

POLICY NOTE

THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022 (INCIDENTAL PROVISION) REGULATIONS 2023

SSI 2023/116

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 12(1) of the Cost of Living (Tenant Protection) (Scotland) Act 2022⁽¹⁾ and all other powers enabling them to do so. In accordance with section 12(5)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Purpose of the instrument

To make a technical drafting amendment to clarify the insertion point within the Private Housing (Tenancies) (Scotland) Act 2016 of the new section 34A of the Cost of Living (Tenant Protection) (Scotland) Act. The power to modify provisions relates to making changes to the rent adjudication provisions within Chapter 2 of the 2016 Act but at present that is unclear and it could be read as relating to Chapter 2A which would frustrate the machinery and legislative intention of Schedule 3 of the 2022 Act. Therefore, the instrument will renumber the new section and amend the title of the section (and the preceding italic heading) to make it clear that the power is intended to permit modification of Chapter 2 of Part 4 of the 2016 Act. It will also amend section 77 of the 2016 Act (regulation-making powers) in consequence of the renumbering, to correct this.

This instrument is an exercise of the powers to create ancillary provision in sections 12(1) of the 2022 Act which allows the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provisions they consider appropriate for the purposes of, in conjunction with or for giving full effect to the Act.

Legislative background

2. The Act came into force on 28 October 2022 as a response to the ongoing emergency situation caused by the impact of the cost crisis on those living in the private and social rented sectors, and students living in college or University Halls of Residence and Purpose Built Student Accommodation. The intended effect of the temporary Act is to:

- protect tenants by stabilising their housing costs through the introduction of a temporary, variable rent cap – initially set at 0% until 31 March 2023;
- where possible, during the costs 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
- seek to avoid tenants being evicted during the cost of living crisis (unless an exemption applies), through a moratorium on the enforcement of eviction orders.

⁽¹⁾ 2022 asp 10.

3. Schedule 3 of the emergency Act confers regulation-making powers that are exercisable on, or in anticipation of, the expiry or suspension of paragraph 1 of Schedule 1. These powers intend to enable the Scottish Ministers to modify Chapter 2 (rent variation instigated by landlord's notice) of Part 4 of the Private Housing (Tenancies) (Scotland) Act 2016 in connection with the determination of rent payable under a private residential tenancy by a rent officer or the First-tier Tribunal. For example, the power could be used to change the basis on which rents are determined (i.e. otherwise than on the basis of market value as currently provided for in section 32 of the 2016 Act). It could also be used to provide that a rent adjudicator can only determine an increased rent if the increase is the same or lower than the increase sought by the landlord. Paragraph 2 of schedule 3 makes similar provision with respect to the rent adjudication process for assured tenancies and short assured tenancies under Part 2 of the 1988 Act with the regulation-making powers being exercisable on or in anticipation of the expiry or suspension of paragraph 2 of schedule 1.

4. This legislative intention is clear from the following documents:

- [Delegated Powers Memorandum](#);
- [Policy Memorandum](#); and
- [Explanatory Notes](#).

5. The 2022 Act inserts a new section 34A within the 2016 Act after the new Chapter 2A (also inserted by the 2022 Act). Section 34A should be inserted after Chapter 2 not 2A. Section 34A gives power to modify provisions relating to the rent adjudication process on or in anticipation of the expiry of the rent cap, it therefore, must, be in connection with Chapter 2. (Chapter 2A being unconnected to the rent adjudication process). This intention is set out in the Delegated Powers Memorandum, Policy Memorandum and Explanatory Notes that accompany the emergency Act.

6. To ensure that the power to modify reads as intended as relating to Chapter 2 of the 2016 Act rather than new Chapter 2A, these regulations amend the title of the section (and the preceding italic heading) to make it clear that the power is to modify Chapter 2 of Part 4 of that Act. A change is also made to the amendment of section 77 of the 2016 Act (regulation-making powers) in consequence of the renumbering of new section 34A of the 2016 Act as section 33ZA of that Act.

7. The lifespan of Chapter 2A is temporary. When it expires the issue with the insertion point will cease to be an issue. However, the Chapter 2 powers are likely to need to be exercised before the expiry of Chapter 2A which is why these regulations are needed.

Policy objectives

8. This short instrument makes a technical amendment to put beyond doubt that the powers conferred on the Scottish Ministers in Schedule 3, function as intended as a power to amend the existing rent adjudication process in the Private Housing (Tenancies) (Scotland) Act 2016 by renaming a title and heading, renumbering a section, and correcting a reference.

9. This incidental provision will ensure clarity if, and when, the Scottish Ministers choose to exercise the powers conferred to them in Schedule 3 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 in anticipation or on expiry of the rent cap.

Consultation

10. A formal public consultation exercise has not been undertaken in relation to this instrument specifically. However, the Scottish Government has been in regular engagement with a range of stakeholders since the legislation was introduced. A Call for Evidence was issued to a wide range of rented sector stakeholders as part of the statutory section 9 review of the operation of Part 1 of the Act and the 1st [Report](#) to Parliament on the Act, laid in Parliament on 12 January, includes a summary of the stakeholder engagement that has been undertaken.

Impact Assessments

11. No impact assessments have been completed for this instrument. However, a range of impact assessments were carried out for the Act. The Scottish Government's justification for why the provisions continue to be needed beyond the end of 31 March 2023 is set out in the Statement of Reasons. The Scottish Government has assessed the potential impacts of extension and, in many cases, previous findings remain valid and no additional impacts are expected in the proposed extension of the provisions. Further information has been provided, where relevant and/or helpful, in the [Statement of Reasons](#). In addition, as part of the assessment of the continued necessity of the provisions beyond the end of 31 March 2023, assessment of the rights and equality impacts of extension has also been undertaken.

Financial Effects

12. The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no Business Regulatory Impact Assessment is necessary for this instrument. As outlined above, the Scottish Government considers that, in many cases, previous findings remain valid and no additional impacts are expected in the proposed extension of the provisions. Further information has been provided, where relevant and/or helpful, in the Statement of Reasons.

Scottish Government
Better Homes Division
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