is lifted.

- If this power is utilised, the regulations will be subject Parliamentary scrutiny and consultation with landlords and tenants representatives.

**Living Rent** - *The Scottish Government should commit to keeping the measures in place until longer term rent controls are implemented.*

- Emergency legislation must, by definition, be temporary but given the huge uncertainty as to what the next 6 months holds, we have taken powers in this Bill to be able to extend or vary measures to enable us, with the agreement of Parliament, to respond to the crisis in the short to medium term. .
- As laid out in the Programme for Government, we intend to introduce a new Housing Bill in 2023 which will begin to deliver our New Deal for Tenants.
- The intention is that this will include measures to deliver on the commitment to introduce a national system of rent controls for Scotland by 2025.

**SAL/Propertymark** - *The effect of these measures, coming after a period of uncertainty for landlords caused by the commitment to longer term rent control, will result in many landlords deciding to exit the sector. This will reduce supply and will be bad for tenants.*

- We are aware of claims that landlords in the private rented sector are considering vacating the market.
- Whilst our 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 that allow for consideration of landlord's circumstances.
- The measures will be kept under review and we will work with the private rented sector to understand the impact.
- The number of properties available in the private rented sector has grown alongside increased regulation, from 120,000 properties in 1999 to around 340,000 in 2019-20

**SAL/PRopertymark** – *the key issue in the PRS is lack of supply and these measures will make the PRS in Scotland high risk, leading to a reduction in investment.*

- We recognise that the rent cap may be a consideration in terms of investing in the private rented sector for new or existing landlords.
- However, the emergency measures are temporary, will be kept under review and only be maintained or extended if this is required as a result of wider economic circumstances and with the agreement of Parliament.

### Supportive quotes

Living Rent have said *“as skyrocketing rents continue to pile on top of out of control energy bills, this will have a massive impact”*.

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The Scottish Trades Union Congress said *“The Scottish Government is to be commended for freezing rents. If implemented correctly [...] this will help thousands of households across Scotland when they need it most.”*

Age Scotland have said that *“for the growing number of older people living in rented accommodation [the rent freeze announcement means] one less thing for them to worry about over winter”*.

Sadiq Khan, Labour Mayor of London, said QUOTE: *“This bold action from the Scottish Govt will support thousands of households during this national crisis. I’ll continue to call on the UK Govt to grant me the power to freeze rents in our capital. Londoners face record rents at the worst possible time.”*



### **B2 – RENT FREEZE - Social rented sector**

#### **Short summary / purpose of provisions**

- Tenants in the social sector are among the most vulnerable to cost increases
- Although it is unlikely that rents *will* increase in this sector over the period to 31 March 2023, that can't be guaranteed There is currently no statutory bar on the increasing of rent in the sector.
- This is a fast moving, volatile, emergency situation and so on balance it is considered that it is better to ensure no increases can take place than to not act
- The restriction in rent increases will apply to existing Scottish secure and short Scottish secure tenancies.
- The temporary restriction will allow Ministers to set a 'permitted rate' of rent increase ("rent cap") with the power for this to be varied whilst the emergency measures are in force.
- In the period up to 31 March 2023, the cap is expected to remain at zero to prevent rent increases. The measures will continue to be reviewed, and may be extended with the agreement of Parliament, if it is proportionate at that point to do so.
- The ability of landlords to increase rents (in line with the rent cap) will be maintained, and the level of the cap itself is variable, which means that it can be tailored in a proportionate manner.
- We are working closely with the social rented sector to discuss the operation of any cap on social rents through the establishment of a Short Life Task and Finishing Group.
- As part of this we are also carefully considering what alternative (non-legislative) safeguards can be put in place for social landlords who have competing pressures in a difficult financial climate.

#### **Likely angles and rebuttals / Lines to take**

#### **The sector has made it clear that there should be no intervention in rents after 31 March**

- We are working in very close partnership with the sector through a Short Life Task and Finish Working Group to determine the best way forward from 1 April onwards for the social rented sector, monitoring the situation in the coming months to inform us and determine what action will be appropriate.
- We will seek to decide what actions we may want to take post March 2023 as soon as it is practicable to do so, in partnership with the sector. Any extension of the measures would only be done if it is proportionate to do so, and with the agreement of Parliament.
- The rent cap is variable and temporary. The social sector cap can be calibrated independently of the other sector caps (i.e. private sector) to ensure an appropriate and tailored approach.
- The Working Groups 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.

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- We also recognise the significant challenges faced by social landlords in increasing housing supply, improving quality and maintaining affordable rents.
- Though social landlords will not be able to increase rent above the cap, they will, still, be able to increase ‘other charges payable under the tenancy’ in the prescribed manner, the rent cap will not restrict this.
- No decision has been taken about the use of emergency measures after the initial period to 31 March (for reasons explained above).
- Any such decision will be informed both by the cost of living situation as it develops and by our active engagement with the sector which is already under way.

### **That the rent freeze will have no impact as rents have already been set to April**

- The vast majority of social sector rents are already set until 1 April 2023 and will not increase before then. This has informed our announcement and confirmation of a rent freeze up until at least 31 March 2023 at this stage.
- Although the usual practice in the social sector is to only increase rents once annually, there is no statutory restriction on the frequency of rent increases, there is also no mechanism (in contrast with the private sector) whereby tenants could challenge a proposed rent increase.
- As such, we deem it necessary to deliver the rent cap to provide certainty for social tenants who are among the most vulnerable to cost increases. The cost crisis is not a ‘usual’ economic landscape along the lines of the previous couple of years, which must be acknowledged.
- Whilst the rent cap is in place, the ability of social landlords to increase ‘other charges payable under the tenancy’ under section 25(1), 2001 Act in the prescribed way remains undisrupted, so the rent cap is necessary to protect social tenants from disproportionately bearing the impact of the cost crisis by also having their rent increased.
- We are working in very close partnership with the sector to determine the best way forwards from 1 April onwards, monitoring the situation in the coming months to determine what action will be appropriate.

### **These actions will lead to a reduction in the affordable housing supply programme and wider ambitions such as net zero**

- Affordable housing is a clear and long standing priority for the Scottish Government. Scotland has led the way in the delivery of affordable housing across the UK with more than 111,750 affordable homes delivered since 2007, over 78,000 of which were for social rent. We also brought the right to buy to an end in 2016, ensuring homes remain in the social sector.
- The Scottish Government has committed £3.6bn this Parliament for affordable housing delivery.
- We operate a flexible grant system which can take account of increased costs and we have given five year resource planning assumptions to ensure as much certainty as possible.
- Housing Associations and Local Authorities should continue to draw on support available, such as through the Social Housing Net Zero Heat Fund, which will provide £200 million of grant support over this Parliament.

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- We are carefully considering what safeguards can be put in place for social landlords who have competing pressures in a difficult financial climate

### **There are insufficient safeguards for social landlords as compared with private landlords**

- If the Bill is to extend beyond the 31 March, there is scope to take into account the particular needs of the sector e.g. through setting a different rent cap % than in other sectors and Scottish Ministers have committed to consult with social landlords.
- The general safeguards allow for flexibility and agility in responding to any issues and the provisions should be expired if no longer necessary.
- The general safeguards are; the provisions are due to expire in March, they can only be extended via regulations following Parliamentary approval and the Scottish Ministers can expire or suspend the provisions before their statutory expiry date

### **The Scottish Government has not sufficiently engaged with key stakeholders in the development of the emergency measures**

- We have been working at pace to develop the emergency legislation.
- We have sought to engage with stakeholders as far as was possible in the very limited time available
- We have established a Short Life Task and Finish Working Group, bringing together leaders from across the Social Rented sector, to consider all the options from April 2023.

### **Issues raised by Stakeholders**

- That the rent freeze until 31 March has no impact as social housing landlords had already set their rents until April.
- That 66% of social housing tenants are on full or partial benefit to cover their rents and any cap or freeze after March will only benefit the UK Treasury.

Stakeholders have noted significant concerns that rent controls from April 2023 onwards would:

- significantly impact the long term sustainability of the sector;
- impact their ability to maintain homes to required standards and to;
- deliver on wider ambitions, including affordable housebuilding and energy efficiency.

### **Supportive quotes**

Age Scotland have said that *"for the growing number of older people living in rented accommodation [the rent freeze announcement means] one less thing for them to worry about over winter... Many of the older people who live in socially rented homes*

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*in Scotland are in some of the country's most economically deprived areas, and we know that they are terrified about their rocketing energy bills.”*

### **B3 – RENT FREEZE - Student residential tenancies**

#### **Short summary / purpose of provisions**

- Students are at a vulnerable point in their lives. They are unlikely to be earning at any significant level and the disruption to their ability to access education caused by fears due to rent increases and the threat of losing their accommodation is significant.
- The purpose of the provisions is to stabilise housing rental costs in college and university halls of residence and Purpose Built Student Accommodation (PBSA) through a rent freeze which will prevent in tenancy rent increases to March 2023. There is no statutory protection for students in student residential accommodation.
- The Higher Education Student Agency (HESA) data shows, in a typical year, there are approximately 11,500 students residing in Purpose Built Student Accommodation (PBSA) and approximately an additional 36,000 students in college and university maintained halls attending Scottish universities.
- Although assurances have been received from the majority of institutional and PBSA providers regarding the stability of contracts, and that there is little appetite to increase costs mid tenancy, this does not cover with certainty all the providers.
- Students renting college and university and PBSA accommodation did not receive the £400 energy support and will not be eligible for the household energy price cap. Energy cost increases may be passed onto students and although students are eligible for support from other routes such as through hardship funds, these are already under significant pressure.
- Students are also faced with other cost increases, in particular food and clothing.
- Recent research by the Mental Health Foundation Scotland and NUS Scotland highlighted the impact of financial concerns on student mental health. These measures will provide assurance with regard to students in college and university halls of residence and PBSA around in year tenancy rent increases. NUS/UNIPOL accommodation costs survey showed that, in 2021/22 the average annual rent for purpose built student accommodation in the UK was £7,374, an increase of £309 (+4.4%).
- There is no uniform contract across all providers and not all providers of student accommodation are members of bodies where they agree to meet certain minimum standards. If there is no intervention, landlords may pass on these costs to their tenants where the contract allows.
- The Bill provides general safeguards for landlords as:
- The provisions are time limited (even if extended by regulations under s6(3))

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- 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))
- 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

### **Likely angles and rebuttals / Lines to take**

#### **The Bill does not deliver the protection from rent increases promised for students in PBSA and college/university halls of residence**

- The provisions of the Bill will ensure that students in college and university halls of residence and PBSA have the same protections as their peers in the Private Rented Sector.
- The provisions of the Bill will protect students in such accommodation by ensuring that there will be no mid tenancy rent increases through a 0% cap. This mirrors the protection in the Private Rented Sector.
- We have included colleges and university halls of residence and PBSA as contractual arrangements in the sector are diverse and we cannot say for certain that all contracts stipulate fixed rents for the duration of the tenancy. As there is no statutory protection for students in student residential accommodation, the measures will provide additional assurances for such students.

#### **The Bill does not achieve parity of protection for students in this sector compared with the private rented sector**

- The Bill's provisions for no mid tenancy rent increases, effectively a 0% rent cap, will ensure that students in college and university halls of residence and PBSA will have the same tenancy rights, in this respect as their peers in the Private Rented Sector.
- This is an emergency piece of legislation to address the pressing needs of the cost crisis now. We have established a Review of Purpose Built Student Accommodation Review Group, which includes representatives from across the sector. The Group will consider a report, now complete, from the UK Collaborative Centre for Housing Evidence (CaCHE) on student accommodation and make recommendations to Ministers which will form the basis of our longer term action in this area and inform a Student Accommodation Strategy for Scotland.
- As the current academic year proceeds we will not only review the provisions, but work with the Student accommodation Group (a stakeholder Group

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formed during the Pandemic) as they prepare for and set rents for AY 2023/23.

### **Inclusion of PBSA and college/university halls of residence is not necessary as rents for academic year 2022/23 (running from September 2022 to June 2023) have already been set**

- We are aware that many PBSA providers have signed up to the UNIPOL Codes, an accreditation scheme that seeks to raise standards in student accommodation. The Code goes beyond standards set by law and includes transparency on contract terms and conditions. We are grateful for those who have signed up to the Codes. We are also aware of assurance from the wider sector that there is no appetite for in year rent increases.
- That said, not all PBSA providers have signed up for the Codes in Scotland and there is no coverage of Universities UK and Guild HE Code of Practice for educational establishments (that is colleges and universities) in Scotland.
- For those reasons, including this sector in the legislative provisions will provide further assurance to students, whose mental health is already adversely affected by financial pressures, that there will be no in tenancy rent increases during the rent freeze and that this is applicable to all college and university halls and PBSA tenancies, irrespective of UNIPOL codes signatory status or contractual arrangements.
- It is appropriate to seek to prevent rent increases and remove restrictions later if necessary. Students are at a vulnerable point in their lives. They are unlikely to be earning at any significant level and the disruption to their ability to access education caused by fears due to rent increases and the threat of losing their accommodation is significant.

### **The rent freeze unfairly penalizes student accommodation providers who are being asked to absorb increased costs**

- The provisions outlined in the Bill will only apply to existing tenancies. These are exceptional times of crisis. Students in PBSA and halls of residence do not benefit from the £400 energy discount available to students in other rental sectors, nor do they benefit from the energy price cap. PBSA and halls of residence providers are businesses, not households, and will benefit from the UK Government's discounted gas and electricity rates through the Energy Bill Relief Scheme. There is no guarantee that providers would not pass on additional costs to students.

### **Issues raised by Stakeholders**

Student representative bodies, including NUS Scotland, have asked to ensure all students are protected by the provisions in the Bill.

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Providers of PBSA and college and university accommodation are keen to know the intention beyond 31 March as they will begin to set rents for academic year 23/24 around that time.

All stakeholders are looking for detail as soon as possible due to the uncertainty the Programme for Government announcement has created.



### **B4 – EVICTIONS - Private and social rented sectors**

#### **Short summary / purpose of provisions**

Alongside measures that will freeze rents, we are seeking to support tenants in the private and social rented sectors through a moratorium on evictions. This will prevent the enforcement of eviction action resulting from notices to leave/of proceedings served, or eviction proceedings started, on or after the 6 September 2022 except in the following limited number of circumstances:

- i. antisocial and criminal behaviour;
- ii. tenant abandonment;
- iii. where the property is to be sold by a lender;
- iv. where a private landlord needs to sell due to financial hardship;
- v. where the private landlord needs to live in the let property due to financial hardship; and
- vi. in cases where there are substantial rent arrears.

The definition of substantial rent arrears is;

- For the private rented sector: the cumulative amount of rent arrears equates to or exceeds an amount that is the equivalent of 6 months' rent under the tenancy.
- For the social rented sector: the rent lawfully due from the tenant which has not been paid is equal to or greater than £2,250 (which is equal to or slightly in excess of 6 months' average rent in the Scottish social rented sector).

Financial hardship of a private landlord will be assessed by the Tribunal, who will assess all relevant information about the landlord's finances, and decide whether it is reasonable to evict in each case.

Provisions in the Bill also ensure that where a landlord is prevented from enforcing an order for eviction while the moratorium is in effect, the enforcement can only be delayed for a maximum period of 6 months.

These measures will help to protect tenants by reducing, where possible, the negative 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.

It will also seek to avoid tenants being evicted by a private landlord wanting to raise rents between tenancies during the temporary measures.

In recognition that landlords are also being impacted by the costs crisis, in addition to the general safeguards set out in the Bill, there are further measures which seek to provide appropriate safeguards for landlords who are themselves in financial difficulty, or who have accumulated substantial rental debt as a result of arrears.

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To support the implementation of these exemptions, we have made provision in the Bill for 3 additional grounds for eviction. Where an order/decreed for eviction is granted on any the grounds exempt from the moratorium, landlords will still be able to instruct Sheriff Officers to enforce the order/decreed in the normal way.

The moratorium complements existing legal protections for tenants in both the private and social rented sectors. This includes pre-action protocols for rent arrears and discretion for the First-tier Tribunal for Scotland (Housing and Property Chamber) and the Courts in determining whether it is reasonable in light of all circumstances of the case to grant an eviction order. These protections help to ensure that eviction action can only take place when absolutely necessary.

The moratorium on evictions will not prevent landlords serving a notice to leave/or proceedings on their tenant, or from making an application for eviction to the First-tier Tribunal for Scotland (Housing and Property Chamber) or the Courts.

### **Likely angles and rebuttals / Lines to take**

**The Bill does not deliver the protection from eviction promised and tenants will be evicted over the winter.**

- Eviction action must be an absolute last resort, when all other avenues have been exhausted and a tenancy is no longer sustainable.
- The moratorium increases protection for tenants who find themselves at risk of eviction as a result of the cost crisis.
- As there were during the pandemic, there are exemptions to allow enforcement of evictions for cases of antisocial or criminal behaviour.
- The measures in the Bill also recognise that evictions should be able to proceed in some other limited circumstances.
- We have 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.
- Most people would see sense in exemptions that help to protect our communities, enable vacant stock to be brought back into use or where the landlord is also in financial difficulty.
- The moratorium complements the existing strong legal protections from evictions for Scottish tenants.
- All exemptions are subject to the Court or Tribunal deciding that it is reasonable for an eviction to be granted and in the case of arrears, landlords must follow a series of steps to support tenants struggling to pay their rent before they make an eviction application.

**The moratorium is not necessary, existing legal protections provide sufficient protection**

- We have already heard anecdotally that some private tenants were issued with notices to leave shortly after the 6<sup>th</sup> September announcement and the moratorium will help to protect tenants who find themselves facing eviction in these circumstances.

## **ANNEX B – PROVISIONS IN BILL – PURPOSE / ISSUES / REBUTTALS**

- A delay to enforcement action for those tenants impacted by the cost crisis will help to give these tenants more time to access support and find alternative accommodation.

### **The moratorium unfairly penalises landlords who have already gone through the necessary legal steps to evict a tenant**

- We have sought to strike the right balance between supporting tenants and ensuring that there are appropriate safeguards for landlords who themselves are in financial hardship or have accumulated substantial rental debt because of rent arrears.
- We believe we have achieved that balance.
- For any landlord who is prevented from enforcing an eviction order while the moratorium is in effect, we have included an additional safeguard to ensure that the maximum period an individual eviction order/decreed can be delayed is 6 months.

### **Definition of substantial rent arrears is too high/too low**

- We have sought to strike an appropriate balance between giving tenants in rent arrears as a result of the cost crisis additional protection and protecting landlords and tenants from accumulating substantial rental debt.
- Tenants who are struggling to pay their rent should seek support as soon as possible to avoid going into arrears.

### **The Scottish Government has not sufficiently engaged with key stakeholders in the development of the emergency measures**

- We have been working at pace to develop emergency legislation.
- We have sought to engage with stakeholders as far as was possible in the very limited time available

### **Why does the moratorium not apply to eviction proceeding prior to 6 September?**

- We don't think it is appropriate to apply the moratorium retrospectively to eviction applications in the system prior to the 6<sup>th</sup> of September.
- Information from the Tribunal suggests that there are still a number of Coronavirus Acts eviction cases in the system. It would not be reasonable for cases in these circumstances to be subject to further delay.
- We have already strengthened protections for tenants from eviction through the Covid (Recovery and Reform) Act including making pre-action protocols for rent arrears, and the removal of mandatory eviction grounds permanent.

### **Issues raised by Stakeholders**

## **ANNEX B – PROVISIONS IN BILL – PURPOSE / ISSUES / REBUTTALS**

Concerns include:

- the need from private rented sector stakeholders (both landlord and tenant side) to have more certainty, clarity and detail on the emergency measures;
- the lack of engagement in developing the emergency measures with stakeholders;
- lack of tenant awareness on renting rights; and the potential for emergency measures to increase in the numbers of illegal evictions taking place;
- measures do nothing to address the current lack of housing supply and could exacerbate supply issues if private landlords exit the market which could lead to higher rents in the longer term and an increase in homelessness.

### **Supportive quotes**

Living Rent secretary Meg Bishop, Big Issue article 6 September said *“A rent freeze and an eviction moratorium is a huge step in the right direction by the Scottish government and will go a long way in supporting tenants.”*

## **ANNEX B – PROVISIONS IN BILL – PURPOSE / ISSUES / REBUTTALS**

### **B5 - EVICTIONS – University and college halls of residence and PBSA**

#### **Protection against eviction for student residential tenancies and safeguards**

##### **Short summary / purpose of provisions**

- 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.
- The evictions provisions ensure the response to the emergency situation caused by the impact of the cost of living crisis applies equally to all students, including those in the PBSA/university halls sector
- It seeks to prevent negative impacts on health and wellbeing of students caused by being evicted and/or made homeless.
- The provisions provide a temporary moratorium on evictions except in certain, limited circumstances.
- No additional safeguards other than the general safeguards set out in the Bill, are proposed for this group as they are either not applicable to the student sector or not appropriate.
- Landlords would be unable to evict students in college and university halls of residence and PBSA for substantial rent arrears, as this is not included in the exemptions. This would give students further assurances as to their tenancy during this period.

##### **Likely angles and rebuttals / Lines to take**

##### **Eviction provisions have no impact on this sector**

- Whilst the number of evictions within this sector is low, with providers tending to seek recovery of rent arrears through payment plans rather than the courts, applying the provisions universally ensures parity of protection for all students and gives students assurances that no eviction proceedings will be raised based on rent arrears alone.

##### **Exemptions mean landlords will be able to get around the evictions moratorium**

- Landlords would only be able to evict on criminal or anti-social behavior and would not be able to evict based on substantial rent arrears. No additional safeguards have been applied to this sector.

## **ANNEX B – PROVISIONS IN BILL – PURPOSE / ISSUES / REBUTTALS**

### **What support is available to students in PBSA/student halls if they fall behind on their rent**

- We recognize that a large proportion of students in PBSA and halls of residence are children or young adults. These types of accommodation provide a supportive environment for student tenants, as do the university and college environments in which the students study. Student tenants have access to sources of financial support and guidance, and mental health and well-being services.

### **Are you signaling to student tenants they don't need to pay their rent for 6 months**

- No – it is important that students continue to pay their rent. The legislative provisions also protect students from accumulating debt.

### **Issues raised by Stakeholders**

Student representatives and student landlords have sought clarity on whether this sector is to be included in the Bill, as well as clarity on the detail of the provisions. In particular, clarity has been sought on how this will operate procedurally given the court process is not used or is hardly ever used for this sector.

Stakeholders have not been consulted to inform development of the provisions.

### **B6 – UNLAWFUL EVICTIONS**

#### **Short summary / purpose of provisions**

There are concerns, as there were during the pandemic, that the emergency measures, may lead to an increase in illegal evictions.

Currently, legislation under the Housing (Scotland) Act 1988 sets out the mechanism for the valuation of damages where an unlawful eviction has occurred. This calculation requires a professional surveyor valuation of the difference between the landlord's interest in the property with and without a sitting tenant. This is an expensive process that is prohibitive for many tenants but feedback from stakeholders indicates it can also lead to a nil valuation.

The New Deal for Tenants Draft Strategy Consultation sought views on reforming the way in which damages for unlawful eviction were calculated and this work has informed measures within the Bill to temporarily reform the way in which civil damages can be awarded for an unlawful eviction.

If passed, the provisions will temporarily amend the Housing (Scotland) Act 1988 to:

- i. replace the basis for the assessment of damages for unlawful eviction with a calculation based on a multiplication of the monthly rent;
- ii. 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;
- iii. 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
- iv. place an additional requirement on the Tribunal to inform the relevant authorities. For example, the local authority landlord registration team, police or in the case of social landlords, the Scottish Housing Regulator. This would allow relevant authorities to consider whether any further action should be taken in relation to the unlawful eviction.

This will help to make it easier and more meaningful for tenants to challenge an unlawful eviction and receive appropriate damages.

This will also make it more difficult, more expensive and higher risk for a landlord to pursue an unlawful eviction rather than going through the lawful routes, therefore further dis-incentivising this behaviour.

#### **Likely angles and rebuttals / Lines to take**

##### **The measure are welcome but should be made permanent.**

- We consulted on permanent reform to the way unlawful damages are calculated in our New Deal for Tenants Draft Strategy Consultation. I can confirm our intention to consult on with a view to introducing these changes on a permanent basis through future housing legislation.

## **ANNEX B – PROVISIONS IN BILL – PURPOSE / ISSUES / REBUTTALS**

- We will consider how we can make use of the transitional provisions within the Bill as we exit these emergency measures to minimise any gap between the ending of the emergency measures and future housing reform. However any extension of emergency provisions will require to be proportionate to the impact of the cost of living crisis and protection of tenants.

### **Issues raised by Stakeholders**

The current process for calculating unlawful damages is no longer fit for purpose.

Concerns that emergency measures may lead to an increase in illegal evictions.

### **Supportive quotes**

There are no supportive quotes from stakeholder specifically in relation to the emergency measures. Some stakeholders have previously indicated support for this measure through responses to the New Deal for Tenants consultation.

- Shelter Scotland Response, A New Deal for Tenants Draft Strategy Consultation *“We welcome the proposal to reform this system in order to simplify the process for the tenant and recognise that a system that makes it easier to seek repercussions may also serve to deter landlord for carrying out illegal evictions.”*
- Shelter Scotland Response, A New Deal for Tenants Draft Strategy Consultation *“The significant maximum penalty should act as a deterrent to landlords who may be considering evicting their tenant without following the correct legal process.”*
- Scottish Association of Landlords, A New Deal for Tenants Draft Strategy Consultation *“We agree that 36 months’ rent is an appropriate maximum for the worst and most damaging cases.”*
- A New Deal for Tenants, Analysis of responses to the Consultation, Analysis Report *“A very substantial majority – 94% of those answering the question – agreed that the current calculation of civil damages for unlawful eviction should be reformed and simplified.”*



### **B7 – RENT ADJUDICATION REGULATION MAKING POWERS**

#### **Short summary / purpose of provisions**

We also provide within the Bill for regulation-making powers that would enable us to temporarily reform the current rent adjudication process – the process through which a tenant can challenge a proposed rent increase by their landlord.

We recognise that once the rent cap ends that this may lead to a large number of landlords seeking to increase their rent all at once, and setting rent again by reference to the open market rent could result in significant and unmanageable rent increases for tenants. In these circumstances, the existing rent adjudication process would not provide a reasonable mechanism for determining a reasonable rent increase as this is based on the open market value.

This regulation making power is an important measure that will enable us to take steps to temporarily change the rent adjudication process to address unintended consequences resulting from an end to the emergency measures. Provisions could include the ability for Ministers to make provision by regulations:

- a) on the basis on which the rent is to be determined by a rent officer or the First-tier Tribunal including:
  - i. the matters to be taken into account in determining the rent,
  - ii. matters to be disregarded in determining the rent,
  - iii. assumptions to be made in determining the rent
- b) to prevent Rent Service Scotland or First-tier Tribunal determining a rent at a higher level than that requested by the landlord; and
- c) make provision about the procedure relating to referral to a rent officer or appeal to the First-tier Tribunal.

To ensure appropriate Parliamentary scrutiny, the measures in the Bill propose this provision is subject to the affirmative procedure and will also be subject to consultation with persons representing landlords and tenants.

#### **Likely angles and rebuttals / Lines to take**

##### **Regulation making powers are not needed**

- It is important that we have the levers at our disposal to support transition out of the emergency measures and to mitigate against any unintended consequences.
- Any regulations will be temporary, subject to consultation and Parliamentary scrutiny.

##### **Issues raised by Stakeholders**

We have not engaged with stakeholders directly on measures to provide Scottish Ministers with a power to reform the rent adjudication process.

## ANNEX B – PROVISIONS IN BILL – PURPOSE / ISSUES / REBUTTALS

We consulted on changing the rent adjudication process to prevent the Rent Officer of First-tier Tribunal for Scotland determining a rent above that proposed by the landlord in the rent increase notice as part of our New Deal for Tenants Draft Strategy Consultation. Consultation analysis of responses to the consultation found:

- many respondents supported proposals to remove the potential for the adjudication process to lead to a larger rent increase than that proposed by the landlord. It was argued that rebalancing of the adjudication process is required with a greater focus on protecting tenants, while ensuring clear evidence-based outcomes.
- Other respondents – including most ‘Private landlord, letting agent or their representative bodies’ respondents and some ‘Local authorities’ – disagreed with the proposals, and some questioned the robustness of evidence on the reasons for tenants choosing not to use adjudication procedures. It was argued that the proposed changes would result in adjudication being unfairly balanced against the landlord and an increase in speculative applications.

### Supportive quotes

There are no supportive quotes in relation to regulation making powers in relation to rent adjudication, however, Shelter Scotland did indicate support in their consultation response to the New Deal consultation for the proposal to change the rent adjudication process to prevent Rent Officer or the Tribunal from determining a rent higher than that in the rent increase notice.

New Deal for Tenants Draft Strategy Consultation response “*Shelter Scotland supports the proposal that the rent adjudication process should only result in rents being decreased or maintained.*”

## **E1: COST CRISIS / SUPPORT FOR FAMILIES**

### **TOP LINES**

**Scotland is facing the most severe economic upheaval in a generation, already impacting people, businesses, public services and the third sector across Scotland.**

- This cost crisis puts livelihoods – and lives – at risk. It is a humanitarian emergency.
- As this crisis unfolded, the UK Government was paralysed by the Conservative Party leadership race and after a lengthy period of UK Government inaction, the Chancellor's 'mini-Budget' was eagerly awaited by those who are most impacted by the catastrophic effects of the ongoing cost crisis.
- The announcements of 23 September provide cold comfort to the millions of people across Scotland who have been looking for the UK Government to use their powers to provide support for those that need it most but have instead prioritised tax cuts and scrapping bankers' bonuses rather than help for those that need it most.
- This reckless gamble with the public finances has backfired spectacularly, plunging the UK into an economic crisis, that will compound the misery already being faced by millions of households across the country.

**The Scottish Government has continually urged the UK Government to focus its efforts on those most impacted and not just rely on blanket interventions which do not recognise the scale of hardship particular households are facing.**

- Instead, we get tax cuts for the rich - including bankers and energy companies - and little for everyone else, all at a time when many families across the country are facing a winter unable to afford essentials, including food.
- Analysis by Resolution Foundation has found that almost two-thirds (65%) of the gains from personal tax cuts announced will go to the richest fifth of households: Almost half (45%) will go to the richest 5% alone, while just 12% of the gains will go to the poorest half of households.

### **SUPPORT FOR HOUSEHOLDS**

**We are already providing significant support for households to mitigate the impacts of the cost crisis. By the end of March 2023, we will have invested almost £3 billion in a range of measures for households, supporting energy bills, childcare, health and travel, as well as social security payments that are either not available anywhere else in the UK or are more generous, such as the Scottish Child Payment.**

- The key policy levers needed to address the crisis still lie with the UKG and we have urged them to take urgent meaningful action to support people and businesses.

**In the Programme for Government, we have identified several further responses to maximise support for those in need**

- We will introduce our new Winter Heating Payment allowance which guarantees a £50 annual payment to around 400,000 low income households.
- Subject to agreement with CoSLA, we will begin to roll out the provision of universal free school meals to Primary 6 and 7 pupils, and take further action to reduce the cost of the school day for families.
- We will double our Fuel Insecurity Fund to £20 million in 2022-23, to help households at risk of self-disconnection or self-rationing energy use.

## ANNEX E – WIDER COST CRISIS RELATED BRIEFING

- We will widen eligibility for the Tenant Grant Fund, to support those struggling with increasing costs.
- We will continue to support more households with energy efficiency measures by widening the eligibility criteria of the Warmer Homes Scotland fuel poverty programme, increasing funding for households through local authority led Area Based Schemes and expanding the Home Energy Scotland Advice Service.
- We will invest in a zero interest loan scheme pilot to help people in Scotland access affordable credit. The scheme will enable people on lower incomes, who cannot afford to repay interest even from community lenders, to access short term credit to meet unexpected costs.
- We will work with partners to strengthen cash first support, so that people are able to access food with dignity and choice.
- We will give local authorities more flexibility to take account of energy bills in their prioritisation of households for Discretionary Housing Payments. We will also increase funding for Discretionary Housing Payments by £5 million.

### **Tackling Child Poverty is a national mission and we are using all the powers and resources available to us.**

- Over the life of our first tackling child poverty delivery plan ‘*Every Child, Every Chance*’ [2018-22], we invested an estimated £8.5bn supporting low income households, of which £3.3bn benefitted children.
- Our second Tackling Child Poverty Delivery Plan, ‘*Best Start, Bright Futures*’ (22-26), sets out our priority actions, including our focus on long-term parental employment support, increased social security, and measures to reduce household costs.

### **We continue to take significant action to tackle and reduce child poverty in Scotland, including:**

- **Increasing the Scottish Child Payment to £25 per eligible child per week and extending it to under 16s.** This is an increase of 150% within 8 months, and will increase eligibility to around 400,000 children.
- From 14 November our five family payments, including SCP, could provide up to £10,000 by the time a first child turns 6.
- **Providing support to 145,000 school-age children and young people through Bridging Payments worth £520 per year** – putting £150m in the pockets of low income families across 2021 and 2022.
- **Investing up to £7.2m this year to mitigate the benefit cap**, as far as we are able within devolved powers, helping up to 4,000 families with around 13,000 children meet their housing costs.
- **Offering free school lunches during term-time to all 275,954 pupils in primaries 1 to 5** – saving families on average £400 per child, per year. This will be extended further to include primary 6 and 7 pupils during the course of this parliament.
- **Investing £50m of Whole Family Wellbeing Funding this year**, which aims to deliver transformational change to improve holistic whole family support.
- Massively expanding the provision of fully funded high quality **early learning and childcare**, providing 1,140 hours for eligible children aged 2, 3 and 4 – savings families up to £4,900 in 2021.
- Increasing **School Clothing Grants**, from previous lowest level of £40 in 2017, to at least £120 for every eligible primary school pupil and £150 for every eligible secondary school pupil from the start of the 2021-22 academic year.
- Launching the **free bus travel** for Under 22s scheme, with approximately 930,000 young people eligible for support estimated to be worth up to £3,000 by the time a child turns 18. Since January this year, over 21 million free journeys have been made and more than half of eligible young people are already benefitting.

## ANNEX E – WIDER COST CRISIS RELATED BRIEFING

- Helping to support a 5% point increase in the proportion of people earning the **real Living Wage** or more in Scotland [rising from 80.6% in 2018 to 85.6% in 2021] through real living wage accreditation and our Fair Work First approach.

### **The Chancellor's mini-Budget is economically and fiscally reckless and saddles generations to come with an unsustainable burden of debt**

- While the rich get tax cuts, ordinary people are about to be hit by rising interest rates, on top of existing inflationary pressures.
- The market is now pricing in an interest rate rise of up to 6% by early 2023 – this would have a material impact on households coming off of fixed term mortgages.
- According to Torsten Bell, Chief Executive of the Resolution Foundation [QUOTE]: “The surge in interest rate expectations has already added another £1,000 a year to the coming increase in mortgages for a typical borrower....This is a painful reminder that economic policy is not a game.” (Torsten Bell, 26 Sep)
- All at a time when households across the country are already dealing with soaring energy bills and Brexit increasing food prices by over 6%.

### **The Scottish Government is deeply concerned about the UK Government's welfare policies.**

- UK benefits were uprated by just 3.1% in April 2022. And while additional payments are being provided by the UK Government, these fall well short of the amount needed, just to close the gap on energy bills alone.
- We have called for additional targeted support for those who are already struggling including an increase in Social Security benefits in line with inflation and for the introduction of a £25 uplift to Universal Credit.
- The UKG package doesn't include changes to Social Security benefits meaning that households on benefits will continue to struggle with increased living costs.
- The benefit cap was lowered in 2016, and has never been uprated since then, despite inflation which reached 10% in the year to July 2022. If the cap is not uprated in April 2023, CPAG estimate that a further 35,000 households across the UK will be capped.
- [QUOTE] “*This cruel and irrational benefit cap needs to be scrapped at source by the UK government as a matter of utmost urgency. It can't be right that children are being driven into even deeper poverty when government should be supporting families.*”. (John Dickie, CPAG Scotland – Daily Record, September 16)
- The Government is now increasing the Administrative Earnings Threshold, meaning that around 120,000 Universal Credit claimants who are in work on low earnings will be expected to actively search for more or better paid work or face having their benefits reduced.
- It is extremely worrying that the further changes announced on 23 September puts people working part time at risk of having their benefits sanctioned and losing money at a time of a cost of living crisis.

### **The Scottish Government is doing what it can with our limited powers to ensure as many people as possible keep a roof over their head, and a job, as we go through these tough economic times.**

- As a result of inflation the Scottish Government's budget is now worth around £1.7 billion less than when it was published in December.
- Within this challenging context we set out a range of measures in our Programme for Government to support those most in need. This includes doubling our Fuel Insecurity Fund to £20 million in 2022-23, to help households at risk of self-disconnection or self-rationing energy use and taking action to protect tenants.

## **ANNEX E – WIDER COST CRISIS RELATED BRIEFING**

- Our policy of no compulsory redundancies in the public sector – which I confirmed we will continue to support notwithstanding the budgetary pressures we face – will give those delivering essential services the peace of mind of knowing their job is safe over the winter.
- The UK Government has chosen not to act on public sector pay, meaning that our more progressive approach, with public sector wages on average 7% higher in Scotland than in the rest of the UK, is funded from within our severely limited budget. In total, excluding direct local government contributions, we have provided £700 million to support enhanced pay offers.

### **E2: STAKEHOLDERS**

#### **Shelter Scotland**

- Supportive of the measures outlined in the PfG to enable people to stay in their homes
- Concerns about the potential for unintended consequences – surge in evictions when moratorium is lifted and surge on rents when freeze ends
- Concerns for impact on social rented sector in the longer term – rent freeze must not prevent social landlords funding and delivering new social homes

**[QUOTE]** Shelter Scotland recognise *‘the need to support people to keep their homes over the winter and prevent more families becoming homeless’*, adding that they *‘welcome the emergency measures outlined in the Programme for Government’* (MSP Briefing: Shelter Scotland response to the emergency measures announced in the Programme for Government on 6th September)

#### **Citizens Advice Scotland**

- Supportive of the rent freeze measures aimed to protect tenants from rising rents and falling into arrears
- Eviction moratorium is well-intentioned
- Welcome the promotion of tenants’ rights awareness and the extension of the Tenant Grant Fund
- Caution that there could be unintended negative consequences – landlords could raise rents to a higher level when rent freeze ends
- Concern that households leave properties when served with an initial notice to quit, prior to eviction order being sought from First Tier Tribunal
- Concern that the measures will lead to more illegal evictions and landlords leaving the market

**[QUOTE]** Citizens Advice Scotland *‘agrees with the spirit and principles of the proposed housing measures in the Programme for Government’* and *‘supports the pledges to launch a new awareness raising campaign for tenants, increase the amount of DHP funding and widen eligibility for the Tenant Grant funding’* (Briefing for the LGHP committee on the Programme for Government 2022-23 housing measures, September 2022)

#### **Scottish Association of Landlords (SAL)**

SAL have been extremely critical of the announcement made via Programme for Government. They have claimed that this move further evidences a perceived ‘anti-landlord rhetoric’ from the Scottish Government and that the planned emergency measures will have a devastating effect on supply of private rented accommodation across Scotland.

**[QUOTE]** John Blackwood (Chief Executive, SAL) *“Once again the Scottish Government fails to grasp the reality of Scotland’s housing crisis and has chosen the easy option of attacking landlords for political reasons which will only further reduce the supply of housing, putting more people at risk. This is not a solution, it will only cause more hardship.”*

## ANNEX E – WIDER COST CRISIS RELATED BRIEFING

### Scottish Federation of Housing Associations

- Understand and endorse the intention to help people who are facing real poverty and desperate situations as a result of the cost of living crisis
- Critical that measures targeted at Social Rented Sector will have little impact on tenants, as rents are already low in the sector and rents would not normally be revised until 1 Apr.
- Caution that intervention in the Social Rented Sector is unprecedented and could damage investor confidence.
- Warns if measures continue after 1 April 2023, sector will be forced to cut back on non-statutory services, such as welfare rights advice, housing support and community-based programmes.
- Warns if measures continue beyond 1 April 2023 it will impact upon financial stability of the sector and on delivery of wider objectives including affordable home supply, energy efficiency measures and maintenance of properties.

**[QUOTE]** Sally Thomas, Chief Exec, SFHA *“We are, of course, facing a deep and sustained cost of living crisis, and it is right that politicians should look for ways of helping people at this time”*

However Sally notes *“While freezing rents may seem like an obvious solution, there is a real danger that this blunt tool may end up shattering the structures that exist to support tenants.”* (Inside Housing, 16 Sep 2022)

### Glasgow and the West Forum of Housing Associations

- Concerned about precedence set by government intervention in rents set by housing associations and the risk of undermining consultation with tenants.
- Warns that drastic cuts in investment would be needed by housing associations if rents were frozen in 2023 and 2024, otherwise they risk running out of money in 4 years.
- Cautions that a freeze beyond 1 April 2023 could have significant impacts on net zero ambitions.

**[QUOTE]** David Bookbinder, Director at GWFHA *“The cost of living crisis affecting our tenants and communities is a huge preoccupation for our members”* (Scottish Housing News, 8 Sep 2022)

### Link Housing

- Notes on average that 50% of social housing tenants are in receipt of full or partial rental payments met by Universal Credit (UC), and that a rent freeze in 2023-24 would deny the sector £60m of UK Government funding.
- Warns that certainty for 2023-24 is needed ahead of mid-November to enable consultation with tenants on rents to be undertaken.
- Warns that a cap beyond April 2023 would fundamentally change the risk profile of all RSLs.

**[QUOTE]** Nick Pollard, Group Finance Director at Link Group *“Whilst it is understandable from a political perspective to have a rent freeze doing so in reality denies the Scottish economy access to £60m of funds or thereabouts that would ordinarily be ‘free money’ from Westminster whilst having little impact on tenants.”* (Scottish Housing News, 26 Sep 2022)



## ANNEX E – WIDER COST CRISIS RELATED BRIEFING

### SUPPORTIVE QUOTES:

#### Tenants Union Living Rent, the Scottish Trades Union Congress and other groups have welcomed the announcement of the rent freeze and other measures.

- Living Rent have said *“as skyrocketing rents continue to pile on top of out of control energy bills, this will have a massive impact”*.
- The Scottish Trades Union Congress said *“The Scottish Government is to be commended for freezing rents. If implemented correctly [...] this will help thousands of households across Scotland when they need it most.”*
- Age Scotland have said that *“for the growing number of older people living in rented accommodation [the rent freeze announcement means] one less thing for them to worry about over winter”*.
- Sadiq Khan, Labour Mayor of London, said **QUOTE:** *“This bold action from the Scottish Govt will support thousands of households during this national crisis. I’ll continue to call on the UK Govt to grant me the power to freeze rents in our capital. Londoners face record rents at the worst possible time.”*

### **E3: RENTED SECTOR STRATEGY: NEW DEAL FOR TENANTS'**

#### **New Deal for Tenants'**

##### **Our 'New Deal for Tenants' proposals show our determination to continue to strengthen the position for tenants**

- We committed in 'Housing to 2040' to consult on delivering a new rented sector strategy to improve accessibility, standards and affordability across the rented sector as a whole.
- The new deal for tenants draft rented sector strategy sets out our commitment to deliver robust rent controls; to review the current grounds for possession; introduce greater flexibility to personalise a rented home and keep a pet; and to establish a Tenant Participation Panel to ensure tenants' voices are at the heart of developing and implementing national policy.
- We published the independent analysis of our New Deal for Tenants' consultation on 23 August. In total, 8346 responses were available for analysis and we are currently considering those views as we take forward this important work.
- Our consultation showed that the issue of rent control is highly topical with sharply contrasting views for or against.
- I believe it is crucially important to view the rented sector as a whole but acknowledge that the private rented sector has further to travel to reform.
- However, this does not mean we can't continue to improve outcomes for social tenants alongside reforms for private tenants.
- The New Deal for Tenants work supports our progress towards the human right of an adequate home for all.
- We will consider the views from our consultation on the draft rented sector strategy and the impact of our emergency measures carefully in taking forward our commitment to rent controls and the wider legislation to deliver a new deal for tenants.
- We aim to introduce a Housing Bill in 2023 to begin to deliver the new deal for tenants. The exact timings of the Bill will be kept under review as we give careful consideration to the impact of our urgent action to address the cost crisis through the emergency legislation introduced to Parliament this week to protect tenants by freezing rents and imposing a moratorium on evictions until at least 31 March 2023.

##### **We have committed to introducing rent controls in a housing bill and to do so in a way which is robust and provides lasting benefit to tenants.**

- Through the Private Residential (Tenancies) (Scotland) Act 2016, Scotland has the strongest tenancy protections in the UK.
- Landlords are already limited to no more than a single rent increase in a year, for which they must give 3 months' notice and such a rise must be fair or the landlord can be subject to a rent adjudication ruling.
- We are introducing a Housing Bill next year which will further strengthen these existing rights by improving rent adjudication and sets out the framework for the delivery of new rent controls in the private rented sector by 2025.
- The introduction of rent controls will be carefully considered alongside our emergency response for the rented sector to the costs crisis.
- We will also continue to explore what further action we can take to ensure rents in the social rented sector are affordable.

## ANNEX E – WIDER COST CRISIS RELATED BRIEFING

### **What is good for tenants is also good for those landlords and letting agents who manage properties responsibly and professionally.**

- The new deal will encourage those landlords who share our commitment to providing good quality homes and will deter landlords who flout the law, undertake illegal evictions or provide high cost, poor quality accommodation.
- Over the last 20 years, there have been a range of necessary changes to the private rented sector aimed at improving quality and accountability and, although stakeholders have often warned that such changes would lead to a reduction in supply of private rented homes, the sector has more than doubled over that time from 130,000 to 340,000 properties.
- We want to work with landlords as we develop proposals and good landlords having nothing to fear from the changes. To the extent that landlords and agents are expressing concerns about the market this appears to be UK-wide, not unique to Scottish-specific policies.

## **E4: HELP WITH HOUSEHOLD ENERGY BILLS**

**Everyone needs a safe, warm place to call home, but we know that even with the UK Government mitigations announced in relation to the October energy price cap, that many people will still be affected by rising energy costs and may be unable to afford their fuel bills this coming winter.**

- That is why, the Programme for Government commits us to doubling the value of our Fuel Insecurity Fund from £10 million to £20 million, to ensure support continues to be available to people at risk of self-rationing their energy use, or self-disconnecting entirely.
- Energy efficiency measures are also essential so we have widened the Warmer Homes Scotland fuel poverty programme and increased funding for households through local authority led Area Based Schemes and expanded the Home Energy Scotland Advice Service.

**We have committed £1.8bn during this Parliament to accelerate deployment of heat and energy efficiency measures and to support those least able to pay**

- We have allocated £336m to heat, energy efficiency and fuel poverty measures this year (2022-23) including £119m targeted at fuel poor households.
- This will be delivered through a package of support via long-standing programmes that have already supported over 150,000 households in or at risk of fuel poverty.
- Our investments will make our homes and buildings warmer and cheaper to heat – progressing commitments both to decarbonise the heating in 1 million homes by 2030 and to remove poor energy efficiency as a driver of fuel poverty.

**More than £193 million has been invested through the Warmer Homes Scotland scheme since its launch in September 2015 helping over 29 000 households throughout Scotland.**

- Warmer Homes Scotland has budget of £55 million for 2022/2023 – its highest ever annual budget.
- Recently agreed changes to the eligibility criteria for Warmer Homes Scotland have made around 110 000 more households eligible across Scotland.
- The Scottish Government are stepping up our investment to accelerate deployment of heat and energy efficiency measures and to support those least able to pay – allocating at least £1.8bn over the course of this Parliament, including, an additional £1.2M package of support to advice services in Scotland.

**This year we have allocated £336m to heat, energy efficiency and fuel poverty measures (2022-23).**

- Our investments will make our homes warmer and cheaper to heat – progressing commitments both to decarbonise the heating in 1 million homes by 2030 and to remove poor energy efficiency as a driver of fuel poverty
- We have expanded the capacity of our Home Energy Scotland advice service this year to help an extra 12,000 households a year receive free, impartial advice.

**Scottish households are among the hardest hit by standing charges hikes and many of our homes are not on the gas-grid.**

- The UK Government needs to take full account of Scottish consumer needs, rebalancing the costs on energy bills away from electricity to incentivise low-carbon electrification and remove the premium paid by those with electric heating.
- For consumers who use heating oil, LPG and other non-regulated fuels, we have repeatedly raised the need to explore regulation of the sector with the UK Government and Ofgem. But they continue to fail to take this into account.

### UK Government Response

**While the UK Government's long anticipated announcement may limit the impact of the energy price crisis, the (average) £2,500 per year that domestic consumers will be expected to pay is still unsustainable for many households.**

- This announcement has come too late for many households across Scotland who are already struggling to pay their bills and heat their homes.
- At the Energy Summit of 23 August, I made it clear that a price freeze should be accompanied by additional support for vulnerable households and businesses to meet the energy bills and the impacts of inflation in general.
- With the price cap frozen at £2,500, we estimate that there will be around 860,000 (35%) fuel poor households in Scotland, of which 600,000 (24%) will be in extreme fuel poverty, from October 2022.
- I was very disappointed to hear that there still has been no announcement on additional support for vulnerable consumers and we will continue to raise the concerns of Scottish consumers with the UK Government in regards to this.

**This support comes far too late to mitigate the extreme costs of energy that a high number of consumers have paid in recent months placing a significant debt burden on many rural communities across Scotland**

- Although the Energy Price Guarantee will provide some additional reassurance for several groups of energy consumers, such as those who hadn't previously been eligible for the £400 Energy Bills Support Scheme, more needs to be done
- We await for clarity on the UK Government's intension to introduce legislation to ensure landlords pass this discount on to tenants who pay all-inclusive bills.
- We are very disappointed at the inadequate support announced for alternative fuel users especially since £100 does not come close in reflecting the price increases of heating oil and LPG costs seen in the past few months.
- A high number of consumers in rural and remote areas of Scotland rely upon heating oil to heat their homes and these people are already having to contend with higher living costs in comparison to those living in more central areas of Scotland.

**From February 2023 our new benefit will provide a stable, reliable £50 payment each winter irrespective of the temperature, or where recipients live.**

- This is an investment of £20m each year to support winter energy bills for around 400,000 low income households. This compares with just 13,000 Cold Weather Payments made by the UK Government in Scotland in 2021-22 – a scheme for which requires it to be sufficiently cold for 7 days running.

**MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

<b>What</b>	Meeting with COSLA spokesperson ahead of emergency legislation being introduced that provides for a rent freeze and moratorium on evictions until at least 31 March 2023.
<b>Where</b>	Microsoft Teams
<b>When</b>	Friday 30 September, 15.00 – 15.30
<b>Key Message(s)</b>	See Annex A
<b>Who</b>	Councillor Maureen Chalmers, COSLA Spokesperson for Community Wellbeing John Mills, Head of Housing Fife Council, Co-Chair of ALACHO COSLA officials: [REDACTED]
<b>Why</b>	<p>Social Landlords have expressed a clear appetite for engagement with Ministers, which focuses primarily on the approach beyond March 2023.</p> <p>Local authorities provide a significant proportion of social housing across Scotland and many have imposed no increases on tenants in recent years. It is understood that Labour-led councils will likely pursue a rent freeze policy and it is anticipated many local authorities may follow suit.</p> <p>In discussions with local government housing and COSLA colleagues, the question of “compensation” for loss of rental income resulting from the rent freeze has been raised.</p>
<b>Expected outcome</b>	<p>Objectives:</p> <ul style="list-style-type: none"> <li>• Reinforce that emergency legislation has been developed in such a way as to allow discussion for how to deliver on shared ambitions – including tackling homelessness – whilst minimising immediate impact on LA housing providers and allowing the necessary space to work with the sector on what will happen in 2023-24</li> <li>• Explore how we work together with COSLA, ALACHO and LAs at an official level, including through the Task &amp; Finish group, to determine the best way forward from 1 April</li> <li>• Agree to ongoing engagement and dialogue at a political level with COSLA to ensure strong partnership and buy in to future measures</li> <li>• To highlight focus on strengthening other support for tenants and landlords, subject to budget considerations and the EBR</li> </ul>
<b>Supporting official</b>	Catriona MacKean, Deputy Director, Better Homes - [REDACTED]
<b>Briefing contents</b>	<p><b>Annex A:</b> Summary brief</p> <p><b>Annex B:</b> Key messages on emergency legislation</p> <p><b>Annex C:</b> Issues and lines to take</p> <p><b>Annex D:</b> Minute of discussion, first meeting of Rents in Social Sector – Short Life Task and Finish Working Group (27 Sep)</p> <p><b>Annex E:</b> Biography</p>
<b>Media Handling</b>	No comms scheduled

# MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)

## SUMMARY BRIEF

Annex A

### Agenda / areas for discussion:

1. Update on the Bill and how it's moved on since 6 Sep
2. Thinking on how SG can working with sector on what happens post April
3. Task and Finish Group, working together to drive this forward

### Top lines

- The cost crisis is going to really impact people this winter and beyond and we must take the steps we can to support all renters at this time. Some of those most vulnerable to economic shocks live in the social sector so not considering their needs within this legislation was not an option.
- Introducing a framework to consider rent caps separately for the social and private sectors gives more flexibility in any approach from April onwards, in the context of a very uncertain economic picture.
- However, we fully recognise the importance of working in partnership with the social sector. This is why the first period of restrictions runs to 31 March specifically to ensure it does not immediately impact on the sectors finances without full consideration with the sector, something we are likely to be criticised for but that we are prepared to manage in order to get time to find the right path forward in partnership.
- We know we need time to work together to see how to keep rents low for tenants and ensure a robust and flourishing future for the social sector beyond this challenging period.
- We could not share the intention to impose a rent freeze in advance because of the risk that landlords in the PRS would seek to issue increase notices as a result. Whilst I understand the frustration this has caused, it was also necessary to avoid the policy resulting in increasing rents for people.
- We are committed to working with you over the coming weeks to establish a position that will protect those to need it most.
- I would be interested to hear your thoughts on how we could move forwards in partnership to meet our shared objective of keeping rents affordable for tenants

### Additional lines

#### **We plan to introduce legislation on Tuesday to provide for a rent freeze and a moratorium on evictions across both the social and private rented sectors.**

- The specific provisions of the Bill are subject to Parliamentary privilege and it is not possible to share these in detail ahead of introduction.
- We recognise the unique contribution of the social housing sector and that these are significant steps to be taking.
- Our announcement acknowledges that the vast majority of rents in the sector are already set until at least 31 March 2022, and therefore the immediate impacts will be limited.

## **MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

### **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 months to determine what action will be appropriate.**

- No decision has been taken about the use of emergency measures after the initial period to 31 March, we will seek to decide what actions we may want to take post March 2023 as soon as possible.
- Any such decision will be informed both by the cost of living situation as it develops and by our active engagement with the sector which is under way.
- We recognise the significant challenges faced by social landlords in increasing housing supply, improving quality and maintaining affordable rents.

### **I am grateful that local authority and COSLA officials have joined the Short Life Task and Finish Working Group, bringing together leaders from across the Social Rented sector, which had its first meeting on Tuesday (27 Sept).**

- The 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.

### **We are exploring what other supports could be put in place to help tenants impacted by the cost of living crisis and will prioritise this through the Emergency Budget Review.**

- Any additional measures will build upon key investment including our £10 million Tenant Grant Fund, £88.2 million for Discretionary Housing Payments and £20 million Fuel Insecurity Fund – all helping to strengthen support for households.
- Further intervention will be difficult without impacting further on planned spend and on programmes, given our largely fixed budget and limited fiscal powers.
- Where possible, we would seek to announce any additional investment during passage of the Bill through the Scottish Parliament, and will share detail with COSLA as soon as we are able.

### **Prompts**

- I am interested to hear your reflections in relation to this emergency legislation and how we can work together to collectively minimise the impact of rent increases on tenants next year whilst delivering on our wider shared objectives.
- How can we work together to ensure that the Task and Finish Group helps to shape future action in this space?

### **Background info**

#### **Concerns / comments raised by LA officials**

- LA officers have indicated that targeted funding, building upon existing measures such as the Fuel Insecurity Fund, would be most impactful for tenants.
- Some LAs/ RSLs will be unable to implement a 0% increase as they would lose millions in revenue. Reductions in rent levels would likely result in a pairing back of investments, including in new affordable homes.
- Certainty of approach is needed soon as proposed rent levels are likely to be considered at council meetings in Feb with views from tenants recorded in report.
- The level set in April 2023 is likely to remain in effect over 2023-24
- Mitigations to reduce the impacts of lost revenues must be considered.



**We will introduce the Cost of Living (Tenant Protection) (Scotland) Bill on Tuesday 4th October to provide for a rent freeze and a moratorium on evictions. This legislation is intended to provide for the following:**

**Rent Freeze**

- We intend to provide a freeze on rents across the social and private sectors until 31 March 2023 provided it remains necessary and proportionate to do so.
- Rents in the social and private sector are to have a cap applied to them (this is to be set at 0% until 31 March and then reviewed). We intend to reserve a power to modify the rent cap at any time should we consider it appropriate to do so.
- The rent caps in the social and private sectors are to be separately variable. This means that the sectors can separately have caps of 0%, some other number above 0 or no cap at all.
- The rent cap will apply to in-tenancy rent increases and private sector landlords will be able to reset rents between tenants.
- A number of safeguards will be built in to balance the rights of landlords and tenants in the context of the costs crisis.
- The rent cap is intended to operate so as to prevent rent increases taking place as a reaction to the PfG announcement on 6 September 2022. The intention is that this will be achieved by targeting all rent increase notices served on or after that date.
- We are committed to working with the social rented sector to discuss the operation of the cap on social rents and will involve the sector well ahead of any decision. We are very aware of the specific context in the social rented sector, including the need to avoid any reduction in tenant participation in rent consultations.
- We are looking at ways to create parity of protection for students in college and university halls of residence as well as Purpose Build Student Accommodation.

**Moratorium on evictions**

- The moratorium on evictions is intended to prevent the enforcement of eviction orders/decrees but it will not prevent landlords serving a notice to leave/of proceedings or making an application to the Tribunal/Court.
- There are to be some limited exemptions to the moratorium on evictions. These are still being finalised but are likely to include eviction action for anti-social and criminal behaviour, in cases of abandonment and repossession by lenders.
- The intention is that there will be a 6 month maximum period that a landlord will be prevented from enforcing an individual eviction order/decreed.

## **MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

### Rent Freeze and moratorium

- We intend to reserve a power to extend these measures for two further six month periods, subject to Parliament's consent, if it is necessary and proportionate to do so but also provide a duty to keep them under review.

### Other measures

- In addition to these two main areas we are also considering changes to the means by which damages for unlawful eviction are calculated and the introduction of measures to support the transition out of the emergency legislation at the same time.

**All of this may be subject to change before introduction and as a result of the passage of the bill through the Scottish Parliament. The details of the legislation are being finalised ahead of introducing the legislation in the Scottish Parliament.**

## MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)

### ISSUES AND LINES TO TAKE

Annex C

**26 Sep:** Herald: Scottish Housing Regulator claim rent freeze “won’t work” as rents in the social sector already set until 31st March.

**23 Sept:** Daily Mail reports that Fraser of Allander Institute said they expect the SNP's rent freeze to exacerbate problems in the rental market.

**31 Aug:** [Inside Housing] Scottish Housing Regulator reports the highest level of rent arrears (£169m at 31/3/22 up 6.1% from the previous year) since reporting against the Scottish Social Housing Charter began in 2010.

### RATIONALE FOR MEASURES

**We recognise the huge pressures the cost crisis is placing on households, particularly on those who rent their home. The recent announcement by the UK Government will not halt the rise in prices and people will still pay more for their energy from October.**

- That is why we are proposing to protect tenants by effectively freezing in-tenancy rents and imposing a moratorium on evictions – except in a number of specified circumstances - at least until 31 March with options to extend beyond then if necessary.
- Our intention is for the cap to apply to rent increases initiated on or after the announcement was made on 6 September.
- We are working at pace to agree expedited processes to deliver any legislation necessary to achieve this with the Scottish Parliament and the UK Government, to ensure these crucial changes are brought about as soon as possible.
- We are engaging with stakeholders and others as we develop and implement the emergency legislation.

### IMPACT OF MEASURES ON SOCIAL RENTED SECTOR

**The emergency legislation will introduce exceptional measures for exceptional pressures to support people to remain living in their home.**

- We recognise that the cost crisis impacts on many households but even more so on renters, right across the board. So it is right that the measures apply to both the social and private rented sectors. But they operate in very different ways, and we are taking account of that in taking these measures forward.
- We are carefully considering what safeguards can be put in place for social landlords who have competing pressures in a difficult financial climate
- We will ensure there is clear messaging for tenants to ensure they know what this will mean for the rent they pay.
- Affordable housing is a clear and long standing priority for the Scottish Government. Scotland has led the way in the delivery of affordable housing across the UK with more than 111,750 affordable homes delivered since 2007, over 78,000 of which were for social rent. We also brought the right to buy to an end in 2016, ensuring homes remain in the social sector.

## **MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

### **SUPPORT TO DELIVER MORE HOMES / TRANSITION TO NET ZERO**

#### **The Scottish Government has committed £3.6bn this Parliament for affordable housing delivery.**

- We operate a flexible grant system which can take account of increased costs and we have given five year resource planning assumptions to ensure as much certainty as possible.
- Housing Associations and Local Authorities should continue to draw on support available, such as through the Social Housing Net Zero Heat Fund, which will provide £200 million of grant support over this parliament.

### **FINANCIAL RISK TO DELIVERY OF WIDER AMBITIONS (INC NET ZERO)**

#### **It is for landlords to decide what is best for their business in terms of balancing their priorities but both the aims of decarbonising existing stock and building new homes can be achievable without compromising tenant affordability, but capacity will vary between landlords dependent on their stock profile and business plans.**

- RSLs will need to closely monitor the financial implications of spending on existing homes to address remedial safety works, energy efficiency improvements and catch up on repairs.
- In particular, the drive to achieve net zero and the decarbonisation of heating in homes is likely to bring significant future costs for RSLs.
- All of this makes it essential for Governing Bodies to fully understand their cost base and capital requirements. They should also stress test their underlying financial and economic assumptions and where appropriate develop mitigation plans in response to risks identified.
- Given the current level of uncertainty and volatility it is vital that this stress testing is carried out on emerging as well as current risks.

### **IMPACT ON SUPPLY OF AFFORDABLE HOMES**

#### **We will continue to collaborate with all our partners to achieve our shared goal of delivering more affordable homes for Scotland.**

- More widely, our Supply Chains Development Programme is identifying opportunities to improve the capacity, capability and better economic impact from Scotland's annual £13 billion public sector procurement.
- As part of the Scottish Government's Affordable Housing Supply Programme we have a suite of investment benchmarks that are used to support the grant funding of affordable housing projects.
- We acknowledge the impact that material and labour cost increases are having on the pace of affordable housing delivery, which is why we operate a flexible grant system.
- The current set of affordable housing investment benchmarks will be updated in time for the start of next financial year, unless evidence suggests that an earlier review is needed.
- Our long term plans recognise that changing circumstances or unforeseen events may require us to adapt. That is why we intend to carry out a review at the mid-point (to 2032) to assess if current plans should continue unchanged or be adapted.

## **MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

### **PRIVATE RENTED SECTOR**

#### **We will work with the private rented sector as we seek to develop and implement these measures.**

- We are aware that some investors in build to rent have signalled a pause to pipeline projects
- However, 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*”.
- Our emergency legislation has been developed at pace.
- We intend to release more details next week, including around the safeguards for landlords which we are putting in place.

### **ADVICE / SUPPORT FOR TENANTS**

#### **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, including information on help for households to meet rising energy, housing and other costs.

### **MID-MARKET RENTS**

#### **Our desire is for as many tenants as possible to be protected by the emergency measures to be introduced.**

- I will ask officials to follow this up with you in order to provide reassurance on this point.

### **HOMELESSNESS**

#### **We are working tirelessly with our local government and third sector partners to end homelessness and rough sleeping in Scotland.**

- 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 funding from our Ending Homelessness Together fund.
- The new measures to be introduced through emergency legislation are designed to prevent more people losing their homes in Scotland – reducing the potential for increased demand for homelessness and housing support from local authorities, and preventing the negative impacts on the health and wellbeing of tenants.

**MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

**MINUTE OF DISCUSSION, FIRST MEETING OF RENTS IN SOCIAL SECTOR – SHORT LIFE TASK AND FINISH WORKING GROUP (27 SEP) Annex D**

**Background:** Officials convened the first meeting of the short life working group on 27 Sept, with the group meeting again on 29 Sept. COSLA is represented at official level by [REDACTED]. LAs are represented by four ALACHO members – including ALACHO co-chairs John Mills and John Kerr.

**Tuesday, 27<sup>th</sup> September, 9.30 – 10.30**  
**Meeting held via Teams**

**Chair:**  
Catriona MacKean

**Attendees:**

[REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED],  
Michael Cameron, [REDACTED], Sally Thomas, Sean Neill, [REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED]

**Apologies:**

[REDACTED]

**AGREED ACTION POINTS:**

Owner	By when	Action
All	30 Sept	To review Terms of Reference and confirm any concerns / changes to SG secretariat

**SUMMARY OF DISCUSSION**

**1. Welcome and introductions**

Group members were welcomed and introduced themselves. The Chair outlined the key focus of the group which is to enable a forum for discussion between the Scottish Government and the social rented sector in relation to emergency legislation and the approach taken beyond 1 April 2023.

**2. Update on current policy position from SG**

Scottish Government officials provided an update on the latest policy position, noting that Ministers plan to introduce legislation very soon to provide for a rent freeze and a moratorium on evictions. The Chair noted that measures may be subject to change prior to introduction and may be changed during passage in Parliament.

## **MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

The Chair invited requests for clarification from the group, during which the following points were made:

- Exemptions to the moratorium on the grounds of repossession by the lender would be relevant to the Private Rented Sector (PRS);
- Service charges are not intended to be explicitly covered within the scope of legislation, however SG will confirm.
- Mid-market rents have been considered by SG, however the key focus of measures is on the main tenancy types (PRS / SRS). SG welcome input on what needs to be considered and covered re mid-market rents.
- SG decision making informed by a range of evidence with a focus on understanding the impacts on tenants, landlords and wider sector. Noted Bill on introduction will be accompanied by a range of impact assessments. Group will be an important source of additional information and evidence on the impact different levels of rent controls could have on the sector.
- It is estimated that in the region of 2/3 of tenants receive full or partial support with housing costs through reserved benefits.

### **3. Role of the Group / Terms of Reference**

The Chair invited comment via correspondence on the terms of reference for the group, these will be agreed formally at a future point.

### **4. Discussion on key actions for the group**

The group engaged in discussion surrounding areas of clarity required by the sector and the approach taken to rent controls post March 2023.

Re timescales and communication, group members made the following points:

- There is a need to consider the understanding of tenants in any comms / messaging by SG, to ensure that tenants do not stop paying their rent due to misunderstanding the measures.
- It is important that tenants are informed on the impacts of a rent freeze or cap in rent setting consultations which will start soon. It would be helpful to have a timeline confirming what is happening / when measures in legislation impact.
- Rent notices will need to issue 28 days before the start of the financial year. In local authorities the level set will require to be considered at a council meeting, likely in February, with views from tenants recorded in the report.
- One RSL noted that their board will require to consider levels of rent increases for consultation by mid-November at the latest.
- Once local authorities have set rents, that will be the rate for the remainder of the year – in year variation would not be possible.
- Assurance statements are due to be with the SHR by the end of October, noting that with the uncertainty at this time it is not clear these can be written with confidence.
- It was noted by members that the end of the calendar year feels too late for certainty.

## **MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

In relation to the potential for a cap / rent controls beyond March 2023 and the level at which this could be set, group members made the following points:

- The principle issue to be considered is whether intervention in the sector is needed post April. Were intervention to continue this would mark a fundamental change in the relationship between SG and the SRS. Sector has previously been trusted to do the right thing.
- SFHA noted that the mandate from members is to resist a rent cap / rent controls beyond March 2023 due to potential for significant negative impact on RSLs, and communities. Controls beyond this date would also impact on SG, given the expectations and requirements on the sector.
- Were rent increases to be set at 0% this would lose millions in revenues for RSLs, impacting on wider investments and activity.
- Any cap beyond March 2023 would fundamentally change the investor landscape in Scotland and the risk profile of all RSLs.
- It is important to consider the perceptions of funders / investors as rent controls could have long term implications, including on funding for the sector and perception of risk by investors.
- The threat of interest rates rising (up to 6%) is a source of concern for the SRS and will make financial projections difficult.
- Any cap on rents will mean difficult decisions for RSLs which would have to focus on statutory requirements in the first instance. This could negatively impact on wider activity, including the supply of affordable homes.

Wider points were made by members in relation to other areas for consideration:

- PRS is an important part of local housing options and if landlords choose to leave the sector this will deplete local stocks and leave SRS to pick up the slack.
- Members suggested the need to consider other mitigations, including funding targeted specifically to 'working poor' households, mechanisms whereby RSLs could recover lost rents were a rent cap applied and other general funds which could be used to support Housing Revenue Accounts (HRA).

### **5. AOB / Close**

The Chair thanked members for their contribution, noting that comments made will be considered further and will inform the approach taken to the next meeting.

The date of the next meeting will be confirmed shortly, however there was agreement on the need to come together quickly to drive forward this important work.



**MINISTERIAL ENGAGEMENT BRIEFING: CAB SEC SJHLG AND MINISTER ZCBATTR - MEETING WITH CLLR MAUREEN CHALMERS (COSLA)**

**BIOGRAPHY**

**Annex E**

**Councillor Maureen Chalmers is the COSLA Spokesperson for Community Wellbeing**

Maureen was elected to South Lanarkshire Council in May 2017 for the Blantyre Ward.

She was Depute Leader of the SNP minority administration 2017-22 with several responsibilities including CoSLA delegate, member of the CoSLA Community Wellbeing Board (CWB) and Chair of South Lanarkshire Community Planning Partnership. In 2021, she was delegated by CoSLA CWB to co-chair the Scottish Public Libraries Strategy Implementation Group. Maureen was re-elected in May 2022 and is currently Depute Leader of the SNP Group.

Maureen has worked in the third sector for 37 years mostly in advice, community development and health and social care organisations at local and national level. She has extensive experience in community, service and volunteer development and has been the Chief Officer of Hamilton Citizens Advice Bureau for the past 14 years.