

ISSUES RAISED BY COSLA AND LINES TO TAKE

ISSUES AND LINES TO TAKE

Issues highlighted within the COSLA briefing to MSPs and lines to take are set out below. The full briefing from COSLA is below.

SFHA and COSLA warn rent controls beyond 1 April could undermine consultation with tenants

- We recognise there are critical differences in how rents are consulted on and agreed in the social rented sector. The vital importance of tenant participation and consultation in that rent setting is a hugely valuable part of our current system.
- We have set out our intention to work in partnership with the social sector over the coming months to consider the implication of rent controls after 31 March. Supporting social landlords to carry out their rent consultations with tenants is a key part of that.

SFHA and COSLA warn rent controls beyond 1 April would have significant negative impact on sector and delivery of services / homes etc

- The vast majority of social sector rents are already set until 1st April 2023 and will not increase before then. This has informed our announcement and confirmation of a rent freeze up until at least 31st March 2023 at this stage.
- 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.
- A Short Life Task and Finish Working Group, bringing together leaders from across the Social Rented sector, had its first meeting last Tuesday (27 Sept) and met again on Friday (30 Sep).
- This group will help bring together evidence from across the sector to identify and consider the options available to support households and minimise the impact of rent increases on tenants next year.

COSLA welcomes PRS eviction ban, but warn ban will increase the need for higher bad debt provision in 2023-24

- The Scottish Government has allocated almost £3bn to a range of supports this year that will contribute to mitigating the impact of the increased cost of living on households.
- This includes investment to strengthen support for households who are struggling to meet essential costs, including doubling our Fuel Insecurity Fund to £20m and putting in place flexibility around the £10m Tenant Grant Fund.
- We have also just launched a new website providing information on the wide range of advice and financial support available to people in Scotland.
- We will use our Early Budget Review to ensure the greatest support possible is made available to renters.
- We will continue to monitor the impacts of the legislation while it is in force and will set out plans for investment in 2023-24 through the Scottish Budget.

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COSLA / SFHA warns that the UKG will be the main beneficiaries of a freeze on the SRS as around 2/3 of tenants receive support with housing costs from reserved benefits

- 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.

COSLA / SFHA have made clear there should be no intervention in rents after 31 March

- 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 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 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.

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COSLA / SFHA have warned that a continued cap on rents would impact on SRS investment plans.

- We understand the potential impacts of a rent cap on social landlord investment and business plans.
- We are committed to working together with the sector to identify the best way to deliver for tenants – by keeping rents affordable, delivering wider support services and continuing investment in new homes and improved quality.
- Affordable housing is a clear and long standing priority for the Scottish Government with more than 111,750 affordable homes delivered since 2007, over 78,000 of which were for social rent. 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.
- As this is emergency legislation, we have set out our intention that a reporting requirement be included – similar to the approach we took in the Coronavirus legislation - to demonstrate the need for provisions to either continue or expire, where appropriate and based on the evidence at the relevant time.

COSLA recommend Scottish Ministers should review the rent control measures early next year due to potential negative impacts on PRS availability.

- The provisions are time limited (even if extended). The provisions can be suspended under s5; and under s7 the provisions can be expired early and must be expired early if no longer necessary or proportionate.
- We must review the operation of the Bill every 3 months to consider whether the provisions remain necessary and proportionate (section 8). This means we must review whether the measures set out for a rent freeze and eviction moratorium remain necessary and proportionate in connection with the Cost of Living crisis.
- This will include considering the available evidence on the impact of these measures, and how the context may change in that time. If we consider that any provision is no longer necessary or proportionate we are obliged, under section 7, to either suspend or expire that provision as soon as reasonably practicable,
- We must prepare a report on the review and lay that report before Parliament. The first reporting period ends on 31st December 2023 and there are further reporting periods every following 3 months.
- These reviewing and reporting duties recognise that this is a carefully balanced package seeking to protect tenants whilst also allowing appropriate safeguards for landlords. The duties to review and report ensure that the provisions of the Bill which remain in force at any given time, remain necessary and proportionate.
- We will work with landlords, tenants and other stakeholders to consider what additional data is available to inform decisions made about what may happen after 31 March. Any extension to provisions, and the nature of any measures to be extended, will be subject to the agreement of parliament.

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COSLA warns that a ‘one size fits all’ approach to a rent cap would have differential impacts across local authority areas

- We fully recognise and appreciate concerns raised by the sector in relation to the differential impact a cap would have, not only across different areas in Scotland, but also across different housing providers – influenced by current rent levels and other aspects.
- This is a critical issue and one that we will look to the working group to explore in greater detail to help identify the best way forward.

COSLA / SFHA concerned of ‘logistical issues’ given requirement to notify tenants 28 days in advance of any rent increase.

- This is an important issue which has been raised by members of the working group.
- We are committed to ensuring that social landlords can meet their obligations.
- That is why we are working closely with the social sector to provide clarity as soon as possible but ensuring we find the right approach for 31 March onwards.

COSLA note LAs planned to increase rents by 1.6% on average next year, and there is no evidence to suggest LAs / tenants would support a freeze.

- We recognise that keeping rents as affordable as possible for their tenants is a principal objective of all social landlords, as highlighted by the recent report of the Scottish Housing Regulator.
- We also recognise there are critical differences in how rents are consulted on and agreed in the social rented sector. The vital importance of tenant participation and consultation in that rent setting is a hugely valuable part of our current system.
- We are committed to working in partnership with the social sector over the coming months to consider the implication of rent controls after 31 March

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COSLA STAGE 1 BRIEFING [3 OCT]

Annex

BRIEFING ON EMERGENCY LEGISLATION FOR MEMBERS OF THE SCOTTISH PARLIAMENT (MSPs)

This proposed emergency legislation as we understand has significant implications for Scottish Local Government. COSLA Leaders on Friday 30 September reflected sympathy for the proposed emergency measures during the winter months. However, very serious concerns were reflected about any rent freezes/rent caps continuing beyond March 2023.

Key Issues of PfG - Rent Freezes/Rent Caps

- Any rent freezes/rent caps beyond March 2023 would have significant implications for local authorities, particularly the governance of local housing and the role of elected members to set rent levels in consultation with tenants. Rent setting has never before been taken out of the decision making of local elected members as a sphere of government.
- Circumventing local authority rent setting processes would not only override the statutory responsibilities of elected members, but also local democratic processes for local authority tenants to have an opportunity to have their say.
- Continuing low rent increases over next year and possibly over the following year will increase risks in Housing Revenue Account (HRA) Business Plans, which ultimately poses restrictions on the level of HRA borrowing can be sustained to fund new council housing and retrofitting housing improvements to meet EESSH2 (energy efficient housing).
- Rent freezes or rent caps across the country would have a differential local impact e.g. Edinburgh Council have much higher rent levels compared to the Moray Council area with low rents. Therefore, a 'one size fits all' approach would have a detrimental impact on long term investment for much needed new housing and energy efficiency measures.
- Local authority rent levels are actually low with only a 1.6% uplift on average planned next year. There is not necessarily evidence to suggest that all local authority tenants would want rent freezes beyond March 2023, as potential rent freezes/caps could have implications for housing upgrades, new supply of housing and energy efficiency measures.
- The ideal for local authorities as landlords is no intervention beyond March, 2023 to ensure local authorities can progress other Scottish Govt priorities on energy efficiency and new build homes continue. There is a need to use the 'right tools to crack the right problem' and not to interfere with local authority HRAs.
- The Department for Work and Pensions might actually be a beneficiary from the legislation, rather than the housing authorities who need the resource. Rent caps are really not needed for 'affordable housing' as it is 'affordable'. In addition, there will be timing/logistical issues for increasing or freezing rent

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levels 28 days before the March 2023 deadline, as well as uprating Housing Benefit levels based on rents.

- An eviction moratorium outlined in the PfG will reduce homeless presentations from the private rented sector. As a result, this will help to ease some of the pressures that local authority Homelessness Services are currently under. That said, the impact on local authority HRAs of the eviction ban will be to increase the need for higher bad debt provision for 2023/24. In a scenario that some or all LAs adopt a 0% rent increase, the money will have to come from other costs centres in the HRA.
- Scottish Govt should re-assess the impact of actions early next year as the impact of a rent freeze could mean that tenants actually suffer as there is less housing available in some local authority areas and that councils have to deal with more homelessness people due to the Private Rented Sector shrinking further in some local areas.

COSLA

3 October 2022

COST OF LIVING (TENANT PROTECTION) BILL – key points

Rent freeze

- A rent increase notice issued before 6th September will apply as per current requirements – with rent increases for affected tenants taking place until approximately 30th November in line with the 12 week notice period before a rent increase can be applied.
- Rent increase notices issued on or after 6 September 2022, but before the emergency measures come into force, will be void.
- Once the measures come into force, rent increases can only take place where the cap is above zero.
- If the cap is raised or the measures expired then landlords will be able to raise rents, in accordance with the existing notice period.
- In the initial period of the measures up to 31 March, this will have the effect that rents will not rise between approximately 30 November 2022 and 01 July 2023 (6 months)
- During the period the measures are in force, some rents will be able to rise in relation to successful applications by landlords for prescribed property costs. These applications will be able to be made from the date the measures come into force and any permitted rent increase will be applied 12 weeks after the date the tenant was advised that the landlord has made an application.

Reporting / Review criteria

- The provisions are time limited (even if extended). The provisions can be suspended under s5; and under s7 the provisions can be expired early and must be expired early if no longer necessary or proportionate.
- We must review the operation of the Bill every 3 months to consider whether the provisions remain necessary and proportionate (section 8). This means we must review whether the measures set out for a rent freeze and eviction moratorium remain necessary and proportionate in connection with the Cost of Living crisis. This will include considering the available evidence on the impact of these measures, and how the context may change in that time. If we consider that any provision is no longer necessary or proportionate we are obliged, under section 7, to either suspend or expire that provision as soon as reasonably practicable,
- We must prepare a report on the review and lay that report before Parliament. The first reporting period ends on 31st December 2023 and there are further reporting periods every following 3 months.
- These reviewing and reporting duties recognise that this is a carefully balanced package seeking to protect tenants whilst also allowing appropriate safeguards

for landlords. The duties to review and report ensure that the provisions of the Bill which remain in force at any given time, remain necessary and proportionate.

- This morning I committed to engaging with the Local Government and Housing Committee as we develop our approach to reporting and to keeping them updated on these processes. We will also be working with landlords, tenants and other stakeholders to consider what additional data is available to inform decisions made about what may happen after 31 March. Any extension to provisions, and the nature of any measures to be extended, will be subject to the agreement of parliament.

Social landlords – impact on investment – compensation

- We hear the concerns from social landlords regarding the potential impact on future investment and I wanted to reassure once again that no decisions have been taken beyond 31 March and before we do so, we will be considering all of this in the round.
- A key part of that will be to discuss these concerns fully with stakeholders - particularly through our already established Task and Finish Group - over the coming weeks and months.

Tenant Grant Fund

The following figures set out the numbers of grants given and refused. **It is important to note that the data we gather doesn't include the reasons people were rejected.** We could assume that reasons could include the arrears were not for the qualifying period, duplicate applications (one from landlord and one from tenant or perhaps two from either tenant); housing situations changed or tenancies ended in the time it took to process, alternative support avenues were more appropriate and in the interests of the household etc but we have nothing to support any of these being the case. That is based on policy leads assumptions.

- **Private Rented Sector**
 - Awards made 383 totalling £738,672.14
 - Rejections 245 totalling £275,441.83
- **Local Authority**
 - Awards made 1919 totalling £2,053,468.24
 - Rejections 648 totalling £729,326.53
- **Registered Social Landlords**
 - Awards made 2128 totalling £235,0979.18
 - Rejections 433 totalling £230,039.20
- **Total**
 - **Awards made: 4430 totalling £5,143.119.56** (we can also refer to a total spend of £5.6m as that higher figure includes the £0.5m in administrative grants across the 32 LAs)
 - Rejections: 1326 totalling £1,234,807.56

Landlords in financial hardship – financial support to landlords

- Exemptions to the moratorium alongside safeguards to recover certain prescribed property costs as part of the rent cap, provide appropriate protection and support for landlords in financial hardship. There are no plans to provide direct financial support to private landlords.
- While the measures delay an eviction where a landlord intends to sell the let property for reasons other than financial hardship, landlords are not prevented from the selling the property with the tenant in situ should a landlord choose to do so.
- Increased support to tenants struggling to pay their rent during the cost crisis also support landlords by helping to prevent rent arrears
- We will use our Early Budget Review (EBR) to ensure the greatest support possible is made available to renters.
- We have a proven track record of doing this – look at DHPs, Tenant Grant Fund, Fuel Insecurity Fund etc
- This is the whole point of the EBR, to look at best possible use of available funding in the circumstances so it is right that these decisions are taken through that process.
- Recognising the scale of pressures being faced by households in the rented sector we will prioritise this as part of the EBR, carefully considering what support we can give.

Role for Housing Associations/ Local Authorities in buying PRS properties

Purchasing homes through the Affordable Housing Supply Programme

- As the statutory housing authority for their area, local authorities are responsible for assessing housing need and demand and setting out how the requirement for housing will be met through their Local Housing Strategies and Strategic Housing Investment Plans, including the size and type of housing required.
- The Scottish Government supports the delivery of these requirements with resources allocated through its Affordable Housing Supply Programme (AHSP).
- The AHSP has funded, and continues to be able to fund, acquisitions of existing homes where it makes strategic sense for local authority and RSL partners to do so – and where there are available resources.
- As with any purchase through the AHSP, local authorities will want to be assured that any activity relating to the acquisition of existing homes from landlords in the private rented sector meets a clear strategic purpose and can clearly be seen to

support the achievement of the priorities and objectives set out in their Local Housing Strategy. For example,

- consolidation of stock for management and stock improvement reasons
 - securing stock where there is limited supply and limited development opportunities, and/ or
 - securing stock for households with particular requirements.
- There will be many other examples so local authorities will want to fully consider each opportunity on a case by case basis and, in doing so, will want to take into account aspects such as cost, quality¹, location, size and current use as part of the decision making process.
 - Given the above, any potential opportunities identified by landlords in the private rented sector should be raised and discussed with the relevant local authority for decision as the strategic housing authority.

HAs enjoy lower borrowing costs because of rent setting freedom

- We are working closely with social landlords to set out what will happen beyond 31 March and will be looking to ensure a partnership approach which recognises our shared ambitions to support tenants and avoid tenants being unable to afford rent or facing eviction.
- We know that the lending landscape is important for social landlords – it should be noted that lender response will not be solely on the basis of whether Government is intervening but the nature of that Government intervention. That is why we are working closely with the social sector to provide clarity as soon as possible but ensuring we find the right approach for 31 March onwards. There are also really positive interventions this Government has made – unlike other areas of the UK we have a 20 year housing programme; a 10 year affordable housing target underpinned by a £3.8bn investment in this parliamentary term.

¹ Published Scottish Government guidance states that 'projects using existing properties (not new build) should maximise energy efficiency and accessibility, as far as is practicable'.

STAGE ONE: OPENING SPEECH

Introduction

Thank you Presiding Officer, I'm very pleased to open today's debate on the introduction of the Scottish Government's Cost of Living (Tenant Protection) Bill. In doing so I want to express my thanks to everyone within government who has worked so hard, at an extraordinary pace, to make this possible.

Almost a month ago, the First Minister launched this year's Programme for Government, which was published in the context of a severe cost crisis.

A crisis that poses a danger, not just to livelihoods, but to lives.

At that time, perhaps, we thought it couldn't get much worse. But thanks to the frankly astonishing actions of the UK Government in the last two weeks it has. Make no mistake, this has the makings of a humanitarian emergency.

This Parliament does not have all the levers we really need to fully tackle this crisis but we are determined to do what we can with the powers we have to protect those who need it most.

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Tenants have, on average, lower household incomes, higher levels of poverty and are more vulnerable to economic shocks. 63% of social rented households and 40% of private rented households don't have enough savings to cover even a month of income at the poverty line.

That's compared to 24% of households buying with a mortgage and 9% of households who own outright. Not many households escape the cost crisis. But tenants are just so much more exposed.

That is why this Bill will provide tenants in the private and social rented sectors, college and university halls of residence, and Purpose Built Student Accommodation with greater protection.

Context

The UK Government's response to the energy crisis – through the Energy Price Guarantee – falls far short of what is needed to help people avoid severe financial hardship. And we anticipate as a result that many more tenants will fall into fuel poverty and extreme fuel poverty this winter.

Tenants don't just need help with their housing and energy costs. They need to feel secure at home over the winter.

Policy Aims

With that crucially important context in mind, the Cost of Living (Tenant Protection) Bill has 3 key aims.

- To protect tenants by stabilising their housing costs by freezing rents;
- To reduce impacts on the health and wellbeing of tenants caused by being evicted or being made homeless
- To reduce unlawful evictions.

But in addition to these important measures to protect tenants, the Government also recognises that not all landlords are in the same financial position, so we include in the Bill necessary safeguards which will give them flexibility where it is genuinely needed.

It is the intention for these provisions to last until at least 31 March next year.

I will now go through these provisions in further detail.

Rent Freeze

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First the rent freeze. The Bill will allow for Scottish Ministers to set a cap on the level of increase in rents – initially set at 0% until 31 March 2023.

Under the proposals, Scottish Ministers will take powers to vary the cap, which will operate separately for the social and private sectors. Students in college and university halls of residence and PBSA will also be protected through a 0% cap, ensuring that there will be no mid-tenancy rent increases.

This will apply to all rent increase notices served on or after 6 September 2022.

As I have said, we recognise that the cost crisis is also impacting some landlords and whilst the primary purpose of this legislation is about protecting tenants, it is also important to ensure it reflects landlords' circumstances.

So private landlords will be able to make an application to increase rent for limited prescribed and legitimate costs associated with offering the property for rent where these have increased. This will be for up to 50% of those costs and total no more than 3% of rent; and these percentages may be varied if circumstances justify it.

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There are of course critical differences between the private and social rented sectors. For social landlords, there are already requirements about how rents are consulted on and agreed. And tenant participation and consultation on rent setting is a hugely valuable part of our current system. Social landlords are not for profit bodies with rents channelled back into the quality of homes, services for tenants and public investment in housing. That is why we are working in partnership with the social sector to consider the implication of rent measures after 31 March.

I told Parliament last week and I will emphasise again now, no decision has been made about any use of these measures after March, and any such decision will be informed by dialogue with the sector.

Moratorium on evictions

Turning now to the eviction provisions.

These measures prevent the enforcement of eviction action in the private and social rented sectors, and in college and university Halls of Residence and Purpose Built Student Accommodation – except in a number of specified circumstances.

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Again it is vital that this emergency legislation reflects a range of circumstances facing both tenants and landlords and ensure responsible landlords continue to offer properties in the private rented sector.

Recognising these factors, as was the case with the eviction measures in the Coronavirus legislation, we have allowed for a number of exemptions from the moratorium.

These are a mixture of existing eviction grounds and new temporary grounds for eviction, which we have developed.

This includes allowing evictions:

- in cases of criminal or anti-social behaviour, to protect other tenants and neighbours from behaviour that can have a hugely damaging impact on communities,
- in cases where a tenant has abandoned a property,
- in cases of repossession by lenders, to continue to ensure lender confidence in the sector;
- when a landlord intends to sell the property specifically to alleviate financial hardship; and
- when the landlord intends to live in the property to alleviate financial hardship, preventing their own homelessness.

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The last two grounds are new – in effect versions of existing grounds but with the important caveat that financial hardship must be demonstrated; we will work with the Tribunal to support the implementation of this.

In addition, we have taken the view that in both the social and private rented sectors, evictions may still take place in cases where there are substantial rent arrears.

- i. for the private sector this means a total value of at or over 6 months' worth of rent arrears
- ii. for the social sector this means rent arrears of £2,250 or more (which is around 6 months' worth of average rent in the Scottish social rented sector).

The decision on this issue has not been an easy one, but having considered it at length I am firmly of the view that it will act as a safeguard for both landlords and tenants.

It will allay the concern that a minority of tenants might stop paying rent even when they can afford it. Ongoing substantial rent arrears can mean the landlord could find it increasingly difficult to offer the property for rent, especially where no rent has been paid for a prolonged period.

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In addition, for a tenant facing unsustainable rent arrears, prolonging the situation will only increase their debt and financial insecurity and can trap them with debt they will never be able to service.

The protection that a tenant in these circumstances needs is different; what they need is direct support and we are making support available, including through the Tenant Grant Fund.

And of course, as a result of changes parliament approved back in June. Any eviction for rent arrears will also have to take into account all the circumstances of both landlord and tenant, judged to be reasonable by the Tribunal or Court and demonstrate that steps have been taken to help tenants manage or reduce arrears.

The Bill also includes a provision to ensure that the restriction on the enforcement of an eviction order applies only for a maximum of six months from when the order was issued. This applies to individual cases and is separate from the consideration of whether or not the moratorium on evictions is extended beyond 31 March next year.

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These restrictions will apply to all eviction orders granted in proceedings raised after the moratorium comes into force and will also apply to proceedings raised before the Bill comes into force where the eviction notice was served after 6 September 2022.

It will not apply to eviction orders granted in proceedings raised before 6 September 2022. Our aim here is to ensure that no-one is evicted in a case started after, or in response to, the announcement of our intention to introduce an emergency rent freeze.

Unlawful Evictions

Presiding Officer, we know that many private landlords are professional and that many supported their tenants during the pandemic. However we cannot ignore the fact that a small minority will try to circumvent these new protections including by trying to unfairly bring existing tenancies to an end. This is an affront both to tenants and to those landlords who follow the rules.

That is why the Bill makes some vitally important changes to the way in which civil damages can be awarded for unlawful eviction – making it more attractive for tenants to challenge an

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unlawful eviction and receive appropriate damages where one has occurred.

The provisions introduced today replace the basis for the assessment of damages that the Tribunal or Court can award to a minimum of 3 times and a maximum of 36 times the monthly rent, though there will be discretion to award a lower amount if appropriate.

In addition, the legislation will create reporting requirements where a landlord has been found to have unlawfully evicted a tenant.

This will act as a strong disincentive to those unethical landlords who would seek to avoid going through the proper legal process.

Rent Adjudication

Presiding Officer, turning now to the rent adjudication provisions within the Bill.

This part of the Bill looks ahead to a time when we are hopefully entering recovery from the cost crisis and are therefore intending to support transition out of the emergency measures.

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A key concern is that the lifting of the restrictions could lead to a large number of landlords seeking to increase their rent all at once. Returning to open market rent could result in significant and unmanageable rent increases for tenants and a volatile market. In these circumstances, the existing rent adjudication process would not provide an effective mechanism for determining a reasonable rent increase.

The Bill, therefore, contains a regulation-making power to temporarily reform the rent adjudication process to support transition out of the emergency measures and to mitigate any unintended consequences from the ending of the rent cap.

This power will be subject to affirmative procedure, ensuring that appropriate Parliamentary scrutiny is given to the necessity for any temporary changes proposed.

Extension/Expiry/Reporting

Turning finally to the general provisions laid out in the Bill.

- we are seeking to commence the Bill the day after Royal Assent;

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- we propose the flexibility to extend the provisions in Part 1 for two subsequent 6-month periods, if Parliament agrees;
- the powers in Part 3 – rent adjudication – will expire at the end of March 2024 with the option to be extended by periods of up to one year.
- there will be powers to suspend and revive the provisions in Part 1, and powers to expire these provisions earlier than 31 March.

Similar to the Coronavirus legislation, there will be a requirement to review and report on the necessity and proportionality of the provisions in Part 1 and the Scottish Ministers will be required to bring forward regulations to suspend or expire any provision that is no longer appropriate.

Conclusion

Presiding Officer, in conclusion, we are bringing forward this emergency legislation in recognition of the fact that people who rent their home are – right now – being hit hardest by an extraordinary costs crisis.

This Bill primary purpose is to provide the necessary protection for tenants whilst also recognising the circumstances of landlords.

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The Bill significantly strengthens the protection against unwarranted rent rises and eviction; it sends a strong signal to landlords about the damages that can be awarded for unlawful eviction and it provides a bridge into the longer term reforms that I set out in the New Deal for Tenants last December.

The safeguards in the Bill provide a total package of fair and robust measures.

Presiding Officer, this is a government which confronts the cost crisis head-on; a government which gives people stability in their homes and assurance about rents; a sharp contrast with those who want to cut taxes for the wealthiest and let bankers bonuses soar.

This Bill demonstrate our determination to use all the powers we have to protect people in Scotland from these harshest of times. Let us do all we can to support tenants through these times.

I move the motion in my name.

ENDS (around 14 mins speaking time)

sfha briefing

Member briefing:
Rent freeze
Second briefing

September 2022

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SFHA Member Briefing

Rent Controls - September 2022

Summary

Following our ████████ earlier this month on the Scottish Government's proposals on an emergency rent freeze, this briefing provides an update on what we know and sets out action SFHA has already taken and intends to take.

The key points are:

- The legislation to implement a rent freeze up until March 2023 is expected to be passed by **Thursday 6 October**.
- SFHA is urgently requesting members to provide data on the impact of possible scenarios, by **Friday 30 September: please complete the [template](#) included in this briefing**
- SFHA has now set up a Working Group on this issue: details are below.
- We would encourage you to contact your local MSP on this matter and have provided a draft [invitation letter](#) and key points to cover in any meeting

Introduction

On 6 September, the First Minister announced that the Scottish Government intended to introduce a rent freeze and evictions moratorium, effective immediately, across all housing tenures, to last until at least 31 March 2023. Our first briefing on the subject set out our initial political and media responses, and our planned next steps.

We now understand that the emergency legislation to introduce a rent freeze across all tenures up until March 2023 will be introduced on Wednesday 5 October and concluded by Thursday 6 October. We do not yet know when the legislation will be published. Clearly, there is very little time for influence, but we are briefing MSPs on the likely impact of such a freeze on the social sector and will be ready to seek amendments to the legislation as soon as it is published.

SFHA actions

We expect to meet the Cabinet Secretary for Social Justice, Housing and Local Government and the Minister for Zero Carbon Buildings, Active Travel and Tenants' rights in the coming days. We have held regular discussions with senior civil servants at director level and have now agreed to join the Scottish Government's Short Life Task and Finish group on the matter. We have done this on the basis that constructive discussion is always worthwhile and on the firm understanding that no decisions have been taken about rent controls for the social sector beyond March 2023.

Politically, we have met the housing spokespeople for both Scottish Labour and the Conservatives and have held discussions with other party political advisers.

This week, our CEO Sally Thomas wrote a comment piece for [Inside Housing](#), setting out the unintended consequences of a rent freeze for the social sector: this was picked up more widely by other media.

SFHA Member Briefing

Rent Controls - September 2022

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

This group will play a key role in helping us develop policy and understand the impact of any government decisions or policy positions, but we will continue to engage with all members as this process develops.

MSP contact kit

We believe the most effective tool we have is concrete examples and input from members, setting out the likely impact of a rent freeze on affordable housebuilding, the maintenance of existing stock, the provision of community services and the shift towards decarbonisation.

We would therefore encourage you to contact your local MSPs setting out your concerns. Please use this [template letter](#) as a starting point but do include your own local context as this will be of most interest. You can find your local MSP at the [Scottish Parliament](#) website. Please do share any responses you receive with us by sending these to Public Affairs and Policy Co-ordinator [REDACTED]

Other helpful information

The Scottish Parliament's Information Centre has prepared this useful [briefing](#) on the proposed rent freezes across the social and private sectors.

Next steps

The first meetings of both the SFHA Member Working Group and the Scottish Government's Task and Finish Group will take place on Tuesday 27 September. We also expect to meet the Cabinet Secretary for Social Justice, Housing and Local Government and the Minister for Zero Carbon Buildings, Active Travel and Tenants' rights in the coming days. Finally, we are in regular contact with other stakeholders to ensure we are aligning our arguments wherever possible.

Contact

If you have further questions or suggestions, please contact our Policy Lead, [REDACTED]
[REDACTED]

From: MacKean C (Catriona)

Sent: Monday, September 26, 2022 5:23 PM

To: First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights <MinisterZCBATTR@gov.scot>; Minister for HE, FE, Youth Employment and Training <MinisterHEFEYET@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; DG Communities <DGCommunities@gov.scot>; Director for Local Government and Housing <DirectorForLocalGovernment&Housing@gov.scot>; FM Policy Team Mailbox <fmpolicyteam@gov.scot>; [redacted]@gov.scot>; [redacted]

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Subject: IMMEDIATE: Cost of Living (Tenant Protection) (Scotland) Bill Pack for urgent clearance

MPO/First Minister

Please find attached the **Cost of Living (Tenant Protection) Bill Pack** for FM's clearance. This includes:-

- Bill Print
- Financial Memorandum (cleared by DFM 26 September – as also attached)
- Policy Memorandum
- Legislative Competence note

- Data Protection Impact Assessment (DPIA)
- Business and Regulatory Impact Assessment (BRIA)
- Equality Impact Assessment (EQIA)
- Islands Community Impact Assessment (ICIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Fairer Scotland Duty Impact Assessment (FSDIA)

The Delegated Powers Memorandum and Explanatory notes will follow in the course of tomorrow.

Please note in addition that a pre-screening assessment was issued via Strategic Environmental Assessment (SEA) gateway and we are currently working on the assumption that a full SEA will not be required. Our initial Islands Community Impact Assessment (ICIA) indicated that a full assessment is not required – however the initial assessment is attached for completeness.

Please note also that whilst we have taken as much care as possible in the time available these documents are still subject to final reviews for accuracy and consistency which may require drafting changes. In particular the Policy Memorandum may be strengthened further. If any substantive changes are made we will provide updates.

With apologies for the tight timescales **we are seeking FM's clearance asap** to allow documentation to be provided to the presiding officer tomorrow allowing in turn for the introduction of the Bill as planned next Tuesday 4th October

Overview

Purpose and Intent

The purpose of the Cost of Living (Tenant Protection) Bill (“the Bill”) is to respond to the emergency situation caused by the impact of the cost crisis on those living in the rented sector in Scotland by introducing a temporary rent freeze, temporary moratorium on evictions, and increased damages for unlawful evictions until at least 31 March 2023 with additional powers to temporarily reform rent adjudication.

The intended effect of the Bill is to:

1. protect tenants by stabilising their housing costs;
2. where possible, during the cost crisis, reduce impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless by giving them more time to find alternative accommodation; and
3. seek to avoid tenants being evicted from the private sector by a landlord wanting to raise rents between tenancies during the temporary measures and reduce unlawful evictions, through the complementary measures of a moratorium on evictions and raising the level of damages that may be awarded;

As this is emergency legislation, it is intended that a three-monthly reporting requirement will be included in the legislation, to demonstrate the need for provisions

to either continue or expire, where appropriate, and based on evidence at the relevant time.

Proportionality and legislative competence

As the First Minister is aware, in seeking to deliver the maximum possible protection to tenants within legislative competence, the emergency bill provides for certain safeguards which take account of the circumstances of a landlord to demonstrate proportionality.

[REDACTED]
[REDACTED]
[REDACTED]. As such we have also developed additional landlord safeguards to be drawn on should this be necessary.

The Solicitor General's view of the proposed legislation, as set out in their 23rd September response to the CSCL paper on this Bill, was that [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
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2. [REDACTED]
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Strengthened rationale for emergency legislation

The Solicitor General also indicated that [REDACTED]
[REDACTED]

[Redacted]

[Redacted]. Please note that these outstanding queries mean that at this time CSCL clearance has not yet been given, although officials are liaising to support the provision of the further information required to enable CSCL sign off.

The Law Officers [Redacted]

Many thanks
Catriona

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

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