

POLICY NOTE

THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022 (SAVING PROVISIONS) REGULATIONS 2024

SSI 2024/19

The above instrument was made in exercise of the powers conferred in section 7(7)(b) of the Cost of Living (Tenant Protection) (Scotland) Act 2022(1).

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 contain saving provisions following expiry of the provisions in Part 1 of the emergency Act intended to facilitate the transition away from the emergency measures. These are to:

- save paragraphs 1 and 2 of schedule 1 (relating to the rent cap) so that they continue to have an effect in relation to notices about rent increases served before Part 1 expires and in relation to any subsequent referrals, applications or appeals;
- save paragraphs 4, 5 and 6 of schedule 2 (relating to certain temporary eviction grounds) so that these grounds continue to have effect in relation to eviction notices served before Part 1 expires and in relation to any subsequent proceedings or appeals;
- save paragraphs 7 and 8 of schedule 2 (relating to damages for unlawful eviction) so that these provisions continue to have effect in relation to actions for damages raised before Part 1 expires and in relation to any subsequent appeals.

Policy Objectives

The Cost of Living (Tenant Protection) (Scotland) Act 2022 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 a temporary cap on most in-tenancy rent increases, as well as greater restrictions on the enforcement of evictions and protections against unlawful evictions.

Part 1 will come to an end when the emergency protections expire on 31 March 2024. These Regulations make saving provisions for certain provisions in Part 1 emergency Act to facilitate the transition away from the emergency measures. Details of the saving provisions are set out as follows:

Rent cap

The emergency Act introduced a temporary cap on most in-tenancy rent increases, from 1 April 2023 the in-tenancy cap was set at 3% and this remains in place until the emergency Act expires.

(1) 2022 asp 10.

Regulation 2 saves paragraphs 1 and 2 of schedule 1 (relating to the rent cap) so that they continue to have effect in relation to notices about rent increases served before Part 1 expires and in relation to any subsequent referrals, applications or appeals.

The saving provision is needed to preserve rent increase notices (and any subsequent referrals, applications or appeals) served before Part 1 of the emergency Act expires, ensuring that the rent cap restrictions in place at the time the notice was served comply with the requirements imposed up to and including the 31 March 2024.

Temporary eviction grounds

The emergency Act introduced a number of temporary grounds for eviction in the private rented sector to facilitate safeguards for landlords in financial hardship or where there were already substantial rent arrears.

Regulation 3 saves paragraphs 4, 5 and 6 of schedule 2 (relating to certain temporary eviction grounds) so that these grounds continue to have effect in relation to eviction notices served before Part 1 expires and in relation to any subsequent proceedings or appeals. The temporary eviction grounds include circumstances in which the landlord is seeking to sell or live in their property to alleviate financial hardship or where the tenant has rent arrears equal to 6 months' rent or more.

These saving provisions are required as the temporary grounds will cease to exist on the 31 March 2024 and if no action is taken to save eviction proceedings which have yet to conclude:

- i. notices to end a tenancy on the basis of the new grounds will no longer be valid and a landlord would be required to serve notice again on their tenant negatively impacting landlords already in financial hardship or exacerbating rent arrears.
- ii. eviction applications made to the Tribunal on the basis of the temporary grounds but not yet determined would no longer be made on valid grounds and the Tribunal could not make a determination. Landlords would need to start the process to end the tenancy again. This would again negatively impact on landlords in financial hardship and exacerbate rent arrears.

Damages for unlawful eviction

The emergency Act also temporarily changed the way in which damages for unlawful eviction are calculated to a multiplication of monthly rent within certain limits.

Regulation 4 saves paragraphs 7 and 8 of schedule 2 (relating to damages for unlawful eviction) so that these provisions continue to have effect in relation to actions for damages raised before Part 1 expires and in relation to any subsequent appeals.

The saving provision is needed to keep the unlawful damages provisions for those applications for damages that were made under the emergency Act and have yet to be determined. Without these regulations, this would mean that the process for calculating damages would revert to the measures under the Rent (Scotland) Act 1984 and require tenants to get a costly professional valuation, which would be a significant barrier to progressing a case. This would undermine the objectives of the change in the emergency legislation and undermine access to justice for those who had raised a case while the emergency Act was in force.

EU Alignment Consideration

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

Consultation

A formal public consultation exercise has not been undertaken in relation to this instrument. However, the Scottish Government has engaged with public bodies and other stakeholders on the expiry of these measures and the saving provision being made. This includes landlord and tenant representative organisations, Society of Messengers at Arms and Sheriff Officers and the Scottish Courts and Tribunals Service. Feedback highlighted the importance of providing tenants and landlords with information about expiry of the Act and the effect of these regulations.

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

22 January 2024