

POLICY NOTE

THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022 (EARLY EXPIRY AND SUSPENSION OF PROVISIONS) REGULATIONS 2023

SSI 2023/8

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 6(1)(a) and 8(1) of the Cost of Living (Tenant Protection) (Scotland) Act 2022¹ (“the Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Purpose of the instrument

The purpose is twofold: -

First, to expire provisions in the Act relating to the rent cap in the social rented sector as captured by paragraph 3 of Schedule 1 of the Act from 26 February 2023. These provisions are being expired following the voluntary agreement that has been reached with the social sector and the intention to expire the provisions was announced on 21 December 2022.

Secondly, to suspend provisions in the Act relating to the rent cap in the student residential tenancies as captured by paragraph 4 of Schedule 1 of the Act (university or college halls of residence or purpose-built student accommodation) from 30 March 2023.

Legislative background

2. The Cost of Living Act came into force on 28 October 2022 and has provided powers and measures which have helped to protect tenants by stabilising their housing costs through the introduction of a temporary, variable rent cap. The cap is set at 0% until 31 March 2023 in relation to in-tenancy rent increases. The 0% cap applied to Scottish secure and short Scottish secure tenancies per paragraph 3 of Schedule 1 of the Act, and to student residential tenancies as defined by paragraph 4 of Schedule 1 of the Act.

3. The provisions in Part 1 of the Act are due to expire on 31 March 2023 unless they are extended by regulations. The Act provides in section 8(2) that provisions in Part 1 must be expired early where Ministers consider that any provision of Part 1 is no longer necessary or proportionate. The Act contains powers for Scottish Ministers to expire (section 8) or suspend (section 6) certain provisions within Part 1 of the Act.

4. This instrument is being laid following close monitoring of the operation of the Part 1 provisions across all sectors, stakeholder engagement and a targeted consultation exercise. To ensure that the Act is necessary and proportionate in connection with the cost of living, the evidence gathered supports expiry of the rent cap in the social rented sector from 26 February 2023 due to a voluntary agreement being reached with the sector (more detail below); and,

¹ [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2022/12)

suspension of the rent cap in the student tenancy sector from 30 March 2023 due to the emerging lack of impact that the measures are having on these tenancy types.

Policy objectives

Social rented sector

5. The Scottish Government has been clear since it introduced the Act that we would work with the social rented sector to agree a way forward. A Social Sector Short Life Task and Finish Group has been working to develop an agreed approach on rent setting for 2023-24 – taken forward on a voluntary basis - that would see an agreement with social housing landlords that ensures that rents remain affordable but still supports continued investment in the sector.

6. The outcome of discussions led by COSLA, in respect of local authorities, and the Scottish Federation of Housing Associations (SFHA) and Glasgow and West of Scotland Forum of Housing Associations for Registered Social Landlords, has reached an agreed position with their members that would see increases of 6.4% and 6.1% respectively, as an average across Scotland.

7. The agreement of an average figure, rather than a fixed cap, is essential to allow flexibility. The majority of rents will be increased at a level below the agreed 6.4% (for local authority landlords) and 6.1% (for registered social landlords) but there may be some social sector landlords who will, for specific reasons, go beyond these levels. However, all social sector rent increases will be kept below the level of inflation. This approach recognises that in some cases tenant feedback to the statutory rent consultations may be in favour of an increase higher than the overall averages agreed, for example to allow planned improvements or maintenance to proceed. The independent Scottish Housing Regulator have asked all social landlords to advise them of the level of rent increase they propose to implement in April 2023 as soon as is practical after they have consulted tenants on the proposed options for the planned rent increase and their committee or governing body has made that decision. They will publish the results when they have them.

8. These regulations will remove the operation of the rent cap in Scottish secure and short Scottish secure tenancies from 26 February 2023 which means that social sector rent levels may be raised in late March/April at the earliest (in line with the legal obligation for social landlords to give their tenants 28 days' notice of any rent increase) to support repairs, maintenance, meeting energy efficiency and carbon neutral targets; and to support social landlords with continuing to deliver the essential support services they provide for their tenants.

Student residential tenancies

9. As regards the student residential sector, the Scottish Government has been clear since the introduction of this Act that there should be parity of protection across the entire rented sector, including those who live in student residential tenancies as defined by paragraph 4 of Schedule 1 of the Act – university and college halls of residence and privately owned purpose built student accommodation (PBSA).

10. Regulation within the student residential sector is based on adoption of the voluntary UNIPOL National Codes, with the majority of PBSA suppliers also being members of the Association for Student Residential Accommodation (ASRA) and College and University Business Officers (CUBO). Student tenancies are regulated by the terms of the contract between the accommodation provider and the student, and common law. These contracts typically cover the whole academic year. There is therefore only a very slight possibility of a contract that permits in-tenancy rent increases arises, as this would only occur in accommodation where the provider has not adopted the UNIPOL codes or is not a member of ASRA.

11. Ministers therefore considered that the prevention of negative impacts on the health and wellbeing of tenants and ensuring parity of protection of tenants across the different rental sectors pursued a legitimate aim, with the inclusion of the student sector a necessary precaution against possible in-tenancy rent increases. However, feedback to date from the student residential sector is that the provisions in the Act had not as yet had an impact and are highly unlikely to do so during the period the accommodation contracts already in place, although NUS were supportive of the rent cap for student tenancies. The provisions of the Act do not prevent re-setting rent for new tenancies so the rent setting process for the academic year 2023/24 will be unaffected. Given that rents are typically not increased during the academic year in this sector, the rent cap is effectively not impacting on the student residential sector. As such, the necessity and proportionality of the measures has been reconsidered in light of this emerging stakeholder feedback and evidence.

12. As such, Scottish Ministers consider the appropriate action to be suspension of the measures on 30 March. Suspension of the measures will mean that they cease to have effect but there is a power for the provisions to be revived during the lifetime of Part 1 of the Act should evidence support that being necessary and proportionate. Although assurances were received from the majority of institutional and PBSA providers confirming that there would be no in-contract rent increases, and the evidence to date supports this, these assurances do not cover with certainty all providers so suspension (as opposed to expiry) is appropriate.

Consultation

13. A specific formal public consultation exercise has not been undertaken in relation to this instrument. However, the Scottish Government has been working closely with the social sector, and this instrument is a product of that engagement. A key focus of stakeholder engagement has been undertaken through the Short Life Task and Finish Group which included key bodies representing social landlords and tenants. This provided a forum for ongoing dialogue between the Scottish Government and key social rented sector representatives. The group were tasked with; helping to inform social landlords' approach to rent setting consultations and business planning for 2023-24; and supporting the production of advice for Ministers – receiving feedback on viability of options to inform shaping of the final approach in relation to the extension or expiry of the emergency measures in place for the social sector. The group's membership included Scottish Government, Association of Local Authority Chief Housing Officers, COSLA, Scottish Federation of Housing Associations, Glasgow and West of Scotland Forum of Housing Associations, Wheatley Group, Link Housing Group, West Granton Housing Co-operative, Hillcrest Homes, Scottish Housing Regulator, UK Finance, Tenants Information Service and the Tenant Participation Advisory Service.

14. Scottish Ministers were also committed to providing a further opportunity for individual organisations to respond to understand how the measures are affecting those working directly in the social housing rented sector in Scotland. As such, a Call for Evidence was issued to the tenant Regional networks, Registered Tenant Organisations, Registered Social Landlord Chief Executives and Local Authority Directors of Housing as part of the statutory section 9 review of the operation of Part 1 of the Act. Consultation responses were considered alongside the views obtained from the Short Life Task and Finish Group to inform this instrument.

15. As with the social sector, there has been no specific formal consultation on this instrument in respect of student residential tenancies but it has been informed by stakeholder engagement during the statutory review of the operation of Part 1 of the Act to ascertain whether the provisions remain necessary and proportionate. The Scottish Government has engaged with the Student Accommodation Group (SAG) which includes representatives of student accommodation providers, both private and university managed, as well as Universities Scotland, Colleges Scotland, ASRA, CUBO, University and College Union, Scottish Funding Council and National Union of Students Scotland. This was supported by email communication to ensure all had the opportunity to respond. The Call for Evidence, issued in relation to the review of the operation of Part of the Act as part of the reporting requirement under section 9 of the Act, was also extended to the student sector although there was a limited response. Overall, the responses to engagement with SAG and to the Call for Evidence reflected that there was a lack of direct impact on the sector for the reasons outlined above.

Impact Assessments

16. No impact assessments have been completed for this instrument. However, a range of impact assessments were carried out for the Act.

Financial Effects

17. The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Better Homes Division
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