



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 5 March 2024

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE

8th Meeting 2024, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

*Pam Gosal (West Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Marie McNair (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Minister for Community Wealth and Public Finance)

Elanor Davies (Scottish Government)

Patrick Harvie (Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 5 March 2024

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning, and welcome to the eighth meeting in 2024 of the Local Government, Housing and Planning Committee. I remind all members and witnesses to ensure that their devices are on silent.

The first agenda item is to decide whether to take item 8 in private. Do members agree to do so?

Members indicated agreement.

Subordinate Legislation

Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024 [Draft]

Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024 (SSI 2024/19)

Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 [Draft]

10:03

The Convener: Under agenda item 2, we will take evidence on three sets of regulations. I welcome Patrick Harvie, the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights, and his Scottish Government officials. Yvonne Gavan is a team leader in the housing services and rented sector reform unit; Adam Krawczyk is head of housing, homelessness and regeneration analysis; Poppy Prior is a solicitor; and Yvette Sheppard is head of the housing services and rented sector reform unit. I invite the minister to make an opening statement.

The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights (Patrick Harvie): Thank you, convener, and good morning to committee colleagues. I am pleased to be at the meeting to present three sets of regulations that will support the expiry of part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 on 31 March 2024 and introduce some important measures that will continue to support tenants from 1 April 2024.

As colleagues know, the emergency act came into force on 28 October 2022. Since then, it has continued to provide extra protection for tenants during very challenging economic times, including through the provision of a cap on in-tenancy rent increases and a moratorium on the enforcement of evictions. However, the measures in part 1 of the act were able to provide only temporary support during the worst of the cost crisis, and the legislation as approved by the Parliament in October 2022 clearly sets out that it could not be extended beyond 31 March this year. In order to support part 1 of the emergency act coming to an end, we have laid the three instruments that the committee is considering.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024 is a negative instrument that is intended to facilitate the transition away from the

emergency measures by saving certain provisions as they relate to processes that commenced prior to 1 April 2024. For the rent cap, certain schedule 1 provisions would be saved for rent increase notices that have been served before 1 April, as well as any subsequent referrals, applications or appeals in relation to them. For the temporary eviction grounds, the regulations will mean that any eviction notice that has been served on the basis of those provisions prior to 1 April may proceed or be appealed. Similarly, provisions will be saved for any action for unlawful eviction that was raised before 1 April and any subsequent appeal. Those provisions will be familiar to members from other time-limited legislation that we have passed previously. In effect, they mean that any action that was started before the expiry date will not have to be restarted just because the source legislation has expired.

The draft Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024 is an affirmative instrument that is technical in nature and it links to the third set of regulations, which I will turn to shortly. The regulations will modify the emergency act in order to change the time when section 10 and, by consequence, schedule 3 of the act will expire. Instead of expiring at the end of 31 March 2024, as part 1 of the act will, section 10 and schedule 3 will expire a year later, at the end of 31 March 2025. In line with the act's requirements, the Scottish Government has laid a statement of reasons to accompany the draft regulations.

The third set of regulations has probably engaged the most interest across rented sector stakeholders. The draft Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 will change how rents in relation to private residential tenancies and statutory assured tenancies are determined on referral by a tenant to a rent officer or the First-tier Tribunal for Scotland. The process of adjudication has been in place since 2017. Although it was suspended during the period of the rent cap, it has now resumed in a modified form. The proposed changes to the adjudication process are intended to smooth the transition away from the rent cap and to protect tenants from steep rent increases, which some tenants would experience if, in a single step, there were to be a move back to open market rent from rent levels that have been suppressed during the period for which the emergency act has been in force.

The legislation requires us to ensure that we reflect the interests of all parties in the rented sector. We recognise that landlords may have experienced rising costs, including from the need to improve and repair properties, which are usually recouped through rent. At the same time, although there have been some signs of improvement in the

economic conditions for households in recent months, they follow a period of significant pressure such that, on average, households continue to face economic and financial conditions that are significantly more challenging than they were prior to the cost of living crisis. In particular, private rented sector households continue to report that they are, on average, under greater financial stress than the average for all households.

Once the rent cap expires, we would expect that many rent increases that are proposed by landlords may proceed as normal, with tenants agreeing to pay the proposed increase. However, it is reasonable to expect that there may be situations in which tenants wish to refer a proposed increase for adjudication. The emergency act provides Scottish ministers with the ability to temporarily modify the basis on which rent increases are adjudicated. The long-standing rent adjudication process allows for rent service Scotland or the First-tier Tribunal to make a determination on the proposed rent increase. That is based on a comparison with the rent for other properties in the area, which is known as the open market rent.

The amended adjudication proposal would see a third factor taken into account when a determination is made. Alongside the market rent and the rent that is being requested by the landlord, there will be an additional comparator. The final rent will be determined based on the lowest of the three figures and it may not be set at a rate above the rent that the landlord is requesting. The additional comparator will be based on the difference between the current rent and the open market rent, with the level of increase being determined on a sliding scale.

When the gap between the market rent and the current rent is less than 6 per cent, the comparator will not come into play, so the rent increase will be either the rent that is being sought by the landlord or the market rent, whichever is lower.

When the gap is between 6 per cent and 24 per cent, a sliding scale will apply, with an additional 0.3 per cent increase being allowed for each percentage point between the current rent and the market rent. The increase may not exceed 12 per cent of the overall rent. That will apply in all cases. The 12 per cent maximum would be reached only in cases in which market rents are 24 per cent or more higher than current rents.

That underlying formula is necessarily more complex than a simple rent cap, and we want to ensure that both landlords and tenants have clarity. That is why a simple online rent calculator forms part of our awareness-raising work. It was launched last Wednesday, well in advance of the changes taking place. Just as people do not need to understand everything about the underlying

technology of the smartphone or the device on which they will use the calculator, they do not necessarily need to know exactly how the underlying formula works in order to use it effectively. The online calculator will allow tenants and landlords to see quickly how various rent scenarios would affect their situation. They do not need to follow the formula in detail. I am aware that members have also been made aware of the recent Scottish Parliament information centre blog on the ending of the emergency measures, which includes an online calculator that is similar to the one that the Scottish Government has provided. When sample numbers are put into the calculator, it will illustrate the potential impact of the proposed changes.

The transitional arrangements will amend the basis of rent adjudication for one year, from 1 April 2024 to 31 March 2025, but they may be extended for further periods of one year, if appropriate, with parliamentary approval. That would be based on an assessment of the circumstances at the time. As well as launching the online calculator to address the underlying complexity of the changes that we are proposing, we are running an awareness-raising campaign that is aimed at increasing awareness of tenants' rights and empowering tenants to assert their rights if required. Our renters' rights campaign launched last Wednesday and it will run for four weeks. We are keen to work with any tenant or landlord representative body to help to raise awareness of the changes and help people to understand how they will work in practice.

The regulations that the committee is considering are vital as they signal a move away from the emergency protections that were crucial in protecting and supporting tenants during the worst of the cost crisis, while also acknowledging that challenges remain and that it is right that we protect tenants as we move towards the pre-cost crisis position. They also come as we prepare the housing bill to be debated in Parliament. That bill will set out how we aim to regulate rents in the long term alongside a wider package of changes to increase tenants' rights and prevent homelessness.

I thank the committee for its scrutiny of the instruments. I am happy to answer any questions.

10:15

The Convener: Thank you for your opening statement. It was helpful that you went into some of the detail and acknowledged the very helpful Scottish Parliament information centre blog with the calculator. It was also helpful to hear about the awareness-raising campaign on renters' rights, which certainly came up in our evidence sessions on the regulations.

On the topic of rent adjudication, I am aware that the Scottish Government is listening to the needs of both landlords and tenants. For a rent increase that may be allowed on adjudication, the draft regulations propose a lower limit of 6 per cent and an upper limit of 12 per cent. To what extent does that strike the appropriate balance between the needs of tenants and the needs of landlords?

Patrick Harvie: We have had to strike that balance throughout the process, from our framing the emergency legislation in the first place to considering its operation and, now, moving out of the relatively straightforward protection of a rent cap.

We have engaged with both tenant and landlord organisations and with stakeholder groups in the sector. We went through a process. It was not a full public consultation because, in order to make use of the most appropriate and up-to-date data, the process had to take place relatively soon before the end of the rent cap. It had to be close enough to that to ensure that we did not end up seeing a gap between the rent cap and the adjudication changes. We floated a lower cap of 10 per cent and an upper cap of 15 per cent. It is probably understandable and predictable that the responses to that were slightly polarised between those who represent different interest groups. However, fair arguments were made from all perspectives, and the fact that we have proposed a taper that moves to an upper threshold of 12 per cent demonstrates that we have taken account of the arguments and perspectives that a range of stakeholders shared during the process.

The Convener: It is good to hear that, having started with 10 per cent and 15 per cent, there was engagement and listening and you settled on those other figures.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): We have heard that, as you mentioned, there are concerns that the proposals could be quite confusing. You mentioned the online rent calculator that has been launched and the awareness-raising campaign on renters' rights, which is limited to four weeks, if I picked up what you said correctly. Will you say a bit more about the awareness campaign? Is there scope to extend it beyond four weeks if that is required? How will you review how effective it is in getting the information across to tenants and landlords?

Patrick Harvie: We will keep under surveillance the engagement that people have with the awareness-raising campaign—a great deal of it is online, so we can monitor the levels of engagement and exposure—and, as we move into the temporary measures, we will also monitor the use of the adjudication protections.

I do not think that it would be reasonable to say that there is a final, set-in-stone decision on how much awareness raising should take place. We have committed to the spend to ensure that there is an awareness-raising campaign as we move out of the temporary rent cap and into the slightly longer-term but still temporary rent adjudication changes. Any such change will increase the level of complexity that people are dealing with and increase some confusion. As a regional MSP, I am aware that my inbox contains correspondence from tenants and landlords who do not know what their rights are as we approach the end of the period.

We need to make sure that we continue to engage with tenants and landlords and provide that information both through direct channels and through working with a range of organisations and advice agencies at a local level. One of the organisations that I visited recently when I launched the campaign was Citizens Advice Scotland, which has a critical role to play as a trusted voice in the local community. Similar organisations the length and breadth of the country will play a really powerful role, too.

Stephanie Callaghan: Can third sector organisations such as Citizens Advice Scotland, if they come up against issues, expect to influence what will happen from this point on?

Patrick Harvie: We will certainly welcome feedback from a range of voices, not only on the awareness-raising work that we are doing in the immediate term but on the operation of the temporary measures once they are in force. We will continue to keep a close eye on these matters.

Mark Griffin (Central Scotland) (Lab): I draw members' attention to my entry in the register of interests as the owner of a private rented property up to July last year.

Good morning, minister. The new process relies on tenants taking the initiative to challenge a potentially unfair rent increase, but we in the committee have heard long-standing concerns about tenants' ability to challenge landlords, for fear of putting their tenancy in jeopardy. What steps is the Government putting in place to protect tenants through the process and assure them that any such challenge will not put their tenancy in jeopardy?

Patrick Harvie: This is a hugely important question that we have been conscious of all through the process. It was very clear that the rent cap had to be temporary; that is the nature of emergency legislation, and I think that that was well understood across Parliament and by external stakeholders when we passed the act itself. Having the ability to modify an existing mechanism—that is, the rent adjudication

mechanism—offered the clearest opportunity for an off-ramp from the temporary rent cap, if I can put it that way.

However, it does place the onus on tenants to challenge, and we need them to be aware that, even as we move out of the emergency legislation, Scotland has the strongest package of tenants' rights and protections of any part of the United Kingdom. We are seeing on-going debates down south over whether no-fault evictions will eventually be banned or whether the proposals will be changed before they are put to the vote, but that is something that we already did a number of years ago.

The grounds on which evictions can be pursued are very clearly and explicitly laid out, and the level of protection that tenants have is very strong. We need to remind not only tenants but landlords of those rights and responsibilities, which is why the awareness-raising campaign is so important and why we will continue to engage with the organisations that provide advice. MSPs, MPs, councillors and other elected representatives can play a really important role in disseminating that information to concerned constituents, ensuring that community organisations that they are in touch with have access to that information and pointing people to online tools such as the rent calculator.

Mark Griffin: My second question is whether the Government has considered changing a particular element of the existing procedure. When a landlord gives notice of a rent increase and the tenant decides to challenge that, arrears can potentially build up in the gap while either rent service Scotland or the First-tier Tribunal decides which rent should apply. My understanding is that, if the rent increase was found to be appropriate, the tenant would need to pay from the date of first issue rather than from the date of the First-tier Tribunal or rent service Scotland agreeing that the increase was appropriate. As I have said, there is the potential for arrears to build up, so has the Government considered amending the process to ensure that the date from which the rent increase would apply would be the date of the tribunal's decision?

Patrick Harvie: A landlord has to give a full three months' notice of a rent increase, and the rent must not have changed when that notice is issued. Tenants who wish to make a challenge can initiate that within the first 21 days of that period.

Rent service Scotland aims to respond to adjudication requests within 40 days. Obviously, there is a degree of independence from Government in the process, but we will continue to monitor the service's ability to respond to requests in a timely manner. It is required to do so within 12

weeks, but it aims for 40 days. If we are able to maintain that level of service, the understandable concern that Mark Griffin raises is less likely to materialise.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. Do you think that rent service Scotland and the tribunal will have the capacity to deal with the potential number of challenges to rent increases that the proposals might bring?

Patrick Harvie: We have worked with colleagues to understand what they expect in terms of the burdens on them of processing rent adjudication requests. The process has not been taking place in the normal way during the period when the emergency legislation has applied, but it will resume now, regardless of whether we are applying an altered adjudication process. However, I would take a little bit of persuading that the numbers are going to be markedly different purely on the ground that we are adding that third comparator.

You might have heard from constituents who are concerned about the rent increase notices that some landlords have issued prematurely, ahead of the rent cap ending—I certainly have. At the moment, we can reassure them that the rent cap is still in place and that those rent increase notices still need to comply with it, but clearly a number of rent increase notices will begin to be issued when the rent cap ends, regardless of whether we take forward the power on a modified adjudication framework with the third comparator figure. It is really important that we have that third comparator figure, but, regardless of whether we use that power, there will obviously be a resumption of rent adjudication requests, and rent service Scotland and the First-tier Tribunal will need to be ready to deal with that. We will, therefore, continue to engage with them to understand how that is playing out in practice. As I said to Mark Griffin, there is a shared desire to ensure that requests are dealt with in a timely way.

Pam Gosal (West Scotland) (Con): Good morning. Callum Chomczuk, from the Chartered Institute of Housing said:

“if we have a system that comes into place in Scotland, we need to have at its heart data on and evidence of genuine rents. We do not have those, and it will require some time to build them up.”—[*Official Report, Local Government, Housing and Planning Committee*, 20 February 2024; c 47.]

Rent service Scotland and the First-tier Tribunal will consider comparable open-market data before decisions on the rent increase can be made. How reliable is that data in allowing rent officers and the tribunal to make informed decisions?

Patrick Harvie: As we go through this year and the committee engages with the proposed housing bill, we will want to explore the issues around data collection in that context. As things stand—that is, as things stood under rent adjudication prior to the temporary emergency legislation—we do not have granular, detailed data on the rents that are actually being paid; we have information far more prominently about rents that are being advertised. That said, rent officers take into account a wide range of factors in determining what they are going to consider to be open-market rent, including the quality and quantity of housing stock, some locational issues such as proximity to shops, banks, leisure facilities and other local amenities and services, and economic factors such as local employment and unemployment rates.

A range of factors is taken into account in making that calculation. The rent officers base their valuations on confirmed lettings information, wherever possible using additional data sources to support them through the valuation process. The process of calculating open-market rent has been embedded for a number of years. Experience and skills, and knowledge of local rental market conditions, have been built up, and we will continue to rely on that process.

10:30

My only additional point is to reassure tenants who wish to bring a request for rent adjudication in those circumstances. They do not need to be able to make their own calculation of what open-market rent is; they can bring a request for adjudication, and the process will kick in and make that calculation. People do not need to have access to information that is not available to them in order to make a request for adjudication.

Pam Gosal: Thank you, minister. The absence of data was brought up last week in our evidence sessions on the housing bill. Data is key when decisions such as this are being made. Do you have any examples that you can share with us from elsewhere—if not around the country, around the world—that, in the absence of data and evidence, we can rely on the areas that you have mentioned?

Patrick Harvie: The evidence that the rent adjudication process can operate effectively with the current data is that it operated effectively before the emergency legislation was in place. We are returning to a system that had already been in operation for a number of years. We are adding a comparator that will ensure that we avoid the very steep rent increases that might have taken place in some parts of the country in the absence of that additional comparator. We are essentially restarting a process that has already been embedded.

We will get into the longer-term debate about how to structure a permanent system of rent controls for Scotland once the housing bill has been introduced and the committee scrutinises it. One of the questions that we will need to address is how much additional data needs to be collected in order for a new system—a system that is not yet in place—to operate effectively. That will be an important question for the committee to get into at that point. It is very clearly not the case that we need additional data in order to operate the rent adjudication process, because we had been doing so prior to the emergency legislation.

The Convener: Thank you for that clarification.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister and colleagues.

The committee heard last week that homelessness has gone up in Scotland but, interestingly, that the numbers of people who had been made homeless in the private rented sector had dropped as a result of the measures that had been in place. Will you give us a flavour of what you think the impact of the regulations might be on homelessness, particularly in relation to the relaxation of eviction notices and so on? I presume that the Government will be keeping a close eye on that.

Patrick Harvie: Absolutely—we will. The point that Mr Coffey raises is relevant to the operation of the emergency protections, but actually goes back a bit before that. If we think back 10 or 15 years, evictions from the private rented sector were one of the leading sources of new homelessness referrals. That has been reducing, so there is evidence that the gradual changes in regulation that were brought in prior to the emergency legislation over a longer period have supported improvements in those statistics and show that evictions in the private rented sector have not been as predominant a source of new homelessness as they were previously. The protections that were part of the emergency legislation have supported, and have been consistent with, that trend. We are obviously keen to ensure that that progress is not reversed.

Earlier, I made a point—to Mark Griffin, if I remember rightly—about the pre-existing package of protections. No-fault evictions have not been permitted for quite some time, and the grounds for eviction are clearly and explicitly laid out. A more recent change was introduced through the coronavirus legislation, in that the pre-action protocols that social landlords previously had to undertake before seeking an eviction have now been extended to the private rented sector.

We believe that a viable and vibrant private rented sector works at its best when landlords and tenants have a shared interest in securing,

sustaining and maintaining tenancies and in avoiding breakdowns. Most landlords do not want to go through a constant cycle of losing good tenants who pay their rent, and most tenants want to be good tenants who are able to pay their rent and have somewhere that they can afford to live with some security. That is what we should be aiming for.

The requirement for pre-action protocols simply embeds the good practice that responsible landlords will, in many cases, already have been using, with landlords seeking ways to sustain a tenancy as a first resort and pursuing eviction only as a last resort, when it cannot be avoided. Sadly, in some cases, eviction will be a necessary step, but I hope that the pre-action protocols ensure that eviction is seen as a last resort rather than a first resort. The evidence shows that those protocols have been effective. We should return to the pre-existing strong package of protections, and we should continue our efforts to drive up standards in the private rented sector by supporting the actions of responsible landlords who have used good practice in the past and by encouraging others to raise their standards.

Willie Coffey: Did you say that the measures that we are discussing today will also expire on 31 March 2025 but that they could be extended beyond then, if appropriate? I think that those were the words that you used. Will you be keeping a close eye on the impact on homelessness among any group to help you to decide on your approach and strategy at that point?

Patrick Harvie: Yes. The Cost of Living (Tenant Protection) (Scotland) Act 2022 gave us the power to introduce such changes. It specified that changes could be introduced for a period of one year and that there could be subsequent decisions to extend the provisions by further periods of one year. That option will be available, but we will not make that decision automatically. We will continue to closely assess the circumstances.

In essence, we must demonstrate that any such measure is proportionate and necessary. That means that we must constantly look at the circumstances and the context in which measures are taken forward. We will look at how the measures are operating, at how the adjudication process is being used and its impact, at the economic circumstances and, of course, at any changes in the patterns of evictions and homelessness.

Willie Coffey: Thank you.

Miles Briggs (Lothian) (Con): Good morning, minister and officials. In your opening statement, minister, you said that renters and landlords do not need to know the detail behind this. What modelling has taken place on how many landlords

will look to apply the upper limit of 12 per cent and what that would mean for the systems that are currently in place?

Patrick Harvie: The circumstances will be different between not only parts of the country geographically, but individual tenancies.

For example, we can think about a tenant who left a private rented home, for whatever reason, while the rent cap has been in place under the 2022 act. If there has been a turnover of tenancy, the new tenancy might well have been reset according to open-market rent and be at the upper end of that. In such a circumstance, there might be very little gap between the rent that is currently being paid and the open-market rent. However, there might be a very big gap for the same property with the same landlord, if there had not been a turnover of tenancy and that landlord, prior to the cost of living crisis, had done their best to keep rent rises low for a number of years, because they wanted to hang on to a good tenant and sustain the tenancy. The circumstances will be different.

In relation to the earlier questions about data, it is very clear that we do not have granular, detailed data about the level of rents that are being paid. We have much more information about the rents that are being advertised. That is a matter to keep under careful watch as the rent adjudication process resumes and Scotland moves out of the temporary rent cap measures. However, at the moment, we do not have the level of detail about the rents that are being paid, as opposed to the rents that are being advertised, which would give a definitive answer to the question.

Miles Briggs: I understand. You mentioned the geographical element; in Edinburgh, new properties are coming on to the market with rents that are 25 to 30 per cent higher than they would have been prior to rent control. There is a real disturbance and a potentially dramatic rent increase, as well as a loss of properties, in the capital. What lessons have been learned from that and the lack of data and consultation in relation to future rent controls in the housing bill?

Patrick Harvie: A range of views are expressed on the potential impact of the temporary legislation on the wider PRS market. It is very clear that new rent increases, as advertised, have been rising in a worryingly strong way in many parts of the UK. A few days ago, the BBC ran a story that showed that Glasgow and Edinburgh are at the upper end of that. Glasgow was a fraction of a per cent above Bolton and Manchester; Edinburgh was a bit below Manchester and London.

If the temporary legislation is the factor that is driving the increase in new rents being set, I would expect to see a big gap between areas in Scotland

and areas in the rest of the UK, but we do not see that. We do see a range of experiences in different parts of Scotland. Cities, as well as towns that are within commuting distance of cities, have been seeing big increases in advertised rents throughout the UK. That is a worry and we will have to consider it as we look at the permanent changes to legislation with the new housing bill.

I do not think that the situation could be used as a justification for not using the power to add an additional comparator as we return to the rent adjudication process. That additional comparator enables us to provide some protection against a cliff edge for tenants as we move out of the temporary legislation. The evidence from around the UK of rent rises for new tenancies reinforces the desire to ensure that that cliff edge is not experienced and that annual in-tenancy rent increases do not, suddenly, in a single step, return to that open-market condition.

In relation to the previous issue, I refer Mr Briggs to the business and regulatory impact assessment, which was published alongside the regulations, and looks at the number of properties that are likely to be affected. The assessment models some of the possible impacts and explores the level of rent that landlords would forgo and tenants would save.

Miles Briggs: Finally, the Scottish Association of Landlords has accused the Scottish Government of “anti-landlord rhetoric” and of “harming investment in private rented housing in Scotland”.

Today, it reports estimates of around 22,000 homes being lost from the private rented sector. How would you respond to that?

10:45

Patrick Harvie: I am sorry that the Scottish Association of Landlords has chosen to use such language. I do not believe that the Scottish Government uses “anti-landlord rhetoric”—I would not acknowledge that. During the debates on the Cost of Living (Tenant Protection) (Scotland) Bill and in relation to the development of the consultation on the wider rented sector strategy, the new deal for tenants and the development of the new housing bill, we have said very clearly that we want a private rented sector that has high standards and that is part of a housing system in which all people have their human right to adequate housing realised, and that responsible landlords have nothing to fear from regulation. Our approach is about raising the standards in places where we do not see responsible practice taking place.

We are all conscious that, within the private rented sector, there is a range of practice, a range

of affordability and a range of protection of and respect for tenants' rights. We want to encourage the best, and we want to ensure that, where standards are not as they should be, they will be raised up.

Good, responsible landlords have nothing to fear from a proportionate approach to regulation. Across many other European countries, the provision of a decent level of regulation and protection for tenants is entirely consistent with a viable private rented sector, and I think that, in fact, that is the experience in Scotland, too. Over the decades, there have been gradual increases and improvements in regulation of the private rented sector and protection for tenants at the same time as a dramatic increase in the scale and size of the private rented sector. Indeed, even during the operation of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and the rent cap, the number of properties that are registered under the landlord register has gone up slightly.

I recognise that the Scottish Association of Landlords has conducted a survey of a small number of tenants, from which it appears to be extrapolating as though it proves something on the wider picture; I do not think that the data that we have demonstrates that.

The Convener: That concludes our questions. I thank the minister and his officials for giving evidence.

We turn to agenda item 3, which is consideration of the motion on the instrument. I invite the minister to move motion S6M-11978.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024 [draft] be approved.—[Patrick Harvie]

The Convener: The question is, that motion S6M-11978, in the name of Patrick Harvie, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Griffin, Mark (Central Scotland) (Lab)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

Briggs, Miles (Lothian) (Con)
Gosal, Pam (West Scotland) (Con)

The Convener: The result of the division is: For 5, Against 0, Abstentions 2.

Motion agreed to.

The Convener: We move on to agenda item 4, which is consideration of the motion on the second instrument. I invite the minister to move motion S6M-11979.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 [draft] be approved.—[Patrick Harvie]

The Convener: The question is, that motion S6M-11979, in the name of Patrick Harvie, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Griffin, Mark (Central Scotland) (Lab)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

Briggs, Miles (Lothian) (Con)
Gosal, Pam (West Scotland) (Con)

The Convener: The result of the division is: For 5, Against 0, Abstentions 2.

Motion agreed to.

The Convener: The next item on our agenda is consideration of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024 (SSI 2024/19). As it is a negative instrument, the committee is not required to make any recommendations on it. Do members have any comments on the instrument?

No one has any comments. Is it agreed that we do not wish to make any recommendations in relation to the instrument?

Members indicated agreement.

The Convener: The committee will publish a report setting out its recommendations on the previous two instruments in the coming days.

I suspend the meeting to allow for a changeover of witnesses.

10:50

Meeting suspended.

11:37

On resuming—

Local Authority (Capital Finance and Accounting) (Scotland) Amendment Regulations 2024 [Draft]

The Convener: The next item on our agenda is an evidence-taking session on the Local Authority (Capital Finance and Accounting) (Scotland) Amendment Regulations 2024 with Tom Arthur, Minister for Community Wealth and Public Finance. Mr Arthur is joined for this item by Scottish Government officials Elanor Davies, who is head of local authority accounting, and Susan Robb, who is a solicitor.

I welcome the minister and his officials to the meeting and invite him to make an opening statement.

The Minister for Community Wealth and Public Finance (Tom Arthur): Thank you, convener, and good morning, committee. With your permission, convener, I will just take a bit of time to explain what I appreciate is potentially a complex set of regulations.

In 2016, regulations were introduced to provide greater flexibility to local authorities to ensure that both current and future taxpayers are charged for their share of the capital expenditure costs of public assets that are used to deliver services.

Perhaps I can briefly explain the nature of statutory accounting arrangements. Accounting standards require depreciation to be charged against revenue to reflect the cost of the capital expenditure for an asset, such as a school, as it is used over the term that it will be used for—in other words, its useful life. The 2016 regulations replaced the requirements of accounting standards with an annual charge against revenue in the form of loans fund repayments, to recognise the costs of capital expenditure to be financed from borrowing over the term for which the expenditure is expected to provide benefit to the community.

The aim of both accounting standards and statutory arrangements is to accurately and transparently reflect the costs of capital expenditure to acquire an asset over the period during which the asset will be used. The 2016 regulations permit local authorities greater freedom to choose the term over which to charge the costs of capital expenditure against revenue, known as the repayment of loans fund advances, and to vary the period and pattern of such charges. The intention is to allow local authorities to more accurately align the period of loans fund repayment—and therefore recourse to taxpayers—with the period over which the asset will benefit the community.

However, a review of local authority financial data shows that, since 2019, local authorities have been significantly reducing their on-going annual revenue provision to meet long-term borrowing costs, despite increasing external debt, and have been deferring a substantial proportion of capital financing costs to future years. That approach has been taken as a solution to meet affordability challenges and address budget gaps instead of allocating more fairly the cost of the capital expenditure to taxpayers. That is not in keeping with the spirit of the statutory accounting arrangements, which are intended to ensure adequate provision from revenue to meet debt financing costs and an equitable charge to taxpayers for the use of the asset for which the capital expenditure has been incurred.

Furthermore, such an approach creates financial risk, as deferred repayments will have to be met in the future. Rising demand for public services and the prolonged impact of UK Government austerity on the public finances, along with economic and inflationary pressures, increase the risks that local authorities might find it difficult to service their increasing capital financing commitments. Deferring provisions to meet such commitments further exacerbates an already challenging longer-term financial outlook. The committee will not need me to draw its attention to the situation in England and the stark evidence of the outcome of such accounting practices in English councils.

We agree entirely with the evidence that I know you will have heard from local authorities that authorities in Scotland are neither borrowing excessively nor borrowing for the purposes of commercial investment, but the fact is that the practice of reversing debt financing costs and deferring those costs to future years, which has contributed significantly to the financial collapse of a number of local authorities in England, is being adopted in Scotland. I point out for information and context a House of Commons research briefing that was published last month that states that the financial collapse of Thurrock Borough Council stemmed from “two principal causes”: not only the loss of value of its assets, but a failure to make “sufficient ... revenue provision” to meet its debt repayments.

The briefing also states:

“a major cause of Slough’s financial difficulties was its failure to make sufficient ... revenue provision in its accounts to repay”

its debts. Moreover,

“Woking issued a section 114 notice”

in

“June 2023”,

highlighting inadequate minimum revenue provision since 2007-08 as a key contributor to the local authority's significant financial challenges.

In 2020, the UK Government took steps to amend equivalent statutory arrangements for England and Wales to prohibit exactly those accounting practices that continue to be adopted in Scotland—namely to prevent local authorities from reversing costs incurred in previous years as a means of increasing reserves, and to prevent the deferral of debt repayments to future years as an affordability measure.

Although our situation and the situation in England are not identical, the amendment regulations simply align Scotland with the improvements that have been made to the statutory framework for England and Wales. Contrary to the suggestion that the regulations have been rushed through in some way, the need for a review of statutory capital financing and accounting was identified in 2019 and confirmed in the resource spending review in 2022. Despite that, local government has resisted any such review and has requested successive delays over the past two years. The committee might be aware that we consulted on a number of other reforms in late 2023, but in the light of the valid feedback from respondents, we wish to take more time to consider the implications of those reforms before bringing them forward.

No specific concerns were raised over the amendments that are being taken forward at this time, and although the UK Government intervened reactively, we are intervening proactively to protect Scotland's public finances from risks such as the outcomes that we have seen in England. I therefore consider it to be important to deliver that alignment as soon as possible.

In summary, the amendment regulations will more clearly articulate the policy intent of the 2016 regulations and will harmonise statutory arrangements not only with accounting standards but with England and Wales, to better ensure an equitable charge to current and future taxpayers over a period that is commensurate with the benefit that an asset provides to the community.

With that, convener, I conclude. Thank you.

The Convener: Thanks very much, minister, and thank you, too, for taking the time to lay things out in quite a bit of detail and for the work that you have been doing on the regulations.

I would be interested to understand why the Scottish Government feels that regulations are needed now, given that the Convention of Scottish Local Authorities has stated that

"there is no requirement for a review of capital accounting"

and that, during last year's consultation, directors of finance said that

"no clear rationale for this review has been provided to support the proposed changes."

11:45

Tom Arthur: The case for the action that we are taking is underlined by the point that I made about the need to be proactive. I touched on the situation in which some local authorities in England have found themselves, and I am sure that no one at this table would want that to befall our local authorities. It is important to ensure that accounting practices are consistent with the standards that we all expect. The Scottish Government and the Scottish ministers have an important role, as stewards of the public finances, in ensuring that there is an appropriate regulatory environment to facilitate the standards that we seek.

As I touched on, the issue has been given careful consideration over a considerable period. That goes back to 2019, when some practices that caused concern became evident. In the resource spending review, we signposted our intention to take this action. We have consulted and, where valid points and concerns were raised, we have not taken forward the relevant measures in the amendment regulations.

We recognise that we have a responsibility to ensure that accounting practices are consistent with what is required to provide long-term stability and transparency in the public finances. Ultimately, that is the reason that underpins introduction of the amendment regulations.

The Convener: Thank you.

Miles Briggs: Good morning, minister and officials.

Not for the first time, we have heard concerns from COSLA and local authorities, which are unhappy about the short period of time that was allocated for consultation on the measure. It was held in December for just four weeks. In the spirit of the Verity house agreement, what consideration has been given to that issue?

Tom Arthur: I have two points to make on that. The first, which goes back to my previous answer and my introductory remarks, is about the timelines and the signalling of our intent. Secondly, on the consultation, a consultation that is just with local government will typically be around two weeks. My officials will correct me if I am wrong, but I think that the consultation in this case was four weeks, so it was more than the normal time.

We have consulted in a way that is consistent with how we normally engage with local

government. More generally, the context in which the consultation was undertaken was that there had been extended engagement over a period in which we had indicated our concerns.

Stephanie Callaghan: I put on record that I was a councillor at South Lanarkshire Council until 2022. I remember the information sessions and the intense scrutiny from councillors across the board when we looked at reprofiling loans fund repayments.

I have a few questions. What assessment has been made of the extent to which local authorities have used the 2016 flexibilities? It would be helpful if you could put a number on that, if that is known. Do you have a figure for the amount by which council reserves have been boosted across the country?

Tom Arthur: I ask Elanor Davies to come in on those specific points and provide some additional information.

Elanor Davies (Scottish Government): I apologise—I am just looking for the values. I had them to hand, previously.

The local authority budget reports for 2023-2024 and 2024-2025 show that many local authorities have applied the flexibilities in the statutory regulations to defer the revenue provision for capital financing to future years. We have seen, in the local financial returns and the statistics that we capture, that revenue provision to meet borrowing costs has been declining since about 2018-19. At 31 March 2022, which is the most recent point for which we have data, the all-Scotland balance for the loans funds was £16.9 billion. Comparing the loans fund repayments, which are required by statute, against accounting standards, we find that the loans fund repayments that have been made account for only 30 per cent of the costs that would have been charged if local authorities were required to apply accounting standards and charge depreciation. If, year on year, 70 per cent of the costs are being deferred to future years, that represents a significant future sustainability risk.

Stephanie Callaghan: Do you have the figures for how many councils have taken that step?

Elanor Davies: I apologise—I do not have a note of the number of councils, but I can certainly provide that.

Stephanie Callaghan: If you could send that on to us, that would be really helpful.

Willie Coffey: Good morning, minister, and your colleagues. The regulations apply only to new loans; they do not apply retrospectively. Why did you make that decision if the extent of the problem is as described by Ms Davies?

Tom Arthur: The regulations are a product of engagement and will help to provide clarity and certainty going forward, as well as the consistency with accounting standards that we want.

Elanor might want to provide some more detail on the process and consideration regarding potential retrospectivity.

Elanor Davies: The regulations will not have retrospective effect. Given that the provisions will be introduced only from the point at which the regulations come into force, which will be 1 April 2024, we cannot ask local authorities to consider decisions that have already been taken. Most local authorities have already applied the flexibility to their existing loans fund advances, so we are instead making sure that that cannot be applied subsequently.

Mark Griffin: You set out some of the financial challenges that have resulted in this flexibility being used in England, which are well documented. What assessment has the Government carried out of the financial health of local authorities in Scotland that have used this flexibility and of whether that has put any of them at risk of going down the same road as the English local authorities that you mentioned?

Tom Arthur: As I touched on in my earlier remarks, there are differences between the circumstances in Scotland and those in England. I sought to be clear about that, as I did not want to suggest that there is full equivalence. However, on the specific point around the accounting practices, that is an area of concern that we can address.

We recognise that, across the public sector, public finances are creating significant challenges and pressures. We have embarked on broader process of engagement with local government through the Verity house agreement and the commitment to developing a fiscal framework. The local government budget settlement for 2024-25 represents a greater percentage of ministers' discretionary spend than there was in previous years' budgets.

Elanor Davies might wish to comment on the specific aspects of the health of local government finance compared with what we have seen in England.

Elanor Davies: It is an on-going piece of work. We are reviewing the financial health and resilience of local authorities. I could certainly provide further information to the committee when that work is complete.

Mark Griffin: In advance of that work being completed, does the Government have any concerns about the risk of financial failure of any particular Scottish local authority?

Tom Arthur: Specific roles and responsibilities are exercised by the Accounts Commission, for example, in assessing the performance and financial management of local authorities. We recognise the challenges that local authorities are facing, but we are in a different set of circumstances than certain local authorities in England were in because of some of the decisions that were taken by individual local authorities. However, as I highlighted in my earlier remarks, a contributing factor was the particular approaches around accounting that we are discussing, and the way in which they were taken in England. The United Kingdom Government reacted to that; we are getting ahead of the situation by being proactive. We are ensuring that we are not creating a situation in which, over time, the level of risk increases and starts to present long-term sustainability challenges.

On this particular point, we are taking proactive action to align with the situation in England and Wales. Indeed, the action is prospective—to answer Mr Coffey’s question, there will be no retrospective effect.

Marie McNair: I declare an interest, in that I was a councillor in West Dunbartonshire Council until 2022.

Good morning, minister and officials. The consultation in December included other proposals that are not being taken forward at this time, and COSLA has concerns that the Government still intends to do further work on those. What are the Scottish Government’s plans on those proposals and on any wider review of capital finance accounting?

Tom Arthur: We will continue to engage constructively with local government on those matters but, as I touched on earlier, we in the Government have an obligation in the broader stewardship of the public finances and in assuring that there is an appropriate regulatory environment.

Elanor Davies may be able to provide more detail on the other elements that were consulted on and the work that is on-going.

Elanor Davies: We have already had discussions with local government and have suggested a collaborative working group. We have also provided assurance that any further amendments would not be introduced before 2027, so that there will be time to give due consideration and reflect them in longer-term financial plans.

Pam Gosal: Good morning, minister and officials.

COSLA has raised concerns that creating additional administrative burdens on local

authorities and their auditors is an unnecessary risk and an unnecessary additional burden. Have you discussed how that might impact on local authorities, and the best way in which to support it to deal with any additional administrative burdens?

Tom Arthur: As has been touched on, we have consulted. The regulations are published subject to parliamentary scrutiny, and we will continue to engage with local government and monitor the situation. Should any particular unanticipated issues arise, we would, of course, want to engage with local government constructively to remedy those.

Pam Gosal: Given that COSLA has raised that concern, are you doing any work to help councils with that additional administrative burden?

Tom Arthur: As I said, if local authorities want to work with the Government on particular points in addressing any of their potential concerns, or other issues that could arise, we want that to happen.

I touched on the areas that we consulted on that we are not taking forward. We have taken a constructive approach to that with the establishment of a joint working group and the deferring of any further changes to 2027 at the earliest. That demonstrates the Government’s balanced and proportionate approach. It is very much in the spirit of constructive partnership.

For the reasons that we have set out, we believe that we have to take forward these regulations at this time, given the significant risks that could ensue if we did not do so.

Pam Gosal: Does the Scottish Government believe that it would be worth its while to clarify the rules that relate to council capital loans and the economic assessments of the value and sustainability of such loans?

Tom Arthur: If local authorities would welcome clarification on specific areas of, or any matter in, the broader regulatory environment, we would want to engage on that constructively. I ask Elanor Davies whether she has a response to any specific points in that area.

Elanor Davies: Yes. Those rules will be clarified. Statutory guidance will be issued in support of the regulations, which will set out clearly how local authorities are to account for loans fund advances and repayments.

Pam Gosal: Thank you.

The Convener: That concludes our questions in that evidence session. I appreciate the minister’s and officials’ provision of information.

We turn to agenda item 7, which is consideration of the motion on the instrument. I invite the minister to move motion S6M-12003.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Local Authority (Capital Finance and Accounting) (Scotland) Amendment Regulations 2024 be approved.—[Tom Arthur]

Motion agreed to.

The Convener: The committee will publish, in the coming days, a report setting out its recommendations on the instrument.

At the start of the meeting, we agreed to take the next item in private. I therefore close the public part of the meeting.

11:59

Meeting continued in private until 12:30.

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