

POLICY NOTE

THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022 (AMENDMENT OF EXPIRY DATES AND RENT CAP MODIFICATION) REGULATIONS 2023

SSI 2023/82

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 5 and 7(3)(a) of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the Act”), and sections 23A(3), 24J(2) and 53(3) of the Housing (Scotland) Act 1988, sections 21A(3), 33F(2) and 77(1) of the Private Housing (Tenancies) (Scotland) Act 2016, and all other powers enabling them to do so.

Purpose of the instrument

To extend Part 1 of the Act for 6 months from the end of 31 March 2023 to the end of 30 September 2023. This SSI will also amend the rent cap for the private rented sector and amend the current provisions in relation to the prescribed property costs landlord safeguards.

The extension of Part 1 of the Act will follow on from the expiry of provisions in the Act relating to the rent cap in the social rented sector from 26 February 2023 and the suspension of provisions relating to the rent cap in student residential sector from 30 March 2023 (university or college halls of residence or purpose-built student accommodation).

Legislative background

1. 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.

2. The provisions in Part 1 of the Act are due to expire at the end of 31 March 2023 unless they are extended by regulations. The Act also 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. Following the voluntary agreement that has been reached with the social sector, the Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023 were laid on 19 January to expire the rent cap provisions for the social rented sector due to them no longer being necessary or

proportionate. These regulations also suspend the rent cap for student residential tenancies, due to the provisions effectively not impacting on the student residential sector.

Policy objectives

Extension of the Act

3. The ongoing cost crisis continues to place people across Scotland in an unprecedented economic position. Renters, in particular, have lower household incomes, higher levels of poverty and are more vulnerable to economic shocks. 63% of social rented households and 40% of private rented households don't have enough savings to cover even a month of income at the poverty line, compared to 24% of households buying with a mortgage and 9% of households owning outright. This economic position has not yet changed fundamentally and many households on low and modest incomes continue to struggle. People are facing increased costs across the board, and the biggest impact is felt by those on the lowest incomes. The Office for National Statistics estimated that inflation for low-income households was 11.9% in October 2022, leaving many struggling to cope.

4. The Scottish Government has therefore taken the decision that, subject to the agreement of Parliament, Part 1 of the Act should be extended to the end of 30 September 2023 and has laid these Regulations to amend the expiry date accordingly. However, extension under these Regulations will not apply to all provisions in Part 1 of the Act as a separate instrument was laid on 19 January 2023 to: expire the provisions relating to the rent cap in the social rented sector from 26 February 2023 - following the voluntary agreement in relation to rent setting that has been reached with sector; and to also suspend the provisions relating to the rent cap in the student residential sector from 30 March 2023, since the evidence shows that it is having a very limited impact due to the different way in which such tenancies are managed.

5. As required by section 7(6) of the Act, a separate Statement of Reasons has been prepared by the Scottish Government and laid before Parliament with these Regulations, to set out reasons for making these Regulations.

6. The reporting requirement under section 9 of the Act will continue to require reporting whilst provisions in Part 1 are in force. It is also important to note that, throughout the proposed six month extension period, if provisions are deemed to be no longer necessary during that time, they can be suspended or expired early. A suspended provision could subsequently be revived if this was considered necessary. Therefore, proposing that Part 1 of the Act be extended at this time does not mean that all provisions covered by the extension must remain in place until the end of 30 September 2023. As it has done throughout the life of the Act so far, the Scottish Government will keep the continued necessity of these provisions under review.

Modification of the Act

7. Whilst the focus of the emergency measures continues to be on protecting tenants, the Scottish Government recognises that the ongoing impacts of the cost crisis may also be experienced by some landlords. Therefore, the Scottish Government has taken the decision, subject to the agreement of Parliament, to modify the level of the rent cap to 3%, and to modify the maximum permitted level of rent increase based on an application for Prescribed Property Costs (the landlord safeguard) up to 6% of existing rent.

8. The Scottish Government considers that the modification to the landlord safeguard ensures that it remains a suitable safeguard which takes account of the individual circumstances of landlords.

Consultation

9. 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

10. 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

11. The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no BRIA is necessary. 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
January 2023