

# **COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022**

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## **EXPLANATORY NOTES**

### **DETAIL ABOUT PROVISIONS**

#### **Part 2—Part 1: supporting provisions**

##### **Information and advice for tenants**

9. [Section 3](#) provides that the Scottish Ministers must take steps to ensure that tenants affected by the provisions of Part 1 (including schedules 1 and 2) receive appropriate information, advice and support for the period during which Part 1 remains in force.

##### **Advancement of equality and non-discrimination**

10. [Section 4](#) provides that the Scottish Ministers must have regard to the importance of communicating in an inclusive way and to opportunities to advance equality and non-discrimination when exercising the functions contained in Part 1 (including schedules 1 and 2).

##### **Subordinate legislation making powers**

11. [Section 5](#) provides that any power to make subordinate legislation conferred by Part 1 (including schedules 1 and 2) includes the power to make ancillary provision – that is, incidental, supplementary, consequential, transitional, transitory or saving provision. The section also provides that any regulation-making power conferred by virtue of Part 1 includes the power to make different provision for different purposes and areas.

##### **Suspension, revival and expiry of [Part 1](#)**

12. [Section 6](#) allows the Scottish Ministers, by regulations, to suspend the operation of any provision in Part 1 (including schedules 1 and 2), and to revive the operation of any such provision that has been suspended. For example, this power may be used to suspend any provision which is, in the view of the Scottish Ministers, not currently necessary or proportionate but which may need to be revived in the future if it becomes necessary and proportionate again. Regulations under this section are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) if they textually amend any part of an Act, but are otherwise subject to the negative procedure (see section 28 of that Act).
13. [Section 7](#) expires Part 1 (including schedules 1 and 2) at the end of 31 March 2023, unless the Scottish Parliament approves draft regulations (under subsection (3)) providing instead for the expiry of Part 1 at the end of 30 September 2023. If the Scottish Parliament approves such regulations, it may later approve draft regulations (under the same subsection) allowing a further, final extension until the end of 31 March 2024, at which point any remaining provisions of Part 1 will expire. Regulations under subsection (3) are subject to the affirmative procedure. In addition, subsection (7)

*These notes relate to the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10) which received Royal Assent on 27 October 2022*

allows the Scottish Ministers, by regulations, to make consequential, transitional, transitory or saving provision in connection with the expiry of a provision in Part 1. For example, this may be used to clarify the legal effect of anything previously done under an expired provision. Regulations under subsection (7) are subject to the affirmative procedure if they textually amend any part of an Act, but are otherwise subject to the negative procedure.

14. **Section 8** allows the Scottish Ministers, by regulations, to expire any provision in Part 1 (including schedules 1 and 2) earlier than it would otherwise. It also provides that, where the Scottish Ministers consider that any provision in Part 1 is no longer necessary or proportionate in connection with the cost of living, they must bring forward regulations under section 6(1) to suspend the provision (where they consider that the provision may need to be revived) or under section 8 to expire the provision. Regulations under this section are subject to the affirmative procedure if they textually amend any part of an Act but are otherwise subject to the negative procedure.

## **Reporting**

15. **Section 9** requires the Scottish Ministers to periodically review the necessity and proportionality of the provisions in Part 1 (including schedules 1 and 2) in connection with the cost of living and then prepare, and lay before the Scottish Parliament, a report on each review. The initial reporting period covers the period from when the Act comes into force until the end of 31 December 2022, and thereafter the reporting period covers each successive 3 month period until 31 December 2023 or the expiry of Part 1 (if that occurs before 31 December 2023).
16. But no review or report is required for any such period if, during the period, the Scottish Ministers are required by section 7(6) to lay before the Scottish Parliament a statement of their reasons why regulations should be made under section 7(3) to change when Part 1 expires.
17. In the report in respect of the period ending 31 December 2022, the Scottish Ministers must, in considering the application of the permitted rate in relation to Scottish secure tenancies and short Scottish secure tenancies (as set out in section 24A(1) of the Housing (Scotland) Act 2001), explain whether they propose to retain the permitted rate at 0%, increase it, or suspend or expire paragraph 3 of schedule 1 which imposes that rent cap.