

COST OF LIVING (TENANT PROTECTION) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Cost of Living (Tenant Protection) (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 4 October 2022.

The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill <Bill Number>-EN);
- a Financial Memorandum (SP Bill <Bill Number>-FM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP <Bill Number>-LC).

2. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES OF THE BILL

3. 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 and a temporary moratorium on evictions, along with increased damages for unlawful evictions, until at least 31 March 2023, and with additional powers to temporarily reform rent adjudication in connection with the expiry of the rent freeze.

- i. protect tenants by stabilising their housing costs;
- ii. 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
- iii. 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;

4. As this is emergency legislation, it is intended that a reporting requirement will be included to demonstrate the need for provisions to either continue or expire, where appropriate, based on evidence at the relevant time.

RENTAL SECTOR CONTEXT

5. The cost crisis exacerbates existing social and economic pressures faced by those living in a rented home, making them more vulnerable as a whole. These pressures are expected to be particularly acute in the winter given the rise in fuel use and costs during this period. Rented households are more likely to have lower household incomes, higher levels of poverty and to be financially vulnerable. 63% of social rented households and 40% of private rented households in Scotland are estimated to be financially vulnerable, with savings which would cover less than one month of income at the poverty line, compared to 24% of households buying with a mortgage and 9% of households owning outright¹.

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

Table 1. Change in cap on typical household energy bill

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

7. This will lead to a significant increase in fuel poverty rates, particularly in the private and social rented sectors, as set out in Table 2, even with various policy mitigations taken into account. There is also a higher proportion of households on pre-payment meters in the social rented sector (43 per cent) and private rented sector (22 per cent), as compared with the owner occupier sector (5 per cent); the finances of these households will be under particular pressure this winter as they are unable to spread energy payments over a longer period.

¹ [Scottish Government Statistical publication on Wealth in Scotland 2006-2020](#)

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

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

Note: Estimated fuel poverty rates are based on 2019 SHCS data, with energy prices uprated in line with the increase in the energy price gap. Figures for October 2022 are presented net of the following mitigations: £400 Energy Bills Support Scheme payment, £650 Cost of Living payment for those on means-tested benefits, £300 Pensioner Cost of Living Payment for pensioner households who receive the Winter Fuel Payment, £150 Disability Cost of Living Payment and £150 Council Tax rebate for households in council tax bands A-D or that receive council tax reduction.

8. Furthermore, general inflation is also very high, with the overall Consumer Price Index at 10 per cent in August 2022, a level which exceeds the growth in nominal earnings and benefit payments.

9. Households in the rented sector, especially those on lower incomes, generally pay more of their income on housing costs than owner occupiers, have higher rates of income poverty and child poverty, and have less financial resilience to cope with cost of living shocks. Given this, and taking the adverse trends described above into account, economic analysis therefore continues to suggest additional measures to protect renters remain necessary. In addition to financial implications, this action seeks to support vulnerable households from the health and wellbeing implications of the economic crisis. In addition, a secure home remains vital to the ability to maintain employment and to having a stable family life.

10. On 6 September 2022, the Programme for Government (PfG) committed to a suite of emergency measures in response to the cost of living crisis. This emergency legislation will offer protection to tenants in recognition of the particular issues that will affect tenants who rent their home. A temporary rent freeze and temporary moratorium on evictions will protect renters by putting in place measures to stabilise immediate housing costs and support renters impacted by the cost of living crisis to stay in their homes for longer. Given the urgency of this situation, we consider the provisions need to come into force before winter given the likely rise in fuel costs and significant impact this will have on households in the rented sector. Our announcement of these intentions - one month ahead of bringing emergency measures to parliament - ensure our intentions are well known allowing time for adjustment.

11. Looking beyond the mainstream rental sector, a significant number of students in Scotland live in college and university halls of residence and in Purpose Built Student Accommodation (PBSA). The Higher Education Student Agency (HESA) data shows, in a typical year, there are approximately 11,500 students residing in PBSA and approximately an additional 36,000 students

in college and university maintained halls attending Scottish universities. This equates to approximately 4% and 14% of all enrolments at Scottish universities respectively.

12. 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. Many PBSA providers have signed up for the voluntary UNIPOL codes, but again this does not cover, with certainty, all the private providers and Scottish college and university providers have not adopted an equivalent code.

13. Students renting college and university and PBSA accommodation did not receive the £400 energy cost support which was for households. Although they are eligible for support from other routes such as via hardship funds, these are already under significant pressure and should utility cost increases be passed onto students there may be insufficient financial resource to meet all individual needs.

14. As PBSA and halls of residence providers are businesses (and not households), students in this type of accommodation, unlike those in the PRS, will not benefit from the energy price cap announced for households by the UK Government. They will, instead, have to rely on providers using the UK Government's Energy Bill Relief Scheme, announced on 21 September 2022, which provides a discount on gas and electricity for non-domestic customers (including all UK businesses and charitable organisations) for 6 months until end March 2023. The level of support, however, for each organisation will vary depending on type and date of contract. Even with this action, electricity and gas prices will increase and there is no guarantee they will not be passed onto students.

15. The current UK inflation rate (Consumer Prices Index (CPI)) is almost 10%, (source: ONS, September 2022) mainly driven by cost increases to electricity, gas, transport and food. The rent freeze and eviction moratorium in college and university halls and PBSA would give further assurance to students that rent will not increase. 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. The Bill will therefore apply the rent freeze and moratorium on evictions to all providers, across college and university halls of residence and PBSA, to ensure parity of protection of this sector.

16. Households in the rented sector, especially those on lower incomes, generally pay more of their income on housing costs than owner occupiers, have higher rates of income poverty and child poverty, and have less financial resilience to cope with cost of living shocks, economic analysis suggests that additional measures are necessary to protect renters.

OVERVIEW OF PROPOSALS

Rent Freeze

17. The Bill sets out that the rent restriction in the private rented sector will be delivered on the following basis:

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- The restriction in rent increases will apply to existing private residential tenancies, assured tenancies and short assured tenancies.
- Landlords will be able to re-set rent levels between tenancies.
- The restriction will allow Ministers to set a maximum permissible level 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 will be set at zero to prevent rent increases.
- Existing rights of tenants to challenge any rent increase and appeals of rent increases will be maintained for rent increase notices issued before 6th September 2022.
 - Rent increase notices issued on or after 6th September but before the emergency measures come into force, will be void. A landlord who seeks to increase the rent once the rent cap rises above zero will require to issue a fresh rent increase notice at that time.
 - The ability of landlords to increase rents (in line with the rent cap and the frequency prescribed by the relevant Acts or regulations) will be maintained to allow for flexibility in the level of the cap, if required in future. Landlords will only be able to issue rent increase notices if the rent cap rises above zero.
 - To ensure adherence to the rent cap, after the measures come into force, there will be a new temporary ‘verification’ process whereby tenants can refer a rent increase notice to a Rent Officer, part of Rent Service Scotland (overall referred to throughout as Rent Service Scotland) to confirm whether a proposed rent increase is in line with the rent cap. The concept of ‘market rent’ will cease to apply as a result of the rent cap. This process will only be applicable if the rent cap is raised above 0% (because no rent increase notices can be given whilst the cap is at 0%). In the case of private residential tenancies, this would be a modification to the existing adjudication process such that there will be no consideration of factors outwith the rent cap. This will also be added as a new temporary right to refer to Rent Service Scotland for tenants with assured tenancies and short assured tenancies.
 - The existing route of appeal for landlords or tenants to the First-Tier Tribunal (Housing and Property Chamber) following a Rent Service Scotland decision will be maintained, or extended in the case of assured tenancies and short assured tenancies.
 - In addition, whilst the rent cap is in force (at any level) landlords will also be able to apply to Rent Service Scotland to increase rent in terms of an increase in limited, defined ‘prescribed property costs’. These prescribed costs are:
 - 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.
 - 50% of the increase in these costs will be eligible for consideration of a rent increase, but this is subject to an overall limit of a maximum permissible rent increase in this context being limited to 3% of the existing rent.
 - Scottish Ministers will have powers to vary the prescribed costs and the 50% and 3% limits.

18. The rent cap will apply to the following tenancies in the private rented sector: private residential tenancies, assured tenancies, and short assured tenancies.

19. The Bill also sets out that rent restriction in the social rented sector will be delivered on the following basis:

- The restriction in rent increases will apply to existing Scottish secure tenancies and short Scottish secure tenancies.
- The restriction will allow the Scottish Ministers to set a maximum permissible level 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 will be set at zero to prevent rent increases.
- The ability of landlords to increase rents (in line with the rent cap) will be maintained to allow for flexibility in the level of the cap if required in future.

20. The rent cap will apply to social rented sector tenancies established under Housing (Scotland) Act 2001. It will apply from the 6th September 2022 and any rent increase notices issued by a social landlord from 6th September 2022 onwards will be void. It will also not be possible for landlords to issue any new rent increase notices until such time as the rent cap expires or rises above 0%. Social landlords will still be able to consult with their tenants notwithstanding the rent cap provisions.

Moratorium on evictions

21. The Bill contains provisions that will prevent the enforcement of eviction action in the private and social rented sector, for a maximum of 6 months, except in a number of specified circumstances providing tenants with more time to access support and find alternative accommodation. The Bill includes exemptions from the moratorium on:

- i. evictions granted on the existing grounds of antisocial behaviour, criminality, tenant abandonment and where a lender intends to sell the property;
- ii. new and amended grounds for eviction. These would be:
 - a. where a landlord intends to sell the let property to alleviate financial hardship (private sector only, excluding regulated tenancies under the Rent (Scotland) Act 1984);
 - b. where a landlord intends to live in the let property to alleviate financial hardship (private sector only); and
 - c. substantial rent arrears (social and private sectors).

22. Substantial rent arrears are where:

- i. for the private rented sector: the cumulative amount of accrued rent arrears (in respect of one or more periods) equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy, and

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- ii. for the social rented sector: the amount of unpaid rent due from the tenant is equal to or greater than £2,250. (This sum is equal to or in excess of 6 months' average rent in the Scottish social rented sector.)

23. Recognising that these measures are intended to provide protection to those impacted by the cost of living crisis, and to allow for practical delivery of these additional grounds (and therefore ensure these are a meaningful protection), all current applications lodged with the Tribunal/Court before the emergency legislation comes into force would not be affected by the emergency measures and will be allowed to continue in line with current legal requirements unless an eviction notice is served or proceedings were raised for an eviction order on or after 6th September 2022.

24. In practice, this would see:

- Eviction orders granted in proceedings raised after the moratorium comes into force being caught by the moratorium;
- Eviction orders granted in proceedings raised before the moratorium comes into force being caught only if the proceedings were raised in relation to an eviction notice served on or after 6 September 2020 or, where no eviction notice is required, only if the proceedings were raised proceedings after that date;
- Eviction orders granted before 6 September 2020 would not be caught;
- Restrictions on the enforcement of an eviction order will only apply up to 6 months from when the order was granted;
- Some evictions will be permitted to proceed, in line with the exemptions outlined above.

25. The provisions above are in recognition of the need to ensure that there are limits to the levels of debt which tenants are left with, which they will continue to owe and which may impact on future access to housing; to limit potential losses of a landlord; and to ensure that tenants recognise the need to continue to pay rent or to seek assistance if they are struggling.

26. Tribunal discretion will continue consider all the circumstances of individual cases therefore could still prevent or delay evictions that meet these requirement.

College and University Accommodation and Purpose Built Student Accommodation

Rent Freeze

27. The Bill applies the rent freeze to these accommodation types but, recognising the different characteristics of this accommodation, does so in a specific way. In college and university halls of residence and PBSA, rent is often inclusive of energy costs and is set prior to the beginning of the academic term and contracts entered into on that basis by students. However, although the majority of institutional and PBSA providers have assured us that rents will not increase mid-contract, this does not cover all providers with certainty.

28. There is no uniform contract across all providers and not all providers are members of bodies such as ASRA nor have adopted the UNIPOL codes – therefore the Scottish Government believe the inclusion of such accommodation providers within the Rent Freeze provisions of the Bill is justified.

29. The rent freeze will apply to student tenancies with the exception of costs related to excessive use of any utilities by the tenant.

Moratorium on evictions

30. The moratorium on evictions and rent freeze provisions will also apply to College and University Halls and PBSA, however a key difference is that exemptions to the moratorium for this group are limited to evictions due to antisocial and criminal behaviour. The Scottish Government believe an exemption for substantial rent arrears is not appropriate for the following reasons:

- the number of evictions within the college and university halls and PBSA sector is low. Providers tend to seek recovery of rent arrears through payment plans rather than the courts;
- institutions and providers are keen to provide a supportive environment for students and this includes not only access to sources of financial support and guidance but also mental health and well-being services;
- the nature of the tenancies are different from the private and social rented sectors – they are typically for 9 months, often paid in advance or per semester. Private and social sector tenancies tend to be for much longer periods; and
- the providers are large institutions/companies that experience the implications of rent arrears differently to individual landlords. The moratorium applies only for a maximum of 6 months in any individual case, and given tenancies tend to be limited to around 9 months, the impact is very different.

Unlawful Evictions

31. In recognition of the possibility that some private landlords may illegally evict a tenant in order to raise rents or recover their property for another purpose, the Bill contains provisions that will change the way in which civil damages can be awarded for unlawful eviction. This will make it easier and more meaningful for tenants to challenge an unlawful eviction and receive appropriate damages where an unlawful eviction is found to have occurred. This will 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.

32. The provisions 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 i) the relevant local authority and police where a private landlord has been found to have unlawfully evicted a tenant; and ii) the Scottish Housing Regulator, where a social landlord is found to have unlawfully evicted

a tenant. This would allow relevant authorities to consider whether any further action should be taken in relation to the unlawful eviction.

Rent Adjudication

33. We recognise that there may be some unintended consequences through the introduction of a rent cap. For example, given that emergency legislation is - by its nature - temporary, the termination of the rent cap 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.

34. Therefore, to support transition from the emergency measures, the Bill contains a regulation-making power to temporarily reform the rent adjudication process. This could include, for example, ensuring that Rent Service Scotland or First-tier Tribunal cannot determine a rent at a higher level than that requested by the landlord.

35. The regulation-making power will be subject to the affirmative procedure ensuring that appropriate Parliamentary scrutiny is given to the necessity for any temporary changes proposed and will also be subject to consultation persons representing landlords and tenants.

General Provisions

36. Subject to approval by the Scottish Parliament - the general provisions of the Bill will be based on the approach taken in the Coronavirus (Scotland) Act 2020. Therefore we expect the following to apply:

- the Bill will commence the day after Royal Assent and the provision in Part 1 will, unless extended by regulations, expire at the end of 31 March 2023;
- the Bill will contain provisions enable the Scottish Ministers to extend the provision in Part 1 for two subsequent 6-month periods;
- the powers in Part 3 (rent adjudication) will expire at the end of 31 March 2024, but this may 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 2023 (noting that a suspended provision can be revived, but not an expired provision);
- 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.

Timescales

37. As set out in the policy rationale, the Scottish Government needs to deliver the proposed changes urgently to ensure that we achieve the aim of protecting tenants from the health and financial stress which are particularly acute as a result of the cost crisis. Any delay in bringing forward this legislation would heighten this for tenants and it is therefore essential that the protections are in place before the winter period given the projected significant fuel costs and the

disproportionate impact this has on tenants. The Scottish Government proposes this emergency legislation be treated as urgently as it can be, and seek expedited Royal Assent, to ensure that the protections are in place for these reasons. The Scottish Government's intentions in this area have been well publicised through the announcement of these emergency measures in the Programme for Government on 6 September 2022.

ALTERNATIVE APPROACHES

38. The Scottish Government has considered alternative approaches to the one taken by the Bill.

39. **Alternative Approach A: Take no legislative action.** The Scottish Government does not consider this to be an appropriate approach, given the current pressures on household incomes and existing evidence which demonstrates that people who rent their home are more likely to have lower household incomes, higher levels of poverty and to be financially vulnerable – and therefore be disproportionately affected by the ongoing cost crisis. Furthermore, the action by the UK Government to introduce the Energy Price Guarantee from 1 October 2022, will not prevent household energy Bills from significant and unprecedented increases, putting greater numbers of rented households at risk of significant financial hardship and fuel poverty.

40. **Alternative Approach B: Introduce a rent freeze and moratorium on evictions whereby the only safeguard for landlords is the ability to evict due to antisocial behaviour, criminality and/or tenant abandonment.** The Scottish Government considers that a more proportionate and balanced approach is required. If a blanket rent freeze were to be applied - combined with an evictions moratorium which provides for no safeguards that take into account financial hardship being faced by landlords – then some landlords could find themselves trapped in loss-making leases. The Scottish Government believe that such an approach would be highly unlikely to strike a fair balance of human rights and [Redacted]

41. The provision of safeguards, as set out above, which take account of the financial hardship a landlord may face, are essential in order to demonstrate proportionality.

42. For students in college and university halls of residence and PBSA, the alternative approach could have been to write to institutional and PBSA providers seeking assurance that they would not increase rents mid contract or – with the exception of criminal or anti-social behaviour – they will not seek evictions in relation to ability to pay rent. Such an approach, through industry bodies would not, however, reach all providers as some are not members of industry bodies nor have all providers signed industry codes of good practice. Moreover, the scale of past and potential energy price rises means there is a risk that these price rises will be passed onto students, even with the UK Government's Energy Bill Relief Scheme for non-domestic customers (including all UK businesses and charitable organisations).

43. It was not considered appropriate to include pitch agreements on mobile home sites and Gypsy/Traveller Sites, regulated by the Mobile Homes Act 1983, in the emergency legislation. There are existing protections for residents under the Act, including a presumption that pitch fees will not rise above RPI. The Scottish Government has considered alternative protections for residents and will consult on a change to the basis of annual uprating from RPI to CPI, to bring it in to line with the uprating of pensions. The Scottish Government will also work

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with COSLA to provide parity with social tenants for residents of public sector Gypsy/Traveller sites, through an administrative pitch fee freeze and ban.

CONSULTATION

44. Due to the emergency nature of the Bill, no formal public consultation has taken place. The measures in the Bill do reflect concerns highlighted by members of the public and members of the Scottish Parliament.

45. Formal consultation with business has not been carried out although discussion has taken place with a range of key stakeholders, including: social and private landlord representative bodies, letting agent representatives, judicial bodies, University accommodation providers and private student accommodation providers.

46. All Impact Assessments for the Bill are available on the Scottish Government website, namely:

- Equality Impact Assessment
- Fairer Scotland Duty Impact Assessment
- Island Communities Impact Assessment
- Business Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Data Protection Impact Assessment

47. The Scottish Government under Article 36(4) of the GDPR, wrote to the UK Information Commissioner's Office (ICO) on 21st September 2022 in relation to proposed data processing under the Bill. ICO confirmed there was only a limited opportunity to engage on the proposal and they had no major concerns based on the information provided.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLANDS COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

48. An Equality Impact Assessment and Fairer Scotland Duty Assessment have been published. The policies are not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties.

49. However, people from non-white backgrounds are more likely than people from white backgrounds to live in the private rented sector. Women and people with disabilities are more likely to rely on social security as part or all of their income, and to live on low incomes. Women are more likely to have caring responsibilities and therefore be impacted more significantly – socially and financially – by any action to increase rents or for eviction. These proposals therefore are likely to have a positive impact on outcomes for these groups during the current economic crisis.

50. The majority of those in student accommodation are women. Almost half of students in halls are from outside the UK and hence those staying in PBSA and college and university halls of residence are potentially more likely to have a wider variety of ethnic backgrounds. The majority of students residing in PBSA and halls of residence are 21 and under. Action to protect students from in tenancy rent increases and evictions should have a positive impact on outcomes for these groups. The Scottish Government considers that the temporary legislative changes are likely to positively impact across those with protected characteristics, as the legislative measures will strengthen protection from the financial impact of potential in-tenancy rent increases and where an eviction occurs, more time to find alternative accommodation. .

Human Rights

51. Consideration has been given to the impact of the policies on a landlord's property rights under Article 1 Protocol 1 ("A1P1") ECHR. The majority of these provisions could be argued to constitute a control of a landlord's use of their property for the purposes of A1P1. The Scottish Government considers that the safeguards provided for in the Bill, as part of the rent freeze and moratorium on evictions, strikes an appropriate balance between the landlord's rights in the property and protection of the tenant from rent increases and eviction during the ongoing cost crisis. Accordingly, all provisions in the Bill are considered to be proportionate.

Rent Freeze

52. In relation to the rent freeze provisions, the restriction of a landlord's ability to charge rent for a property is a control of use for the purposes of ECHR Article 1 Protocol 1. Any such restriction must therefore be justified by reference to the three-part test of being in accordance with the law, having a legitimate purpose, and proportionality.

53. The emergency Bill contains measures that will be in primary legislation and so will be in accordance with the law. The social and economic protection of tenants is a legitimate purpose for the control of the use of property. The intrusion with landlords' rights is mitigated by the creation

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of a safeguard for landlords, whereby they may apply to Rent Service Scotland to increase rent to recover a portion of the increase in prescribed legitimate property costs. There is also then an ability for either landlord or tenant to appeal an order by Rent Service Scotland in this context to the First-Tier Tribunal (Housing and Property Chamber) to ensure the order is accurate.

Moratorium on evictions

54. As with the imposition of rent controls, a moratorium on eviction action would represent a control of the use of a landlord's property.

55. The Bill contains measures that will be in primary legislation and so will be in accordance with the law. The social and economic protection of tenants is a legitimate purpose for the control of the use of property. The inclusion of the exemptions to the eviction moratorium, as set out above, provides appropriate safeguards to ensure that the interests of landlords and tenants have been appropriately balanced.

Purpose Built Student Accommodation

56. In relation to students living within University Halls or PBSA, the introduction of an in-tenancy rent freeze and eviction moratorium will bring students' tenancy rights in college and university halls of residence and PBSAs in line with those students residing in the mainstream private rented sector. It should be noted that 61% of students who live in private sector halls are under 21 and 73% of students who live in provider maintained property are 21 and under.

Unlawful Evictions

57. The proposed amendments to the process for claiming damages where an unlawful eviction occurs do not engage ECHR Article 1, Protocol 1 rights. The proposed amendments do engage ECHR Article 6 insofar as they concern the determination of a civil right, this being a right to adjudication by an independent tribunal.

58. Here the function of the First-tier Tribunal (or the Sheriff Court in social housing cases) is to ensure that the correct level of damages is levied against the landlord in accordance with their jurisdiction under the 1988 Act. The Tribunal/Court is independent and impartial, so provided a hearing is held within a reasonable time, the Article 6 rights of the landlord and tenant would be respected.

59. [Redacted]The fixing of damages by reference to the rent paid for the property ties the level of damages into the value of the rented property and this is the current basis for the calculation of damages. Under these provisions the Tribunal/Court is given significant discretion to award damages up to the maximum limit and, where circumstances warrant it, below the stated minimum and can therefore arrive at a level of damages which adequately reflects the circumstances of the case.

Rent Adjudication

60. Exercising the regulation-making power provided for as part of the Bill constitutes a control of use of property for the purposes of ECHR Article 1, Protocol 1.

61. The Scottish Government considers that a power to modify the rent adjudication processes in the 1988 and 2016 Acts could be exercised in a such a way as to balance the competing interests of tenants and landlords, respecting the A1P1 rights of both. It is proposed that this power will be subject to the affirmative procedure, thus ensuring full Parliamentary scrutiny; and provide that, in exercising the regulation making power, the Scottish Ministers must consult such bodies as they consider appropriate.

Island Communities

62. A full Islands Community Impact Assessment (ICIA) has not been prepared. The Scottish Government considers that there are unlikely to be significantly differing impacts for island communities as a result of the temporary emergency measures, and that the emergency housing measures are likely to affect landlords and tenants equally both in island communities and in communities on the Scottish mainland.

63. A Scottish Government report from 2021 estimates that cost of living in remote and rural Scotland including the islands is between 15% and 30% higher than urban parts of the UK.² The evidence available does suggest that the impacts of the cost crisis may be higher in island communities, due to the already higher cost of living and the higher prevalence of fuel poverty experienced in these communities.

64. However, the provisions within the Bill will help to stabilise housing costs to support people to stay in their homes, and provide more time to access support and find alternative accommodation. While it may be even more necessary to mitigate the effects of the cost crisis than in many communities on the Scottish mainland, particularly those in more urban areas, The Scottish Government anticipates that these outcomes will be similar across Scotland.

65. The proposed provisions would also provide assurance to students from island communities and residing in college or university accommodation or PBSA student accommodation that there will be no in tenancy rent increases or evictions.

66. Whilst there is the potential for adverse effects such as a reduction in supply or in investment in property quality and energy efficiency measures, the Scottish Government is of the view that this is mitigated by the temporary nature of the measures and the safeguards set out above. The Scottish Government will also work with housing providers in the social sector to endeavour to provide certainty on the future level of the cap on the sector from 1 April 2023, and to establish if there are any additional safeguards that should be put in place.

67. The Scottish Government considers that these impacts are likely to be significantly similar across Scotland and that this, coupled with the steps being taking to mitigate adverse effects, means that there are unlikely to be significantly differing impacts for island communities.

² [Supporting documents - The cost of remoteness - reflecting higher living costs in remote rural Scotland when measuring fuel poverty: research report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/09/Supporting_documents_-_The_cost_of_remoteness_-_reflecting_higher_living_costs_in_remote_rural_Scotland_when_measuring_fuel_poverty_research_report_-_gov.scot)

Local government

68. The provisions within the Bill will help ensure people who rent their home have additional protections relating to rent increases and eviction during the ongoing cost crisis. These measures are likely to help ease the pressure on local authority homelessness services, providing local authorities more time to support tenants into suitable alternative accommodation and manage demand for temporary accommodation during a time of acute pressure on services³.

69. The measures will also give local authorities as landlords more time to work with their tenants to access all of the benefits and financial support they are entitled to, helping them to prevent or stop further arrears building up and thereby protecting both the local authority and their tenants from the impact and cost of eviction, wherever possible, in the longer term.

70. Furthermore, the measures provide assurance for student tenants in college or university accommodation or PBSA with regard to in tenancy rent increases and evictions. This would have a positive effect on local government in providing more time to support the prevention of homelessness and easing pressure on local government services.

Sustainable development

71. A pre-screening report was undertaken and submitted to the Strategic Environmental Assessment Gateway in September 2022, seeking views on whether the duties in the Bill would have a significant environmental effect and whether a Strategic Environmental Assessment is required. It was determined that a Strategic Environmental Assessment was not necessary and that the provisions are therefore deemed to be exempt from the strategic environmental assessment under section 7(1) of the Environmental Assessment (Scotland) Act 2005.

72. Although the measures will provide assurance to people who rent their home during economically challenging times, consideration should be given, in subsequent reviews of the measures, to its impact on investment plans around new build developments in the private, social and PBSA sectors, as growth of these sectors is an important element in the provision of housing and local regeneration.

Crown consent

73. Paragraph 7 of schedule 3 of the Scotland Act 1998 requires that Crown consent be signified to the Parliament if the same Bill would need such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As regards the Bill as introduced, it is the Scottish Government's view/expectation that, in order to comply with Rule 9.11 of the Parliament's Standing Orders, Crown consent will be required because it is considered that the provisions in the Bill affecting private residential tenancies could affect

³ [Homelessness in Scotland: 2020 to 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions/embedded/Homelessness_in_Scotland_2020_to_2021.pdf)

This document relates to the Cost of Living (Tenant Protection) (Scotland) Bill (SP Bill X) as introduced in the Scottish Parliament on 4 October 2022

residential tenancies on the His Majesty's private estates and those on land forming part of the Scottish Crown Estate.

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COST OF LIVING (PROTECTION OF TENANTS) (SCOTLAND) BILL

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