

Cost of Living (Tenant Protection) (Scotland) Bill 2022

Business and Regulatory Impact Assessment

October 2022

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Title of Proposal

Cost of Living (Tenant Protection) (Scotland) Bill 2022

Purpose and intended effect

1. 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. 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 rented 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 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.

Background

On 6 September the Programme for Government (PfG) committed to a suite of emergency measures in response to the cost crisis. This emergency legislation will offer protection to tenants in recognition of the particular issues that will affect people who rent their home. Households in the rented sector, especially those on lower incomes, generally pay more of their income on housing costs than owner occupiers and have less resilience to cope with financial shocks.

Further information about the background, rationale and policy intention behind the Bill is set out in the Policy Memorandum which accompanies the Bill. The Bill, Policy Memorandum and other accompanying documents are available from the Scottish Parliament website and are linked to from this Bill webpage.

It is the Scottish Government’s view that the following measures will support those most vulnerable to the cost crisis through a temporary restriction on rent increases, temporary moratorium on evictions, increased temporary penalties for unlawful evictions and additional powers to temporarily reform rent adjudication.

Although the Bill aims primarily to support tenants, it is recognised that the impacts of the cost crisis may also be felt by some landlords so appropriate safeguards have been considered as part of the Bill development process and provided for within the Bill.

Objective

The over-arching objective of the Bill is to provide greater temporary support and protection to tenants during the cost crisis and are detailed above. Given the impacts of the cost crisis may also be felt by landlords, and the legislation needs to strike a balance between supporting tenants and reducing the impact of the measures on landlords. Therefore a range of appropriate safeguards have been considered as part of the Bill development process to offer protection against tenants accumulating unsustainable debts, recognise the costs associated with offering a property for rent and ensure there is a continued clear legal disincentive to tenants from choosing not to pay their rent when they can afford to do so.

Rationale for Government intervention

It is the Scottish Government's view that this emergency legislation is necessary to urgently respond to the specific circumstances of the current cost crisis to support those who rent their homes. Households living in the rental sectors have less ability than owner occupiers to respond to the cost crisis because their housing costs, relative to their incomes, tend to be higher.

It is essential that the proposed changes are delivered urgently to ensure that we achieve our aim of protecting tenants from the health and financial stress which are particularly acute as a result of the costs crisis. Any delay in bringing forward this legislation would heighten the risks 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 rented sectors have a higher proportion of people who are in relative poverty (39% of in social rented households and 34% in private rented households, compared to 7% in households buying with a mortgage and 14% in households who own outright), as well as children in relative poverty (47% in social rented households and 40% in private rented households are, compared to 10% in households buying with a mortgage and 18% in households who own outright).¹

Households in the rented sector are also more likely to be financially vulnerable² (63% of social rented households and 40% of private rented households in Scotland are categorised as financially vulnerable, compared with 24% of households buying with a mortgage and 9% of households owning outright³),

¹ The latest available figures across the period 2017 to 2020 and are sourced from [Poverty and Income Inequality in Scotland Tables](#)

² Financial vulnerability is defined as households with savings which would cover less than one month of income at the poverty line. Data covers the 2018 to 2020 and is sourced from [Scottish Government Statistical publication on Wealth in Scotland 2006-2020](#)

³ [Wealth in Scotland 2006-2020 \(data.gov.scot\)](#)

which reduces their ability to cope with rental increases alongside other inflationary increases and financial shocks.

Students, often reliant on fixed funding streams such as bursaries, grants and loans, are also vulnerable to cost of living increases, making it more likely they will be pushed into poverty. A June 2022 NUS survey found that 92% of UK students said the cost-of-living crisis was impacting their mental health, 96% are cutting back, 68% can no longer afford course materials, and more than 1 in 10 are using food banks.⁴ This survey further confirms the challenges faced by students highlighted in a February 2022 survey undertaken by NUS Scotland, prior to the intensification of the cost of living crisis.⁵

Despite the decision of the UK Government to introduce the Energy Price Guarantee from 1 October 2022, capping typical household energy bills at £2,500, there will be significant increases in fuel poverty rates, particularly in the private and social rented sectors, with around half of households in these sectors being in fuel poverty despite the Energy Price Guarantee.

Whilst grants and support payments in a number of forms are being provided to mitigate this⁶, these mitigations will not be sufficient to offset the impact of higher energy costs.

Households on pre-payment meters will be particularly affected by the increase in energy prices, as around 80% of annual household gas consumption falls within the winter months, and these households are unable to spread the costs over a longer period. The share of households on pre-payment meters is much higher in the private rented sector (22%) and social rented sector (43%) than in the owner occupier sector (6%). Households on pre-payment meters are more likely to be in fuel poverty than those paying by other means, with around three-fifths of households who live in the rented sectors and who have a pre-payment meter being in fuel poverty.

Households will need to use more of their income to pay their energy bills, and this impact is being felt at the same time as a large increase in other types of inflation. CPI inflation, which averaged 4% in 2021/22, has accelerated to nearly 10% in August 2022. Increases in wages and benefits are not keeping pace with the higher inflation rate, meaning that in real terms households are worse off. Households will struggle to cover non-energy related inflation, even before attempting to pay for energy bills, meaning they will either need to draw on any savings or cut back on consumption. These spending choices will be particularly challenging for households who have low or no savings.

For households who depend partly or fully on benefit income, the situation is more precarious. The Scottish Government have uprated most devolved benefits by 6%

⁴ <https://www.nus.org.uk/campaign-hub/cost-of-living-crisis>

⁵ Alarming research on student poverty @ NUS Scotland (nus-scotland.org.uk)

⁶ £400 Energy Bills Support Scheme payment; £650 Cost of Living payment for those on means-tested benefits; £300 Pensioner Cost of Living Payment; 150 Disability Cost of Living Payment; £150 Council Tax rebate; £100 to households who are not able to receive support for their heating costs through the Energy Price Guarantee.

in contrast to the UK Government's 3.1%, but despite this additional protection, the spike in inflation means that the value of devolved benefits has also fallen in real terms, albeit by less than reserved benefits.

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 pressure⁷. 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.

Figures from the ONS Private Rental Index show that the annual increase in private rents across all tenants in Scotland has risen over recent months. In data from letting agents (noting that they will not have complete market coverage) for the latest quarter Apr-Jun 2022 compared with Apr-Jun 2021, Citylets have reported that advertised rents have increased by 15.1% in Edinburgh, 13.0% in Glasgow, and 4.4% in Aberdeen. Rightmove have reported that advertised rents in Scotland have increased by 12.5% over the same time period.⁸

Information from the Scottish Housing Regulator highlights that social landlords in Scotland applied an average rent increase in April 2022 that was below the CPI inflation rate of 9% at that time, with some not increasing rents at all. Social landlords rent increases for 2022/23 were 2.98% on average, with increases ranging from 0% to 6%, an increase of 1.8% on the previous year.

Over the last six years, the average compound increase in rents has been 16.2%, equating to an annualised rate of 2.5%. Social landlords have made significant efforts to minimise the level of rent increases, especially in the last couple of years, with many applying increases below those assumed in their business plans.

The 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%) on last year and since 2011/12, average rents have risen by 61% overall⁹.

With respect to the issue of how often rents are increased, a variety of anecdotal and survey evidence suggests that a significant share of sitting tenants within the private rented sector do not experience a rent increase each year. A survey

⁷ In 2021/22 there were 18,675 students in receipt of an independent students bursary, totalling £17.6 million. As well as 28,730 students in receipt of a young student's bursary, totalling £43.2 million. While in 2020/21, there were 10,675 instances of students receiving assistance through the discretionary funds, totalling £13.3 million.

⁸ Sourced from [ONS Private Rental Index results to July 2022](#), [Citylets Quarterly Reports](#), and [Rightmove Rental Price Tracker](#).

⁹ [Accommodation Costs Survey 2021 \(Unipol and NUS\)](#).

undertaken for the Nationwide RentBetter Project found that over half¹⁰ of tenants responding to the survey had not experienced a rent increase during their current tenancy. A survey of landlords and letting agents undertaken for the RentBetter project reported that of those responding to the survey, around half reported never increasing rents or only on change of tenancy.¹¹ Of the remainder, only around a third reported that they increased rents each year, and for landlords who increase rents less frequently than each year, only a portion of their tenants will experience a rent increase in any given year. Recent experience therefore suggests that, on average, most tenants would not expect a rent increase over the 6 months period ahead. However, as noted above the cost crisis creates a less predictable environment in which rent increases may be more likely and would be much harder for tenants to meet.

Recent research¹² carried out in 2021/2022 with predominantly low-income tenants in the PRS in Scotland, undertaken by researchers on behalf of the Joseph Rowntree Foundation and the Scottish Government, found tenants' difficulties in accessing suitable accommodation centre around affordability, competition for limited properties and, for those on low incomes, additional barriers in passing pre-tenancy checks alongside the unwillingness of some landlords to rent to people in receipt of benefits.

This research also found that many respondents reported worry about spending significant proportions of their income on rent. 44% of low income renters surveyed worry about being able to pay their rent and more than half worry about being able to afford other essentials in future.¹³ People on Universal Credit (US) / Local Housing Allowance (LHA), women, people with disabilities and people with children are more likely to report worry and cut backs on essential spending.

The Scottish Government is satisfied that there is a strong justification for the interventions included in the Bill, and is satisfied that all of the measures contained in the Bill are appropriate and proportionate. However, it recognises that while these interventions offer the required support for tenants, it will also have an impact on landlords and as such safeguards for landlords have been considered as part of the development of the emergency measures.

There is recognition that the measures may have wider consequences for the housing system, housing support and supply of homes for rent in Scotland, therefore, the measures are time limited and their ongoing necessity will be kept under review by Ministers. Ministers are also reserving powers to modify the measures should that be necessary.

¹⁰ 59% of tenants reported not having experienced an increase, and this increases to 63% if the "no answers" are excluded.

¹¹ Around 17% reported never increasing rents and around 32% reported increasing rent only when the tenancy changes.

¹² "What do lower income tenants in Scotland's private rented sector want to see from a new Rented Sector? Summary report" September 2022 (Unpublished – in press)

¹³ Living in Scotland's private rented sector: a bespoke survey of renter's experiences" September 2022 (Unpublished – in press)

Consultation

Within Government

There has been consultation within Scottish Government Directorates including Better Homes, More Homes, Higher Education and Science, Housing and Communities Analytical Division as well as with the Scottish Housing Regulator in order to inform the development of the Bill. The provisions contained within this Bill take account those discussions.

In addition, we have worked with Scottish Courts Services and the First Tier Tribunal (Housing and Property Chamber) and Rent Service Scotland on delivery of the changes to support delivery of the measures.

Public Consultation

Given the need to progress the measures in this Bill urgently, 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. In addition, the 'New Deal for Tenants – Draft Strategy Consultation' undertaken earlier in the year has provided some insight into people's general views around the principle of rent controls (albeit in a different context) and the concerns of tenants, landlords and other stakeholders. Furthermore, consideration has been taken of the consultation on the Coronavirus Recovery and Reform (Scotland) Bill.

Business

In order to respond as quickly as possible, formal consultation with business has not been undertaken although discussions have taken place with a range of key business stakeholders including social and private landlord representative bodies, letting agent representatives, judicial bodies, University accommodation providers and private student accommodation providers. Engagement with these bodies will continue as part of ongoing review of the measures once they come into force.

Options

Option 1: Take no legislative action

Option 2: Minimum Safeguards

Option 3: Balanced safeguards

Sectors and groups affected by all three options

The groups and sectors affected will include, but are not restricted to:

- Tenants in the private and social sectors
- Student tenants in college and university halls of residence and PBSA
- Private and social landlords
- College and University student accommodation providers and providers of Purpose Built Student Accommodation (PBSA)
- Residential investors (including build to rent provision)

- Letting agents
- Scottish Courts and Tribunal Service (SCTS)
- Scottish Housing Regulator
- Sheriff Officers
- Rent Service Scotland
- Support organisations for housing and homelessness
- Local authorities

Option 1 – *Do nothing*

In this option, no new measures are introduced.

Benefits

Voluntary rent freezes have already been agreed by some landlords in the social rented sector over the recent years to support tenants with the impact of the Covid-19 pandemic. Local Authority Landlords and Registered Social Landlords have business plans which may include rent increases as part of their forecast and while Local Authority Landlords are likely to have greater resilience, for Registered Social Landlords, any additional new rent controls will impact their business planning.

Landlords in the private rented sector, both individuals and businesses, will be affected by the current economic environment and are likely to be facing higher costs. No action would potentially give them access to additional income through rent increases, some of which may be needed to offset the rising cost of providing the property (although there is some risk of landlords passing on increases in personal costs too).

Some landlords have told us that additional regulation may lead to landlords leaving the private rented sector. While it is difficult to map cause and effect to any one market intervention, the number of PRS properties to rent has grown alongside increased regulation since devolution, from 120,000 properties in 1999 to a peak of 370,000 in 2016, with a decline to 340,000 in 2018 and 2019. In any event, if landlords were to leave the private rented sector, this would further exacerbate supply issues. In addition, the rented sector is still recovering from the effects of Covid measures that further risk contraction in available private rented sector properties which may put additional pressure on social rented properties as a result. Recent events in the financial markets following the UK Government's fiscal event may result in increases in interest rates faced by landlords and increase the relative impact of a freeze. This option has a lower risk in respect of these issues.

Tenants would continue to have existing protections under the private residential tenancy and be able to make a referral to a Rent Officer (Rent Service Scotland) to determine whether an increase is reasonable but only with regard to open market rent. In addition, tenants' can't be asked to leave for no reason and landlords must go through the legal process to end a tenancy with failure to do so being a criminal offence.

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. The majority

of providers have advised that this is the case and that they have little appetite to change this. This option acknowledges this, not imposing any changes on providers.

Costs

Tenants would be exposed to rising costs that may become unsustainable and there may be health and wellbeing impacts for those individuals, and to the NHS, associated with losing their homes and being without secure accommodation at this time. In addition, there is a risk that if people lose their homes they will find it difficult to maintain or secure employment, worsening their situation and putting further pressure and cost onto public services.

If no action was taken to support tenants, it is probable that rents will increase for a proportion of existing tenants and rent arrears would be more likely to increase. If rent or rent arrears increase to levels where tenants need to move or are evicted, this could lead to an increased demand for homelessness and housing support. For students, whether in mainstream PRS, halls or PBSA, losing their accommodation could prevent them from continuing with their studies.

The uncertainty of the next 6 months (and potentially beyond) leaves tenants with already more precarious financial circumstances facing additional rising costs through which existing mechanisms to navigate are only partially-equipped.

Recent developments in the financial markets may lead to landlords attempting to pass on higher borrowing costs which would exacerbate affordability issues

Conclusion

The Scottish Government does not consider this to be an appropriate option given the current pressures on household incomes. In addition, existing evidence demonstrates those who rent their home are more likely to have lower household incomes, higher levels of poverty and to be financially vulnerable than those in other tenures.

Option 2 – *Minimal safeguards*

Introduce a rent freeze and moratorium on evictions, increased penalties for unlawful evictions and powers to change rent adjudication with the only safeguard for landlords being the ability to enforce eviction action due to antisocial behaviour, criminality, tenant abandonment and/or where the property is to be sold by a lender.

Benefits

This option offers comprehensive protection for tenants, with clear and understandable messaging that there are almost no circumstances where tenants can be evicted or rents can be increased.

Tenants will continue to be expected to pay their rents and any debt accrued will continue to be owed.

Costs

This option includes minimal safeguards for landlords and therefore does not reflect the best balance of interests between landlords and tenants; with potential detriment to both landlords and tenants. Under this scenario if tenants choose not to, or are unable to, pay their rent, landlords could be trapped in loss making leases as enforcing an eviction order due to rent arrears would not be possible. In addition, rental debt follows a tenant after the tenancy ends and staying in an unsustainable tenancy could result in significant debt and impact on their ability to secure a rental property in the future.

If substantial numbers of tenants do not pay their rent, the supply of and investment in housing in the private rented sector and the social rented sector could be at risk without appropriate and proportionate safeguards for landlords.

Conclusion

The Scottish Government considers that this option does not represent a proportionate and balanced approach. If a blanket rent freeze were to be applied - combined with an evictions moratorium with no safeguards in respect of financial hardship being faced by landlords – then some landlords could find themselves trapped in loss-making leases and unable to meet the costs of offering the property for rent. The Scottish Government believes that such an approach would not strike a fair balance of rights and may also impact negatively on tenants.

Option 3 – Balanced Safeguards – the preferred option (reasoning set out below)

Immediately introduce a 0% rent cap and moratorium on evictions across the rented sector with a number of safeguards for landlords. These safeguards will include some limited circumstances where evictions can continue and allow rent increases in relation to limited prescribed costs. In addition, there will be increases in penalties for unlawful evictions and powers to change rent adjudication.

The Bill is being introduced as soon as possible in order to support tenants during the cost of living crisis, with the emergency measures initially in force until 31st March 2023 which provides certainty over that period. There will be a power to modify the measures should it be necessary and proportionate to do so at any time.

There will be the option to extend the measures for 2 further periods of 6 months with Parliamentary approval which provides surety that the measures are time bound and cannot be maintained without proper scrutiny. In addition, the Bill contains provisions that require the measures to be reviewed, and reported on, every 3 months and for the Scottish Government to move to immediately expire any provision that is no longer necessary. Together these measures provide certainty for landlords on the overall duration that the restrictions in the Bill can be in force and that they will be kept under review to reflect changing circumstances.

The emergency measures will:

i) set a cap on the maximum level of increase in rent in the private and social rented sector and for college and university halls of residence and PBSA. The cap will be set at zero for the period to 31st March 2023 but this can be varied whilst

the emergency measures are in force, to respond to changes in wider economic circumstances. The cap will apply to any rent increase proposed on or after 6th September 2022. For the period the measures are in force landlords will not be able to increase rents for existing tenancies, other than in line with the cap, but rents can be re-set between tenancies.

The following safeguards are included in the emergency rent cap measures for PRS landlords:

- While the general presumption is for a freeze, landlords will have a means to apply to a rent officer to increase rent in light of an increase in specific prescribed costs related to offering the property for rent
- Where that is granted, the permitted increase for prescribed costs will be capped at 50% of the increase in costs or 3% of the existing rent level whichever is lower.
- Where an increase in rent on the basis of prescribed costs is approved, there will be a route of appeal for landlords and tenants to the First Tier Tribunal where the rent officer's decision is disputed.

ii) prevent enforcement action in respect of evictions for six months in the private and social rented sector, college and university halls of residence and PBSA.

The following safeguards are included in the moratorium on evictions:

- The maximum period that any individual enforcement action will be prevented for will be 6 months;
- The measures will allow eviction on the grounds of anti-social behaviour, criminality, abandonment and where the property is to be sold by a lender to continue;
- 3 new grounds of eviction will be created to support landlords where there are substantial rent arrears, or where the landlord needs to sell or live in the let property due to financial hardship¹⁴;
- Eviction orders granted in eviction proceedings raised before the legislation comes into force and where the eviction notice was served before the announcement on 6th September, will not be caught by the moratorium and will still be able to be enforced.

iii) increased penalties for unlawful evictions

These measures change the way civil damages can be awarded for unlawful eviction. This is intended to discourage landlords from carrying out such evictions and will benefit tenants who have been subject to this. It is not considered that any safeguards are required as landlords who conduct evictions lawfully will not be affected.

iv) provide additional powers to temporarily reform rent adjudication.

¹⁴ 1. 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); 2. Where a landlord intends to live in the let property to alleviate financial hardship (private sector only); and 3. Substantial rent arrears (social and private sectors).

These measures will allow Scottish Ministers to temporarily reform the rent adjudication process to support the transition out of the emergency measures. Any regulations made under this power will be subject to consultation and will be made through the affirmative parliamentary procedure, ensuring that appropriate scrutiny is given to the necessity for any temporary changes proposed. It is considered that this provides a significant safeguard in terms of this measure.

Further details about the specific safeguards and approaches are set out in the Policy Memorandum.

Costs and Benefits Analysis

Rent Restrictions with balanced Safeguards

The potential costs that landlords could face has been calculated using scenario analysis, where a number of scenarios have been forecast to provide a range of potential costs to all landlords¹⁵.

The range of costs to all PRS landlords depends on a variety of factors but there are two key components,

- the percentage of tenancies that could face a rent rise over the period the measures are in force; and
- the percentage increase in rent prices over the initial period.

Evidence¹⁶ suggests that half of landlords do not increase rents for existing tenants. Of the remainder, around 15% reported that they increased rents each year. For landlords who increase rents less frequently than each year, only a portion of their tenants will experience a rent increase in any given year. We have assumed an estimate of 50% of landlords increasing rents for existing tenants in a given year, equivalent to 25% of existing tenants, who have been in their properties for more than 1 year, who could face a rent increase during the initial 6 month period¹⁷ and with behavioural change as a result of the current economic situation this could be between 15% and 35% of existing private rented tenants.

It has been assumed that those in the PRS could face a wide range of rent increases, from 2.5% to 10% annually.¹⁸

Excluding the 35% of PRS properties where the tenant has been living for less than a year, if about a quarter of the rest (around 220,000) would experience a

¹⁵ The op end scenarios analyse the potential costs to landlords over the 6 month period to March 2023 only and focus on the PRS only.

¹⁶ Nationwide Rentbetter survey of landlords and letting agents – 2020 Published by Indigo House

¹⁷ If it's assumed that the starting dates of tenancies are approximately equally distributed over the course of a year, this would suggest that less than a quarter of sitting tenants would experience a rent increase over a 6-month period. In the current environment, with high levels of inflation and rents rising, it is plausible that landlords look to increase rents within tenancy at a greater rate than in the past and perhaps sooner than they would otherwise done so. Our estimate accounts for this potential behavioural change.

¹⁸ This range has been informed by letting agent rental market forecasts (Rightmove forecast that from Q2 2022 to Q4 2022, the average new let rental market price will increase by 8%) and the current level of inflation (an annual 9.9% to August 2022).

rent increase during the initial period then the total cost to private landlords could range from £6,000,000 to £23,000,000, based on an average 2-bedroom rent of £693 in 2021, rolled forward to August 2022 using the ONS private rental index¹⁹, providing a monthly rent of £722. If this figure is converted to a per property figure, this equals to an average of £110 to £420 across the 55,000 properties that may have experienced a rent increase. Using the wider range of existing tenancies that could face a rent rise (15% - 35%), the total cost to landlords for an initial 6 month freeze range from £3,500,000 to £32,500,000. The total rental income for private landlords is estimated to be around £3 billion a year.

In recognition of potential increased costs to landlords and to support them to continue to offer properties landlords will be able to apply to a Rent Officer to increase rent in order to reflect an increase in limited, prescribed costs related to offering the property for rent. This will allow rents to increase up to a maximum of either 50% of the increase in prescribed costs or 3% of the total rent (whichever is lower) where the landlord can evidence that they have faced an increase in the prescribed costs. If the cap rises above 0% landlords will be able to increase rents in line with the rent cap.

It is recognised that a rent freeze could reduce the incentive to invest in rented property for new or existing landlords. It may also limit landlords' ability to invest in energy efficiency and improvements for existing rented properties. However, given the relatively short initial period, these impacts may be relatively modest as the loss of income will only be the foregone rent increase over this period or less depending on if or when rent may otherwise have been able to increase. There is also funding and advice available to PRS landlords to support them to improve energy and carbon efficiency of properties through the Homes Energy Scotland's private sector landlord advice scheme²⁰ and landlord loans.²¹ It has been suggested that lenders may be nervous of increased regulatory risk as a result of this intervention and increase the cost of borrowing or rebalance the amount they are prepared to lend to the sector in Scotland.

If rent caps were extended beyond the initial period, then the impacts on landlords' ability to invest could become more significant as an increasing share of rents would be at a level below what they otherwise may have been. This may be in the context of high levels of inflation, particularly in the construction sector, results in higher costs for routine repairs and maintenance and also improvement costs, such as energy efficiency. While inflation may be the more significant of these two factors, this, might result in landlords being less able to afford to invest in the property. The impact will however depend on future trends in inflation, and the level of rent increase permitted, and can be considered at the review point.

If the cost of maintaining a property becomes unaffordable and there is uncertainty around the duration of the measures and the potential timeline for being able to raise rent then this may result in landlords considering whether it is in their best interests to leave the sector. This could impact on the availability of rented property and increase rents in the long-term.

¹⁹ [Index of Private Housing Rental Prices, UK - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

²⁰ [Home Energy Scotland private sector landlord advice](#)

²¹ [Private Rented Sector Landlord Loan: overview · Home Energy Scotland](#)

There may also be a potential impact on landlords' health and wellbeing as the financial stresses, outlined for tenants above, will also apply to some landlords in the private rented sector who rely on rents to support their income. The safeguards included in the Bill will support landlords where there is an increase in their costs.

In relation to social landlords, the Scottish Housing Regulator have estimated that an absolute rent freeze in 2023/24 would remove at least £50 million in income in that year from the business plans of Registered Social Landlords (this does not cover impacts on Local Authority landlords). Lower rents and lower income will reduce the available funding for maintenance, building improvements for energy efficiency and there is a risk of how this will impact stock supply in the medium to long term. The sector funds a significant amount of its investment by borrowing against future rents. Lenders have viewed it as low risk and set interest rates accordingly. Figures from the regulator identify that the sector is currently carrying £6.4 billion of debt. If this perception changes there is a risk that borrowing costs will rise. Each 0.1 percentage point increase in the cost of servicing the sectors outstanding debt of £6.4 billion by £6.4 million per annum²² Changes in borrowing costs will impact as debt is refinanced or where lending covenants are breached.

The Scottish Government will work with the social sector on whether a cap on the sector from 1 April 2023 (should the measures be extended beyond 31 March 2023) is necessary and if it is at what level and provide decisions as early as possible. A Short Life Task & Finish group including SFHA, GWSF, ALACHO, COSLA, Tennant organisations and the Scottish Housing Regulator and others from the Sector will be established to support this. Scottish Government will also work with the sector to establish if there are any additional safeguards that should be put in place.

In respect of college and university halls of residence and PBSA, given the difference in how tenancies in this sector are structured, the provisions will have minimal impact for academic year 2022/23. They will provide certainty and reassurance to students that their rents will not increase until 31 March 2023. If the measures are extended beyond 31 March, it is likely providers will factor in inflationary driven cost increases in determining rent levels for academic year 2023/24 which could result in higher rates for students.

The Scottish Government is committed to developing a student accommodation strategy for Scotland informed in part by the PBSA review which is being taken forward in parallel with the New Deal for Tenants. This will address affordability and improving standards across the private rented sector. The review is being driven forward by the PBSA review group which includes sector representatives.

General points

- The rent restrictions could discourage tenants from moving as they may be subject to an increased rent if they do because landlords tend to increase rents at the point of tenant turnover, so if a tenant moves, they would likely experience an

²² [Social Housing - Home - Scottish regulator report signals high investor confidence in providers](#)

increase in rent for a comparable property. Not being able to move for work, caring or social reasons could be detrimental, although over the initial period this impact may not be substantial.

- Landlords may have already issued rent increases in good faith and in accordance with the existing law in order to manage their costs prior to the Government announcement on 6 September and those increases will not be affected. However, those who were eligible only after this point (rent increases being limited to once a year) or those who had voluntarily delayed issuing such a notice will be disadvantaged.

Evictions with balanced safeguards

Evidence reviews and research studies undertaken in the UK (including Scotland)²³ suggest that feelings of insecurity related to tenure have impacts on tenants' health and wellbeing. These studies conclude that the negative impacts of housing insecurity are complex and affect tenants in several different ways including by causing financial distress (including around potential expenses related to moving); causing concerns over finding a new property; making it difficult for tenants to feel at home and connected to their place when insecure; and by causing stress over the potential of being separated from local support networks. An evictions moratorium, except in specified circumstances, offers additional security to tenants in a challenging time.

PRS landlords seeking to repossess a property due to rent arrears could incur additional costs due to the extended period that a tenant can hold rent arrears without being evicted. The cumulative worth of rent arrears that a tenant must hold before being evicted will be 6 months.

Data from the First Tier Tribunal (FTT) from 2022 (up to August) shows that in 90% of eviction cases for rent arrears, 6 months' worth of rent arrears had been accrued at the point the eviction is granted. For the remaining 10% of cases an average of 4 months' worth of arrears had been accrued. However, given the intention to create a new ground for eviction for substantial rent arrears (6 months or more), it is possible that landlord and tenant behaviour or actions may change making predicting the impact difficult. For example, landlords may wait until 6 months of arrears have been reached before starting FTT proceedings or tenants may seek to keep arrears below 6 months in total at the point the FTT make their determination.

The average monthly rent for a PRS landlord of £693 (for a 2-bed property) in 2021 can be rolled forward to August 2022 using the ONS calculated private rental market index²⁴ giving a more up-to-date rent figure of £722. This figure would be the average additional debt to landlords for every month that the enforcement is delayed (up to a 6 month maximum). How long that delay could be is entirely

²³ [Health and wellbeing in the private rented sector \(UK Collaborative Centre for Housing Evidence; 'Generation rent' and the emotions of private renting \(K. McKee, AM. Soaita, J. Hoolachan\) ; Health and wellbeing in the private rented sector Part 2 \(UK collaborative Centre for Housing Evidence.](#)

²⁴ Index of Private Housing Rental Price, UK – Office for National Statistics (ons.gov.uk)

dependent on individual circumstances, actions of landlord and tenants and the time it takes to process eviction applications on rent arrears by the FTT.

It is difficult to forecast the number of evictions that could take place as the numbers will be affected by the ongoing uncertainty caused by the cost crisis, which could lead to tenants being less likely to pay their rent and therefore increase the probability of an eviction for rent arrears. In 2019 (pre-Covid) there were 264 rent arrear evictions therefore assuming 6 months this would be 132. This figure is being used as it relates to evictions in 2019 but we do not know what the total number of evictions will be over the next 6 months given the different current social and economic situation. .

One example of potential impact could be this: without the emergency legislation a landlord would have to wait for 3 consecutive months of rent arrears before giving the tenant 28 days' notice of the intention to evict before the FTT would consider it. Under the new legislation if a landlord waits until 6 months of arrears (although this is not necessary) has been accrued this would mean an addition 2 months arrears before seeking the action (£1444 average²⁵).

If this was to be applied to all rent arrear evictions over 6 months (using the 2019 data set out above) this could lead to an overall cost of around £0.2m²⁶. However, there are many reasons why this figure could be substantially higher or lower depending on multiple factors including tenant and landlord actions, numbers of cases and economic changes. This provides one possible scenario and should not be considered an estimate of costs to the sector. As safeguards in the legislation are being put in place to both ensure any delay in individual eviction enforcement does not exceed 6 months and to ensure cases with substantial rent arrears (over 6 months or more) will not be delayed, there are multiple scenarios and cost implications depending on individual circumstances. Therefore it is not possible to estimate the cost to the sector with any degree of certainty.

For social landlords seeking to repossess a property due to rent arrears, there are likely to be cost implications for those landlords due to loss of income from unpaid rent. An average weekly rent for a social rented property was £85.36 in 2021/22. Therefore, where a tenant was unable or did not pay rent for a period of 6 months, a landlord based on the average weekly rent would lose £2,219 over this period. As per the Scottish Housing Regulator's National Report²⁷ published on 31 August 2022 - social landlords had total arrears of rent of £169,626,857 at 31 March 2022. This is 6.3% of total rent due, an increase from 6.1% in the previous year, and the highest level of arrears reported to the Scottish Housing Regulator since the introduction of the Scottish Social Housing Charter in 2012.

In addition Registered Social Landlords (RSLs) employ contractors to carry out maintenance and other essential services which are funded out of rental income. Loss of rental income could potentially affect an RSL's capacity to contract work and affect those jobs.

²⁵ £722 x 2 months.

²⁶ £1444 (rent accrued) x 132 (number of evictions in 6 months in 2019).

²⁷ [Scottish Housing Regulator publishes its National Report on the Scottish Social Housing Charter 2021/22 | Scottish Housing Regulator](#)

Responses to the Coronavirus Reform Bill consultation²⁸ on Tribunal Discretion and Pre-Action Protocols were mixed with some welcoming strengthened tenants' rights whilst others were concerned about the negative impact on private landlords and supply in the rented sector. In the New Deal for Tenants Consultation Analysis Report, the financial risk to landlords from rent control and increased protection for tenants was cited as a significant concern by respondents reflecting landlord perspectives, noting that landlords say they can suffer significant financial losses in relation to rent arrears and that ongoing barriers to evictions could be a significant deterrent to investors²⁹.

There are some recent indications that the demand-supply balance in the private rented sector has tightened recently, with data from letting agents suggesting a drop in the number of new listings and a fall in reported average time-to-lets, alongside separate trends in a reduction in landlord registrations and increased numbers of eviction cases where the landlord intends to sell. The introduction of the emergency measures may accelerate in these trends when the measures are lifted.

In terms of college and university halls of residence and PBSA, contracts tend to be for an academic year, typically September to June. Students tend to vacate properties at the start of the summer and in many cases those properties are then let for commercial purposes for the summer months (for example around the Edinburgh Festival). Many first year undergraduates move out of this type of accommodation after their first year, into the PRS.

Given that the measures do not apply between tenancies, even if the provisions extended beyond 31 March 2023, providers would be free to set rents for academic year 2023/24, taking account of energy costs and construction sector inflation, at a higher level than for the 2022/23 academic year. However, the measures will provide assurance to current renters that there will be no in rent increases within their current contract while the measures are in place.

The last significant intervention in this market was the 28-day notice period brought in as part of the Coronavirus (Scotland) (No.2) Act 2020. Earlier this year, through consultation on the operation of the notice to leave period, providers highlighted the significant costs to them of the government's intervention in bringing the 28-day notice period into the PBSA sector.

NUS Scotland research has highlighted the already challenging situation faced by students³⁰ and a report by the Mental Health Foundation highlighted the relationship between poverty and financial worries and mental health issues.³¹ These measures will provide assurance and certainty with regard to students in

²⁸ [coronavirus-recovery-reform-scotland-bill-consultation-analysis.pdf](#)

²⁹ Internal analysis of published eviction decisions in 2022 (Jan to August) by the First-tier Tribunal for Scotland suggests the median level of rent arrears for those evicted due to rent arrears totalled £6,800, whilst the mean was £7,600.

³⁰ <https://www.nus-scotland.org.uk/articles/alarming-research-on-student-poverty>

³¹ <https://www.mentalhealth.org.uk/sites/default/files/2022-06/MHF-Thriving-Learners-Report-Executive-Summary.pdf>

college and university halls of residence and PBSA around in year tenancy rent increases.

General Point

It should be noted that the moratorium on evictions will impact on the Sheriff Officer profession. This is a small sector with less than 150 commissioned officers in Scotland. A large proportion of their work is in relation to the process of recovering property and ensuring that the eviction process is fair and lawful. The legislation aims to reduce the number of evictions enforced and this will impact Sheriff Officers. However, the enforcement of eviction orders will continue where the order is granted in eviction proceedings raised before the legislation comes into force and where the eviction notice was served before the announcement on 6th September will continue. Eviction orders granted in relation to specified grounds of eviction will still be able to be enforced, for example where a landlord needs to sell the property to alleviate financial hardship, or where there are substantial rent arrears.

Unlawful Evictions

Improving the way compensation can be awarded and the method of calculating the level of compensation would reduce barriers for tenants to challenge an unlawful eviction and receive compensation where an unlawful eviction is found to have occurred. This would also make it more expensive and risky for a landlord to pursue an unlawful eviction, potentially acting as a strong disincentive. As the action is already unlawful there should be no impact for businesses and individual landlords who continue to follow legal requirements.

Rent Adjudication

The power to temporarily change rent adjudication processes is being made available to support transition away from the current emergency measures. At this time there is no commitment as to the use of the measures but the impacts of any changes would be fully considered and subject to consultation if they are to be used.

Scottish Firms Impact Test

As part of our engagement to develop the Bill, the Scottish Government have held discussions with a number of stakeholders. This focused on understanding the impact and difficulties from the measures on the for private and social landlords in Scotland.

We have committed to work in partnership with the social rented sector to determine the best way forwards, should the measures be extended. This will focused on monitoring over the coming months to determine what action will be appropriate up to and beyond 31 March 2023 and discussing the impacts of different options on the sector.

Institutional investors favour certainty and there will be further engagement with this sector as the detail of the emergency legislation is published and as part of the ongoing regular review of the provisions.

UK Finance indicated some concern about lender confidence. By allowing evictions for lenders evicting to sell as a result of a mortgage repossession we seek to maintain the confidence of lenders. Very few evictions of this sort take place and in this case the landlord is likely to be financially vulnerable. Internal analysis of published eviction decisions in 2022 (Jan to August) by the First-tier Tribunal for Scotland suggests that there were 3 evictions on the basis of ground 2, property to be sold by lender.

Competition Assessment

The introduction of the measures in the Bill is likely to affect a proportion of private and social landlords although the impact will vary depending upon individual circumstances. The legislation should not alter the ability of new landlords to compete in the rental market as it only applies to in-tenancy rent increases and not between tenancy or new tenancy rent setting.

However, landlords in both the private and social rented sectors have indicated concern that these measures could lead to a reduction in the overall supply of rented accommodation across both sectors. This in turn could lead to a decrease in landlord competition and increased rents in the long term.

Will the measure directly or indirectly limit the number or range of suppliers?

There is some anecdotal evidence that landlords in the private rented sector are considering vacating the market, potentially reducing the supply of properties although the extent to which there is a net impact on supply will depend on whether exits are replaced with new entrants. This view was also expressed in response to the [consultation on the Coronavirus \(Recovery and Reform\) \(Scotland\) Bill](#) on proposed amendments to evictions where landlords noted they may leave the Private Rented Sector due to the increased uncertainty on regulation.

There is also some evidence and stakeholder feedback that investors in build to rent are pausing existing projects because of concern about market conditions and Scottish Government policy in this area. For example, reports that Springfield Properties has put all long-term fixed price affordable housing contracts on hold and temporarily suspended its expansion into the private rented sector. However, that was prior to the mitigations being finalised and the statement made by Springfield Properties also expressed confidence about the viability of the market. Scottish Government will work with landlord organisations throughout the period of this legislation.

Prior to 1 April 2023, the rent cap will have a limited impact on the social rented sector as rents are set once a year. However, there is some concern from social sector stakeholders that a 0% cap continuing after March 2023 will reduce rental income for Registered Social Landlords, with business plans going into high risk and a significant risk that some RSLs may fail, which would impact on tenants. In addition, if significant numbers of tenants do not pay rent and cannot be evicted this will put pressure on budgets, and the future rents of other tenants. The

Scottish Government acknowledges these concerns and will work with the sector to understand the potential impacts well ahead of any decision about the future of the cap.

The number of landlords catering for students in the private rented sector is decreasing in some areas and a reduction in available properties in the private rented sector would create additional pressure for University and College halls of residence and PBSA. PBSA providers operate UK wide and PBSA is an attractive market for UK and overseas investors. It is difficult to predict what the impact of the provisions may be on the ongoing attractiveness for investment in this sector but certainty around costs and legislative requirements are likely to be a key factor in investment decisions.

Will the measure limit the ability of suppliers to compete?

If tenants in the private sector do not pay rent and landlords cannot bring the tenancy to an end without significant delay and seek alternative tenants that could limit the ability for landlords to compete and invest in the sector further. It will depend on the individual circumstances of the landlords. In the social sector, it is likely to be RSLs who may struggle to develop the organisation if their ability to raise funds is limited.

In the college and university halls and PBSA sector, in the short term, we do not anticipate any significant impact as all providers will be subject to the same legislative provisions. However, given the investment driven nature of this sector we anticipate potential hesitancy should the provisions be extended over a longer period. This could result in lower investment levels, potential constraints on supply and resulting reductions in competition and competitiveness within the sector. This would also entail additional pressures on the private rented sector which is already subject to high demand and low supply.

However, the legislation will be applied equally to all landlords in both the social and private rented sectors and providers of student accommodation.

Will the measure limit suppliers' incentives to compete vigorously?

Potentially – PRS landlord stakeholders have argued that there may be a reduction in interest in continuing to be a landlord as a result of these and other Government measures and due to external factors such as the buoyancy of the housing market. They suggest that the risks to landlords will outweigh the incentives to grow their portfolios.

Will the measure limit the choices and information available to consumers?

The private rented sector has grown by more than 2 and a half times from 120,000 to 340,000 households over the last 20 years, peaking at 370,000 households in 2016. There may be a reduced number of properties available in the private rented sector if landlords chose to sell their properties (although the buyer may, of course, continue to rent it out) or exit the market and just retain their property as a second home or holiday rental, although there are also additional

requirements for short-term lets. Furthermore, landlords who remain may seek to reduce costs in response to the legislation measures impacting on the quality of PRS properties as a result. There may also be a change in landlord behaviour in the longer term as landlords move to raising rents more regularly due to uncertainty about future unexpected interventions or long term rent controls.

There may be impacts in the wider housing sector including greater caution by investors towards build to rent properties. This could be further impacted by restrained investment in housebuilding in the social rented sector in the event of longer term use of these measures which would likely impact on the people on lowest incomes within the private rented sector who can no longer compete with other renters.

Information about the measures will be available on the Scottish Government website and via advice agencies such as Shelter Scotland and Citizens Advice Scotland. In addition Programme for Government this year included a commitment to a tenants' rights campaign, showcasing existing rights and ensuring tenants are aware, for example, of their ability to challenge rent rises. The intention is for tenants' rights to form part of our wider cost of living campaign.

Whilst some of the communications work will have an online focus, there are also plans to raise awareness by other routes, to ensure that communities and individuals who have limited internet access will still have information on their rights.

Consumer Assessment

The Scottish Government definition of a consumer is "anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future". In the context of the rental sector, the consumer is the tenant. However, landlords could also be the consumer of services provided by letting agents.

Does the policy affect the quality, availability or price of any goods or services in a market?

The price and availability of properties to rent could be affected in the longer term if predictions of a contraction of supply come to fruition. During the period the measures are in force, existing tenants will have certainty over rent to be paid within their existing tenancy. However, where there is a new tenancy, the landlord will be able to set the rent, which will reflect the market conditions and would be impacted by a reduction in both private and social rented supply.

PBSA plays an important role in addressing student housing and certainty around costs and requirements is an important factor in investment decisions and the measures could impact on this. Again, if there is a contraction in supply, and a corresponding contraction in supply of private sector homes for students, it will impact on the cost and quality of accommodation available to students.

Does the policy affect the essential services market, such as energy or water?

No.

Does the policy involve storage or increased use of consumer data?

No.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

Potentially – during the moratorium on evictions in the Covid-19 pandemic there were indications of an increase in illegal evictions, which is why measures have been taken to temporarily increase the penalties for this within these emergency measures.

In addition, if there is a reduction in the supply it is possible that tenants pay additional money or accept lower standard accommodation for fear of not being able to secure an alternative. They may also fear a poor relationship with their landlord. The proposals have sought to limit the potential for these risks to arise but it would most likely impact those who are the least financially stable. This risk is also likely to be low for the initial period but will increase if the measures are extended.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

No

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

No.

Test run of business forms

The Bill will not introduce any new statutory forms.

Digital Impact Test

Changes in terms of processes are not anticipated in the period when the requirements will be in place. A Data Protection Impact Assessment has been completed as part of the Bill development process.

Legal Aid Impact Test

The Bill does not introduce any new processes or rights to access to justice which the Scottish Government anticipates could require access to legal aid or incur expenditure from the legal aid fund. Due to the time restrictions, the Scottish Legal Aid Board have not been consulted on this Bill.

Enforcement, sanctions and monitoring

Landlords are required to follow the correct legal procedure in order to increase rents and tenants have a legal right to seek a determination from a Rent Officer in

respect of any rent increase notice issued by their landlord. The right of tenants to seek a determination will remain in place, in an amended form, during the period the emergency measures are in place.

Private residential landlords must follow the correct legal procedures for ending a tenancy and not doing so is a criminal offence and enforced by Police Scotland. The First-tier Tribunal For Scotland (Housing and Property Chamber) and Sheriff Court for social housing have a role in ensuring landlords comply with all their legal requirements before granting a repossession order.

The Scottish Government undertakes monitoring and evaluation of repossession cases that come before the First-Tier Tribunal for Scotland (Housing and Property Chamber). The impact of these proposed measures on the outcome of applications for repossession will be monitored through the publically reported decisions of the Tribunal.

Social landlords are required to report their performance annually to the Scottish Housing Regulator, this includes the number of notices served and the number of repossessions. This will allow the impact of these provisions to be monitored.

In student halls and PBSA landlords tend to work with students to arrange a payment plan to support them where rent arrears have accumulated rather than pursue an eviction. If a landlord in student halls or PBSA attempted to apply an in-tenancy rent increase contrary to the legislation, tenants will not be liable to pay the additional sums requested.

The Bill commits to a review every three months to measure the impact of the legislation and allows for the restrictions to end earlier than the initial six month period if they are no longer necessary.

Implementation and delivery plan

The measures, where required, will be supported by guidance that provides information to support those with a role in meeting the requirements.

Post-implementation review

The emergency measures are temporary and will be under review. The measures cannot last for longer than six months without Parliamentary approval. The statutory review process will allow for regular data review and analysis and where measures are not seen to be appropriate or proportionate they can be terminated early.

The intention is for the rent cap to be set at 0% initially and remain at that level until 31 March 2023, however, Scottish Ministers will keep the rent cap under review and will have flexibility in setting the level of the cap.

Scottish Ministers are aware of the wider potential impact on the housing sector and will take into account the views of those affected to ensure the measures remain appropriate and proportionate.

Summary and recommendation

Option 3 to introduce emergency legislation with balanced safeguards is recommended as it offers protection to tenants who may be more vulnerable to the impact of the cost crisis. The Scottish Government considers that the interests of landlords and tenants have been appropriately and proportionately balanced with this option, particularly as the Bill contains a range of safeguards designed to recognise that there are also impacts on landlords.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed:



Date: 3 October

Minister's name Catriona MacKean

Minister's title Deputy Director, Better Homes

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