

## POLICY NOTE

### THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022 (EXPIRY OF SECTION 10: EXTENSION) REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred in sections 11(2) and 12(1) of the Cost of Living (Tenant Protection) (Scotland) Act 2022(1) (“the 2022 Act”) and all other powers enabling them to do so.

In accordance with section 11(5) of the 2022 Act, at the same time as laying a draft of this instrument before the Scottish Parliament, the Scottish Ministers laid before the Scottish Parliament a statement of their reasons why the Regulations should be made.

In accordance with sections 11(4)(a) and 12(5)(a) of the 2022 Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

#### Summary Box

The provisions in Part 1 of the emergency Cost of Living (Tenant Protection) (Scotland) Act 2022 expire on 31 March 2024.

These regulations modify the emergency Act to change the time when section 10 and, by consequence, schedule 3 of the Act expire. Schedule 3 of the Act confers powers on the Scottish Ministers on or in anticipation of the expiry or suspension of the rent controls imposed by paragraph 1 of schedule 1 of the Act, to modify how rent is to be determined by a rent officer or the First-tier Tribunal for Scotland.

Regulation 2 of these regulations provides that, instead of expiring at the end of 31 March 2024, section 10 and schedule 3 of the Act will expire one year later (i.e. at the end of 31 March 2025).

Regulation 3 makes a consequential amendment to section 11(1) of the Act to reflect this change.

#### Policy Objectives

The Cost of Living (Tenant Protection) (Scotland) Act 2022 (‘the Act’) came into force on 28 October 2022 as a temporary response to provide increased support to tenants living in the rental sector through the cost of living crisis. Part 1 of the emergency Act introduced, among other things, a temporary cap on most in-tenancy rent increases ‘the rent cap’.

Part 1 of the Act (which includes the rent cap) was extended twice<sup>2</sup> and is now due to expire on 31 March 2024. To support a transition away from the rent cap, schedule 3 of the Act contains powers to modify the basis on which rent is determined when there is adjudication of rent disputes to help smooth the transition out of the rent cap and protect tenants from

<sup>1</sup> Cost of Living (Tenant Protection) (Scotland) Act 2022 ([legislation.gov.uk](https://legislation.gov.uk))

<sup>2</sup> The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 ([legislation.gov.uk](https://legislation.gov.uk)) and The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023 ([legislation.gov.uk](https://legislation.gov.uk))

steep rent increases which could be experienced if there is a sudden move to open market rent from rent levels that have been suppressed. The powers in schedule 3 of the Act will expire on 31 March 2024 by virtue of section 10 of the Act which means that unless they are extended, they would not be able to be used. The reason for these regulations is, therefore, technical in nature to enable the powers to be exercised as intended.

A Statement of Reasons setting out why these regulations should be made has been published, in accordance with section 11(5) of the emergency Act. The statement explains the reason that without extending section 10 of the Act beyond 31 March 2024, it will not be possible for the Act's schedule 3 regulation-making powers to be used to support the transition out of the rent cap once Part 1 of the Act is expired.

The proposed temporary changes to the existing rent adjudication systems are set out separately, draft Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024.

Scottish Ministers have therefore carefully considered the wider economic context and feedback from stakeholder engagement, and decided that it is necessary that Section 10 of the Act be extended for twelve months which is necessitated by Part 1 of the Act having been previously extended twice.

### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

### **Consultation**

No formal consultation on this particular instrument has taken place. However, from December 2023 to January 2024 the Scottish Government engaged with key stakeholders on the proposed approach to temporarily modify the rent adjudication process, as part of the transition away from the temporary, emergency measures.

### **Impact Assessments**

No impact assessments have been completed for this instrument. However, a range of impact assessments were carried out for the Cost of Living (Tenant Protection) (Scotland) Act 2022.

### **Financial Effects**

The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no Business Regulatory Impact Assessment is necessary for this instrument.

Scottish Government  
Directorate for Local Government and Housing

*January 2024*