

Cost of Living (Tenant Protection) (Scotland) Bill

Equality Impact Assessment – Results

October 2022

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Purpose and intended effect

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

1. Protect tenants by stabilising their housing costs;
2. Where possible, during the cost crisis, reduce impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless by giving them more time to find alternative accommodation; and
3. Seek to avoid tenants being evicted from the 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 three-monthly reporting requirement will be included in the legislation, to demonstrate the need for provisions to either continue or expire, where appropriate, based on evidence at the relevant time.

Directorate for Local Government and Housing:
Better Homes - Housing Services and Rented Sector Reform Unit

Executive summary

On 6 September 2022, the Programme for Government (PfG) committed to a suite of emergency measures in response to the cost crisis to protect tenants by freezing rents and imposing a moratorium on evictions until at least 31 March 2023.

This emergency legislation will offer protection to tenants in the private and social rented sectors, college and university halls of residence and Purpose Built Student Accommodation (PBSA) in recognition that they are likely to be particularly impacted and vulnerable to the cost crisis, and that additional steps are needed to protect them. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics or on the wider equality duties. However, our assessment identified that the Bill is likely to have a direct positive impact on women, young people, single parents, ethnic minorities and on older or disabled people who may already be living in poverty, and struggling to meet their housing costs.

Households in the rented sector, especially those on lower incomes, in general pay more of their income on housing costs than owner occupiers, have higher rates of poverty including child poverty, and have less resilience to cope with financial shocks.

In response to the cost of living crisis, the UK Government has introduced a UK Energy Price Guarantee but there remains a substantial pressure on household budgets despite the mitigation package announced to date. This is anticipated to lead to a significant increase in fuel poverty, and extreme fuel poverty, with particularly high levels in the rented sector.

In addition to financial implications, there are broader impacts related to feeling secure in your home, including the effect on peoples' health and wellbeing, the ability to maintain employment and having a stable family life.

The Scottish Government is of the view that the temporary legislative changes are likely to positively impact across those with protected characteristics, as the measures will provide support to all tenants to prevent both rent rises and evictions in certain circumstances during this period of extraordinary economic challenge.

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.

The Scope of the EQIA

The EQIA considers the impact of introducing emergency legislation against the protected characteristics: age; disability; sex (including pregnancy and maternity); gender reassignment; sexual orientation; race; and religion or belief.

Given the need to progress the measures in this Bill urgently, no formal public consultation has taken place. To assess the likely impact on the protected characteristics, within the time available, each provision was assessed and evidence was gathered from research papers, anecdotal evidence at stakeholder meetings and responses to the New Deal for Tenants consultation.

Although time has not allowed for formal consultation with business, discussions have taken place with a range of key stakeholders including: social and private tenant and landlord representative bodies; letting agent representatives; judicial bodies; University accommodation providers; and private student accommodation providers.

Consideration of the protected characteristics and financial security of household in rented accommodation

This section sets out a summary of what we know about protected characteristics and financial insecurity of tenants by tenure type in Scotland.

Given the significant impact of the cost of living crisis on all households in Scotland, particularly those on the lowest incomes, this overall position is considered first and the following information on specific tenure types should be taken in this context. Data and evidence in many instances is drawn from surveys, in particular the 2019 Scottish Household Survey which predates both the Covid pandemic and the cost of living crisis – both of which have exacerbated existing inequalities.

We do not have parallel data on the profile and characteristics of landlords in Scotland. The Scottish Government does not have access to the data or registration held on the Landlord Register. The purpose of the Landlord Registration database is to assess the fit and proper status of a landlord in terms of letting of private properties, the data is not used by the Scottish Government for profiling of the private rented sector landlords. In the absence of time to consult fully, we therefore cannot assess the equality impacts on landlords in Scotland.

The effects of the Cost Crisis

Tenants as individuals, and landlords as individuals and businesses are likely to be affected by the current economic environment.

However, evidence suggests that the group of people most likely to be worst affected by increases in the cost of living in the immediate term (e.g. over the next year) are

low income households, with little or no savings. Within the broad grouping of low income households there are a number of groups of people who are likely to incur additional costs and / or receive real terms reduced income because of their particular characteristics and / or circumstances, and are therefore likely to be disproportionately affected by increases in the cost of living:

- People from ethnic minority backgrounds
- Unemployed adults
- Women
- Single parents
- Unpaid carers
- Children living in poverty
- People with disabilities
- Older people
- Children and young people

Households in the rented sectors have a higher proportion of people who are in relative poverty¹, as well as children in relative poverty². They are also more likely to be financially vulnerable³.

In addition, households in the rented sectors, especially those on lower incomes, in general pay more of their income on housing costs than owner occupiers, have higher rates of poverty (including child poverty) and have less resilience to cope with financial shocks. Measures to support tenants in the rented sector are therefore likely to help those tenants most affected by increases in the cost of living.

Recent results from the Scottish Housing Regulator National Panel of Social Housing Tenants and Service Users indicate that cost of living pressures have been increasing:

- A quarter of panel members who responded to the 2021/22 survey said that they are not currently managing well financially and 6 in 10 saying their financial circumstances are worse than before the pandemic. Many linked these difficulties to increased cost of living and rent increases and more than 7 in 10 were concerned about future affordability of their rent.
- More than half of respondents reported experienced difficulty heating their home, with more than double the number from the previous year stating energy costs as the main factor contributing to these difficulties⁴.

¹ 39% 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

² 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. The latest available figures across the period 2017 to 2020, on an after housing costs basis, and are sourced from [Poverty and Income Inequality in Scotland Tables](#)

³ 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 outright. 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](#)

⁴ Scottish Housing Regulator National Panel of Tenants and Service Users 2021 to 2022

Households in the rented sector

Available data suggests a strong correlation between particular protected characteristics and households who do not own their own property, either outright or through a mortgage⁵ with the following household types likely to rent: households where household heads were widowed, cohabiting, single and never married, or divorced (including separated and Civil Partnership dissolved); disabled household members; a minority ethnic household head; a female household head and; households with younger household heads⁶. The Wealth in Scotland report also shows that lone parents (of whom 92% in Scotland are women) and working aged women with no children are the least likely groups to own any property.

The intersection of these household characteristics is not considered in detail in this impact assessment. However, it is considered that households with more than one of these characteristics are less likely to own their own home and therefore more likely to rent their property.

Whilst a precise gender breakdown isn't available for other household types on Housing Benefit or for households receiving the housing element of Universal Credit, the available data suggests that it is likely that women in Scotland are overall more likely to be in receipt of Housing Benefit or the housing element of Universal Credit than men.

People who live in the private rented sector and social rented sector are more likely to identify as being 'Muslim' or 'other religion' compared to those who own their homes outright and those who own their homes with a mortgage. In 2015-20, Muslim adults and adults identifying as 'other religion' were more likely to be in relative poverty (52% and 21% respectively) than adults overall (18%) and adults belonging to the Church of Scotland (15%), after housing costs were taken into account.

Households in Social Housing

In 2019 it is estimated that 590,000 households and 1,170,000 people were resident in the social rented sector, either in local authority or housing association properties⁷.

Within the social rented sector some of the characteristics of social housing tenants highlight their vulnerability to the cost crisis. Tenants of social landlords are less likely to be in employment than those in households generally, with less than half of tenants being in employment.

In addition, an estimated 54% of social rented households have a highest income householder who is female. Households where women are the highest earner are overrepresented in the social rented sector, with these the households less likely to

⁵ In 2018-20, based on findings in Wealth in Scotland 2006-20.

⁶ In 2018-2020, 53% of households with a household head aged under 35 owned property. This was lower than for households with household heads aged 35-44 (64%), 45-54 (63%), 55-64 (70%), 65-74 (71%), and 75 and older (70%).

⁷ 2019 Scottish Household Survey.

own or rent a private property than those where men are the highest earner. Scottish Household Survey findings for 2019 show that 60% of social rented sector households have a net household income of £20,000 or under.

When looking at children in relative poverty, 47% of children in social rented households are in poverty, compared to 10% of children in households buying with a mortgage and 18% of children in households who own outright⁸. In addition, around two-thirds (66%) of social rented households are receiving some level of support for housing costs through Housing Benefit or Universal Credit⁹.

Available evidence finds social renters are more likely to have a limiting, long-term physical or mental health condition (45%) than those in the private rented sector (22%), those who own their homes outright (28%) and those who own their homes through a mortgage (14%).

Households in the Private Rented Sector (PRS)

In 2019 it was estimated that 340,000 households and 680,000 people were resident in the Private Rented Sector¹⁰.

There is more variation in experience and circumstances among those living in the private rented sector. Whilst the private rented sector is dominated by younger households, there are a mix of household types living in the sector, with over a third (37%) having a household income of £20,000 or less, over a fifth (22%) of households having children, almost a fifth (17%) of adults being in further or higher education, and 8% of adults being retired from work.

The experience of affordability within the private rented sector is also likely to be very different for tenants with lower incomes compared to the tenants with higher incomes. Over the latest period 2017-20, private rented sector households in the lowest income quintile were paying an average of almost half (47%) of their household income on housing costs, compared to only 17% for private rented sector households in the highest income quintile¹¹.

Research by Joseph Rowntree Foundation (JRF)¹² suggests that minority ethnic households are less likely to be managing well financially due to lower incomes and higher costs. JRF highlighted that minority ethnic households were over-represented within the PRS and are less likely to own their own home than white households.

⁸ Family Resources Survey, as reported on in Poverty and Income Inequality in Scotland Tables

⁹ Source: DWP StatXplore Tables for May 2022, compared with latest available rented stock figures. The DWP based figures are not able to be separated out into the number of households receiving either full or partial support, however a separate analysis of Housing Benefit support for social tenants was carried out for the SG Social Tenants in Scotland Statistics 2017 publication, based on Family Resources Survey data. This showed that for social rented households in Scotland in receipt of Housing Benefit, an estimated 67% were estimated to have their rent fully covered by Housing Benefit, when looking at data across the three years 2015/16 to 2017/18.

¹⁰ 2019 Scottish Household Survey.

¹¹ [Additional poverty analysis 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-published/additional-poverty-analysis-2021/)

¹² [Ethnicity, poverty, and the data in Scotland - JRF](https://www.jrf.org.uk/ethnicity-poverty-and-the-data-in-scotland)

In 2019¹³, Asian, Asian Scottish or Asian British made up 6% of adults in private rented households, 2% of adults in socially rented households and 2% of adults in owner occupied households. In the same year, African, Caribbean or Black Minority made up 4% of adults in socially rented households, 1% in private rented households, 1% in other tenures and 0% in owner occupied households. People from minority ethnic groups are, in general, more likely to be living in relative poverty after housing costs than people from the 'White – British' (including white Scottish) group. In 2015-20 the poverty rate was 41% for the 'Asian or Asian British' ethnic groups, and 43% for 'Mixed, Black or Black British and Other' ethnic groups, compared with 24% for 'White - Other' and 18% for 'White – British'.

Available evidence highlights close links to residency in PRS housing and other protected characteristics. For example, in relation to sexual orientation, people living in the private rented sector are more likely to identify as either 'lesbian, gay, bisexual or other' (LGB) than the population as a whole: 6.9% compared to 2.9%.

Student Households

A significant number of students in Scotland live in college and university halls of residence and in Purpose Built Student Accommodation (PBSA). The majority of those in such accommodation are women. Almost half of students in halls are from outside the UK and hence, those staying in college and university halls of residence and PBSA are potentially more likely to have a wider variety of ethnic backgrounds. There are also strong links between student households and the protected characteristic of Age, with the majority of students residing in college and university halls of residence and PBSA aged 21 and under. Recent research by the Mental Health Foundation Scotland and NUS Scotland highlighted the impact of financial concerns on student mental health.

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. Moreover, as PBSA and halls of residence providers are businesses, 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.

¹³ [Scottish Household Survey 2019](#)

Consideration of the Specific Measures in the Emergency Legislation

Our assessment identified that the Bill is likely to have a direct positive impact on women, young people and single parents, ethnic minorities and on older or disabled people who may already be living in poverty, and struggling to meet their housing costs. While women are more likely to be in part-time and low paid/precarious work they spend a higher proportion of net income on housing (and fuel and food)¹⁴. Renters with a disability are also more likely to be concerned about being able to afford other essentials like food, heating, and clothing in comparison to renters without a disability¹⁵.

Consideration has been given to how the proposals in the Bill will impact whether negatively or positively on each of the protected characteristics of those living in social and rented households and also those living in college and university halls or residence and in Purpose Built Student Accommodation (PBSA) and what might prevent outcomes being achieved.

Each group of measures is considered in turn below.

Measure 1: Rent freeze

A temporary restriction on rent increases (with a cap initially set at 0%) will help to stabilise bills for vulnerable tenants and reduce the risk that a rent increase will result in a tenant being unable to meet the cost of their rent during the cost crisis or build up substantial rent arrears resulting in a risk of eviction.

A rent freeze is anticipated to have a positive impact on all tenants who may have otherwise experienced a rent increase during the 6-month rent freeze period and with protected characteristics who spend a higher proportion of net income on housing (and fuel and food) on average.

Recognising that the potential for increased costs also applies to landlords, many of whom are small scale and exposed to mortgage rate increases we have also put in place a number of safeguards which will allow private landlords to apply to increase rent in respect of limited, prescribed, legitimate costs associated with offering the property for rent. This obviously reduces slightly the benefit for tenants with landlords in this situation but to ensure this is proportionate an overall cap of 3% has been placed on any rises, even where the prescribed legitimate costs can be established.

The Scottish Government considers that this strikes an appropriate balance, taking into account the impacts which the cost crisis is having on some landlords, and will mitigate against a disproportionate impact on landlords.

¹⁴ [GENDER-HOUSING-AND-HOMELESSNESS---A-LITERATURE-REVIEW.pdf \(engender.org.uk\)](#)

¹⁵ What do lower income tenants in Scotland's private rented sector want to see from a new Rented Sector? Summary report of the Tenant Insights Project – JRF (unpublished, in press)

Specific consideration is given below to three cohorts of tenants, who are not resident within the social rented sector or PRS.

College and University Halls of Residence and Purpose Built Student Accommodation (PBSA)

The Bill's temporary measures, the application of the rent freeze (and moratorium on evictions) applicable to all providers across college and university halls of residence and PBSA, will enhance the rights of student renters in such accommodation and provide reassurance to them that there will be no in-tenancy rent increases. This will ensure parity of protection of this sector with the PRS for these tenants who, as set out above, are likely to be young and likely to have a wider variety of ethnic backgrounds than those in some other tenures.

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. The review is being driven forward by the PBSA review group which includes sector representatives.

Homes with Pitch Agreements

Situations where residents own a mobile home unit but lease the land on which it sits present unique circumstances. Pitch agreements on mobile home sites and Gypsy/Traveller Sites are regulated by the Mobile Homes Act 1983 and are not included in the emergency legislation. We have therefore considered alternative protections for people with pitch agreements.

Gypsy/Traveller communities are at high risk of poverty, with Census data¹⁶ highlighting that Gypsy/Traveller households are more likely to have a characteristic that is associated with poverty, including being more likely: to have 3 or more children; to report a long-term health problem or disability; to report bad or very bad general health; live in lone parent households. Gypsy Travellers are also more likely to be in irregular work or be economically inactive and have a low income.

Research for the Scottish Government in 2019 found 29 public Gypsy/Traveller sites across Scotland, providing a total of 397 active pitches. Some of these are seasonal or transit pitches and a number will be closed for refurbishment over the period. Rents are set once a year in line with the social sector so the initial proposed rent freeze (due to end on 31 March) will not have a practical effect unless it would be extended past 1 April 2023.

While Gypsy/Traveller pitch agreements will not be bound by the emergency legislation, we will work with social landlords to agree an administrative pitch fee freeze and evictions ban to ensure parity with their other tenants.

¹⁶ [Introduction - Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Residents on licenced residential mobile home sites

There is limited data available on mobile home sites but stakeholders estimate that more than six thousand people live on them. As mobile home parks are a common choice for people downsizing for retirement and some sites impose a minimum age, residents are more likely to be older and living on pension income.

The Mobile Homes Act 1983 already places a limit on the increase in pitch fees with a presumption that pitch fees will not increase above the level of Retail Prices Index (RPI) each year, at an annual review date. We recognise that the gap between RPI and Consumer Price Index (CPI) has grown recently with the effect that pitch fees are growing faster than income. We will therefore consult on the impact of changing the basis of uprating from RPI to CPI, with a view to including this in the 2023 Housing Bill to bring cost rises for residents in to line with pension increases.

If the owner of a Mobile Home Site wants to terminate a contract for a pitch on one of the grounds set out in the contract, they must apply to the Court and a Sheriff will decide whether it is reasonable to do so and, if so, what the appropriate date would be to end the contract. The Sheriff will apply the usual tests of reasonableness used when possession is sought. Factors such as the reasons for arrears e.g. rising energy prices, may be taken into account within the courts existing discretion.

Measure 2: Moratorium On Evictions

It is anticipated that a temporary moratorium on evictions will help to prevent the negative impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless. In addition it will provide more time for people to seek support and to find alternative accommodation that meets their needs at an affordable rent.

Findings from evidence reviews and research studies undertaken in the UK (including Scotland) suggest that feelings of insecurity related to tenure have impacts on tenants' health and wellbeing¹⁷. Evidence suggests that there are multiple mechanisms through which vulnerable households can experience insecurity: actual experiences of eviction; fear of the threat of eviction causing residents to feel insecure and 'not at home' in their house; and the challenge of finding a new tenancy within the market¹⁸.

This research notes that negative psychosocial effects of living in insecure and precarious (as well as unaffordable housing) impact on tenant wellbeing and mental health. These studies conclude that the negative impacts of housing insecurity are complex and 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

¹⁷ [HW-in-the-PRS-final.pdf \(housingevidence.ac.uk\)](#) ; [McKee-et-al-HousingStudies-2020.pdf \(stir.ac.uk\)](#) [cache03192.pdf \(thinkhouse.org.uk\)](#) [HW-in-PRS-Part-2-final.pdf \(housingevidence.ac.uk\)](#)

¹⁸ Hulse, K. and Milligan, V. (2014) 'Secure Occupancy: A New Framework for Analysing Security in Rental Housing', *Housing Studies*, 29(5).

connected to place when insecure; and by causing stress over the potential of being separated from local support networks; among other mechanisms.

While much of this research is qualitative and based on the lived experience of tenants (particularly those on a low income), a larger study that linked data from the UK Household Longitudinal Study to measurable health outcomes found that desire to remain in current home was one element that led to significantly increased levels of biomarkers associated with infection and stress¹⁹.

In their interviews with tenants, McKee et al²⁰ (2019) conclude that feelings of insecurity were commonly reported amongst those on low incomes, and it is reasonable to suppose low income tenants are also most likely to be additionally impacted by the current cost of living crisis. Furthermore, a 2018 report²¹ by the Joseph Rowntree Foundation on forced evictions in England and Wales concluded that *“the experience of forced moves and evictions were extremely stressful for low-income households as they struggled to find alternative properties because they are often seen as undesirable by private landlords and are often unable to access social housing”*.

Related to this, findings from the RentBetter study’s 2020 baseline survey²² of landlords and letting agents found that only a quarter of respondents indicated that they would accept new tenants where rent for the property was paid in full or part by Housing Benefit or Universal Credit, with another quarter indicating that they would ‘only sometimes’ let to tenants in those circumstances.

The temporary prevention of enforcement of eviction action in the private rented sector will have a mostly positive impact on the rights and protections of tenants as a way to prevent evictions and reduce homelessness.

However rent arrears and debt will continue to accumulate, so for some tenants delays in eviction may increase their overall of debts to unsustainable levels and data from the Tribunal suggests that even without these delays debt levels at the point of eviction for rent arrears are very high²³.

In addition, where some tenants are evicted for rent arrears it is often extremely challenging for them to secure alternative accommodation in the PRS where landlords or letting agents seek references or carry out credit checks.

Responses in the report ‘Covid recovery: a consultation on public health, public services and justice system reforms’ highlight concerns that similar restrictions in place during Covid could result in financial hardship for landlords and could

¹⁹ [Housing and health: new evidence using biomarker data | Journal of Epidemiology & Community Health \(bmj.com\)](#)

²⁰ [cache03192.pdf \(thinkhouse.org.uk\)](#)

²¹ [poverty-evictions-and-forced-moves-2018-jrf.pdf \(yhphnetwork.co.uk\)](#) p 4

²² [RentBetter Baseline Full Reports | Rent Better \(indigohousegroup.com\)](#)

²³ Internal analysis of published eviction decisions in 2022 (Jan to August) by the First-tier Tribunal for Scotland suggests the average level of rent arrears for those evicted due to rent arrears was £7,600.

negatively impact the available rental stock²⁴. The restricted nature of the grounds of the appeal will potentially exclude landlords who are reliant on rental properties as a source of income, such as older, small scale landlords who do not have alternative employment or pension related income. In these cases, the need to meet the rising costs of offering the property for rent could have an impact on their ability to meet the cost of meeting their own basic expenses. For this reason, appropriate safeguards have been considered as part of the Bill development process and provided for within the Bill.

A moratorium on evictions applicable to all providers across college and university halls of residence and PBSA will enhance the rights of student renters and provide reassurance to them that there will be 'no evictions except in specific exempt circumstances relating to criminal or anti-social behaviour or abandonment'. This will ensure that there is parity of protection of this sector with the PRS.

The regular review of the provisions and the Government's intention of taking forward a Student Accommodation Plan for Scotland will go some way to alleviating potential impacts on landlords.

Measure 3: Unlawful Evictions

The measures in the Bill will change the way in which civil damages can be awarded for unlawful eviction making it easier and more attractive for tenants to challenge an unlawful eviction and receive appropriate damages where an unlawful eviction is found to have occurred. This will provide additional protection to renters in the private rented sector from unfair eviction action by private landlords in direct response to the introduction of a temporary Rent Freeze seeking to raise rents for a new tenant.

It was reported in Nationwide's RentBetter Project Wave 2²⁵ findings that illegal evictions may have increased during the emergency coronavirus legislation period and that a longer-term impact of the extended notice periods is that evictions can be expected to increase over the coming months and years.

The 'New Deal for Tenants: Draft Rented Sector Strategy' proposed that the current calculation of civil damages for unlawful eviction should be reformed and simplified, and a very substantial majority – 94% of those answering the question – agreed. The importance of raising tenants' awareness of their rights in relation to illegal evictions was highlighted, with suggestions that this could be done via the tenancy agreement or could involve a media/social media campaign.

In relation to disputes with landlords, and access to justice, the RentBetter Wave 2 Tenants Qualitative Report²⁶ reported that those with less confidence in raising disputes were again those with less financial power – often those on lower incomes and in part-time work, or younger, inexperienced renters. We therefore consider that this change will have a positive effect in protecting both younger renters and those

²⁴ [Covid recovery: a consultation on public health, public services and justice system reforms – consultation analysis \(26 January 2022\)](#)

²⁵ [Findings | Rent Better \(indigohousegroup.com\)](#)

²⁶ [Findings | Rent Better \(indigohousegroup.com\)](#)

with lower incomes or less financial stability. As set out above, people with a number of protected characteristics are more likely to fall into the latter two categories, and we therefore consider that this measure will have an overall positive affect. In addition, preventing unlawful evictions and keeping people in their homes will also contribute to stability and reduced costs on tenants.

However, the legislation also recognises that there may be some cases where a landlord will rely on rent and a tenant may choose not to pay, even when they can afford it. As set out earlier, many landlords only have 1 or 2 properties²⁷ and be vulnerable to tenants not paying rent for a prolonged period.

Therefore some mitigations that support both vulnerable landlords and tenants have been put in place including:

- allowing eviction on the grounds of anti-social behaviour and criminality - to protect both landlords, neighbours and other tenants.
- allowing eviction on the grounds of abandonment – to ensure empty homes can be brought back into use quickly for renters to access.
- Creating 3 new grounds of eviction to support landlords experiencing hardship²⁸.
- Setting the maximum period that any individual enforcement action will be prevented for will be 6 months – to give tenants an extended period to consider alternative accommodation and landlords certainty that they can plan for.

Measure 4: Rent Adjudication

We recognise that there may be some unintended consequences through the introduction of a rent cap. For example, given that the legislation is 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 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.

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, to ensure that the Rent Officer or First-tier Tribunal cannot determine a rent higher than that requested by the landlord.

The regulation making power will be subject to the affirmative procedure ensuring that appropriate scrutiny is given to the necessity for any temporary changes proposed and will also be subject to consultation.

²⁷ An analysis of Landlord Registration data by Registers of Scotland as at September 2022 shows that 72.5% of registered landlords with a property are estimated to own a single rental property, 13.6% to own 2 properties, 5.4% to own 3 properties, and 8.5% to own 4 or more properties.

²⁸ 1. “Landlord intends to sell due to financial hardship” (private sector only (not including protected tenancies under the Rent (Scotland) Act 1984));2. “Landlord intends to live in the let property due to financial hardship” (private sector only); and 2. “Substantial rent arrears” (social and private sectors).

Accessing rights

A key finding from the RentBetter research highlights tenant's on low incomes general lack of awareness around private rented sector rights and protections²⁹. It is particularly important that we reach seldom heard audiences who are less likely to know their rights or might know their rights but feel unable to exercise them.

To mitigate potential impacts, we are therefore including 'Renting Rights' as part of the Cost of Living Crisis campaign which outlines what the Government is doing to help the public deal with the cost of living crisis. Raising awareness of the rent adjudication process could directly help more people successfully challenge rent increases and prevent their cost of living rising beyond what they can afford, as well as helping to prevent unlawful evictions.

Conclusion


As set out above, individuals with some protected characteristics are more likely to live in the rented sector and are also more likely to be impacted by the current cost of living crisis and therefore we consider that this will have a positive impact for these equalities groups. In particular, these measures will support women, young people, single parents, ethnic minorities and older or disabled people who may already be living in poverty, and struggling to meet their housing costs.

We acknowledge that some individuals who are landlords may also need particular protections and for this reason appropriate safeguards have been considered as part of the Bill development process and provided for within the Bill.

Whilst the emergency measures will offer greater protections to those in the rented sectors to mitigate some of the impacts of the current cost crisis, tenants whose case proceeds under current arrangements will still have considerable protections, including those specifically for tenants in the PRS which were strengthened through the Coronavirus (Recovery and Reform) (Scotland) Act 2022 earlier this year. These protections include the requirement for landlords to undertake pre-action protocols before seeking an eviction and the fact that all eviction grounds are now discretionary. This means that the circumstances of the tenant and landlord must be taken into account by the Tribunal/Court when determining whether to grant an eviction order or decree. In terms of rent notices' issued prior to 6 September the following protections were already in place: in the PRS tenants must be given 3 months' notice of a rent increase and the rent cannot be raised more than once in 12 months and; in the social rented sector tenants are consulted prior to any rent rise.

²⁹ [Findings | Rent Better \(indigohousegroup.com\)](https://www.indigohousegroup.com)

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

A handwritten signature in black ink, appearing to be 'C MacKean', written in a cursive style.

Signed by: Catriona MacKean, Deputy Director, Better Homes
Date: 2nd October 2022



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