

Local Government, Housing and Planning Committee

5th Meeting, 2023 (Session 6)

Tuesday 21 February 2023

Evidence session on the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023; and the Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023

Introduction

1. The purpose of this paper is to provide information for the Committee's evidence session with stakeholders on the:

- Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023;
- Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023

2. The Committee will take evidence from—

- Timothy Douglas, Head of Policy and Campaigns, Propertymark
- Sarah-Jane Laing, Chief Executive, Scottish Land and Estates;
- David Melhuish, Director, Scottish Property Federation;

and then from—

- David Bookbinder, Director, Glasgow and West of Scotland Forum of Housing Associations;
- Carolyn Lochhead, Director of External Affairs, Scottish Federation of Housing Associations (SFHA);
- Sherina Peek, Acting Policy Manager, Association of Local Authority Chief Housing Officers (ALACHO);

and then from—

- Fenella Gabrysh, Member and Emma Saunders, National Organiser, Living Rent;
 - Gordon MacRae, Assistant Director, Shelter Scotland;
 - Colin Stewart, Chair, North of Scotland Regional Network of Tenants and Residents.
3. Copies of the Regulations can be accessed via the following links—
- [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Dates and Rent Cap Modification\) Regulations 2023](#)
- [Cost of Living \(Tenant Protection\) \(Scotland\) Act \(Early Expiry and Suspension of Provisions\) Regulations 2023](#)

Background

4. The Cost of Living (Tenant) Protection (Scotland) Act 2022 gives Scottish Ministers temporary power to cap rents for private and social tenants, as well as for student accommodation. The Act also introduces a temporary pause on the enforcement of eviction orders in certain cases.
5. It was considered in the Parliament as emergency legislation and accordingly the Committee did not have time to undertake scrutiny of the Bill. It did, however, take evidence from stakeholders and the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights ('the Minister') on the issues raised by the proposals on 4 October 2022.
6. The measures in the Act initially apply from 6 September 2022 to 31 March 2023 but the provisions can be extended for two further periods of six months with parliamentary approval. Any provision in the Act can also be ended early or be suspended.
7. The rent cap, which applies to in-tenancy rent increases, has initially been set at 0% from 6 September 2022 until at least 31 March 2023. Ministers have the power to vary the rent cap while it is in force subject to the approval of the Parliament.
8. The Act requires the Scottish Ministers to prepare and lay a report before the Parliament on whether the rent freeze and evictions moratorium remain necessary and proportionate.
9. The first of these reports covering the period from enactment to 31 December 2022 was laid before the Parliament on 12 January 2023.
10. In his statement to the Parliament on the report the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirmed that the

Scottish Government would lay secondary legislation to expire the social rented sector rent cap provisions from March 2023.

11. At the same time, the Minister expressed his intention to lay secondary legislation to continue both the temporary pause on the enforcement of eviction orders in certain cases and the rent cap for tenants in the private rented sector beyond the expiry date of 31 March 2023 although he did not confirm what the level of the cap would be for tenants in the private rented sector.

12. The Minister also noted that the rent cap for student accommodation was also under review, but suggested that its effect had been limited due to the different way in which such tenancies are managed.

Regulations

13. The Regulations have now been laid before the Parliament and will be considered by the Committee at its meetings on 21 and 28 February.

Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023

14. These Regulations, if approved, will increase the rent cap for private sector tenancies to 3%. The Act also currently allows private landlords to apply to Rent Service Scotland to increase their rent by a maximum 3% to cover specified increases in costs in limited circumstances. This limit will be increased to 6%.

15. If approved, the Regulations will also extend the evictions pause until the end of September 2023.

Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023

16. These Regulations propose to remove the rent cap provisions for social housing tenancies from 26 February 2023 allowing social landlords to give their tenants notice of any rent increase applying from April onwards.

17. The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Early Expiry and Suspension of Provisions) Regulations 2023, also proposed to suspend the rent cap for student tenancies.

Written submission

18. The Committee has received a written submission from Shelter to inform the session. The submission can be found at the Annex to this paper.

Next steps

19. Further to this meeting the Committee will take evidence on both sets of Regulations from the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights at its meeting on 21 February. At that same meeting the Committee will be invited to consider whether it wishes to recommend to Parliament that the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 should be approved.

**Clerks,
Local Government, Housing and Planning Committee**



SHELTER SCOTLAND: EVIDENCE ON THE IMPACT OF THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

We welcome the opportunity to provide evidence to the Committee on the impact of the measures introduced as part of the Cost of Living (Tenant Protection) (Scotland) Act 2022. These emergency measures included a cap on rents and moratorium on evictions for social and private tenants. We would reflect that the intention stated when the bill was introduced to protect tenants from rent rises and eviction has unfortunately been limited in practice.

While we support most of the short-term measures in the Cost of Living Act and believe it should be extended for a further six months (acknowledging the extension and changes to provisions announced last month), it should be noted that we continue to have significant concerns about some of the measures such as the exemption which allows social tenants to be evicted for rent arrears of over £2,250. We called for this amount to be increased as evidence from our Law Service showed that of the 84 social sector eviction cases which they have worked on from January to October 2022 (prior to the Cost of Living Bill being introduced), the average amount of rent arrears was £5,701.

While we recognise that short term interventions are required, we would strongly argue that we need the structural solutions to the housing emergency to be implemented urgently. The housing emergency has been with us long before covid and the cost of living crisis. To provide effective, long-term solutions to Scotland's housing emergency, we are calling on the Scottish Government to:

- Reverse its planned cuts to the housing capital budget to ensure 38,500 social homes are delivered by 2026 to reduce housing need. They should prioritise funding in the Affordable Housing Supply Programme exclusively to delivering homes for social rent and introduce a national acquisition programme.
- Fully fund local government and local homelessness services, including carrying out a full audit of existing homelessness spend and creating a new Homelessness Emergency Fund to direct money where it is most needed.
- Guarantee the right to a home for everyone experiencing homelessness.

Social housing supply is the structural solution
Increasing the supply of social housing in Scotland is crucial if we are to address the housing emergency. It requires adequate funding in order to

ensure enough social homes are delivered to reduce housing need and to get the growing number of people out of temporary accommodation.

The large year-on-year cut to the social housing capital budget announced by John Swinney in December (16.2%) poses significant problems for increasing the supply of social homes and reducing housing need, particularly when we have seen the cost of building increase over the past year. Failing to deliver the new social homes Scotland needs will keep Scotland in the grip of a devastating housing emergency and increase homelessness and housing need.

We acknowledge the current challenges in meeting social housebuilding targets across Scotland – that is why we have [offered urgent solutions to the Scottish Government](#) to help ensure the social homes we need are still delivered – we need an urgent and coordinated interventions:

- redirect all public subsidy in the AHSP exclusively to homes for social rent
- develop a national acquisition programme to increase the supply of social homes
- reverse the cuts announced in the draft budget, which will prove doubly devastating for the delivery of social homes in the current inflationary environment.

Social sector rents

We understand that the Scottish Government has come to an agreement with Councils and Registered Social Landlords (RSLs) on social sector rents and will remove the social rent freeze/cap from this legislation. This will allow RSLs and councils to effectively plan and deliver their social house building/delivery programmes and this is positive, as it is the single most important structural policy solution to tackle the housing emergency and reduce housing need.

However, it is vital that social rents remain affordable, especially at a time when tenants are struggling to pay their rent, heating and food bills. There is the potential for rents to rise almost in line with inflation, which could mean an 11% increase. This would be devastating for many households who are already struggling, particularly for those whose housing costs are not covered by housing benefit or universal credit. We know that "come April 2023 half of all households in the social rented sector will be in extreme fuel poverty"¹ and 63% of social rented households (and 40% of private rented households) in Scotland were estimated to be financially vulnerable over period 2018 – 2020 (defined as households with savings which would cover less than one month of income at the poverty line)².

It is therefore vital that the Scottish Government:

¹ The Cost of Living (Tenant Protection)(Scotland) Act 2022: First Report to the Scottish Parliament, p.11.

² [Cost of Living Bill - Key Statistics Scottish Government](#)

- adequately supports households in the social rented sector to ensure they can pay their rent and other essential bills and ensure that they are not at risk of losing their home.
- provides the support social landlords may require to keep rents affordable and to continue to deliver quality social homes for current and future tenants.

Evidence from the front line on how the emergency measures are working
We have spoken to our housing advisers, legal team and digital advice team to better understand the impact this emergency legislation is having.

We recognise that to date the evidence is limited, but we have seen some impact of the Act with our advisers successfully challenging and stopping some evictions and rent increases using this emergency legislation. This indicates that some of the emergency legislation is working, but as it has also required the support of our advisers to ensure it is enforced, we would urge the Scottish Government to do more to support private tenants in particular to understand their rights and how to enforce them.

We are also aware that some landlords are acting unscrupulously to circumnavigate the emergency legislation and evict tenants from their home without following the correct legal process.

Our advisers have seen an increase in the numbers of illegal evictions and harassment of tenants forcing them to leave their home. This issue also came up during the Covid emergency period and we ask that the Scottish Government continue to proactively work closely with Police Scotland to ensure that illegal eviction cases are always treated as a criminal matter.
Social sector evictions

When the bill was progressing through the Scottish Parliament we called for the level of rent arrears to be increased for which an eviction could be pursued. Our evidence showed that for social tenants we are supporting, who are struggling to keep their home due to rent arrears, their rent arrears were all over the £2,250 level legislated in the Act.

We argued that to support more people to keep their homes, it was important to recognise this evidence and if the legislation was to successfully protect more people from eviction, then it needed to be amended.

Our Law Service have reported that of the 84 social sector eviction cases which they have worked on from January to October 2022 (prior to the Cost of Living Bill being passed), the average amount of rent arrears was £5,701. Since the Cost of Living (Tenant Protection) (Scotland) Act 2022 came into force, our Scottish Housing Law Service have not observed the new legislation having any impact on Court proceedings throughout Scotland. We have not observed any discussion of or reliance on the Act in the Courts we regularly attend.

In terms of the social sector, we do not expect the Act to impact our case work going forward. This is because the exemption under Schedule 2, Section

1(5)(b)(i) will apply to the majority, if not all of our clients. In general, rent arrears in the social sector are in excess of £2,250 by the time the case reaches Court.

Furthermore, we have serious concerns for the long-term implications of the figure of £2,250 being considered to be 'substantial rent arrears' in the social sector after this emergency legislation ends. We believe it could create a perverse incentive for social sector evictions to be granted for far lower levels of rent arrears than they were previously granted, putting more households at risk of homelessness.

We also have concerns around the imminent resumption of evictions in both social and private sectors. As noted on the [Scottish Government website](#):

"...where a landlord is prevented from enforcing an order for eviction while the moratorium is in effect, the enforcement of that order can only be delayed for a maximum period of 6 months."

Our law service has confirmed that this means we will start to see eviction notices granted on or after 6 September 2022 becoming enforceable from 6 March 2023 onwards. People will potentially lose their homes before even the initial period of the Act is over, and subsequently gives some landlords the chance to significantly increase rents between those tenancies.

It is our understanding that the 6-month restriction on enforcement is a maximum, and there is no means to extend this under the Act. The extension of the Act itself to end of September will have no impact on eviction notices already raised which are approaching the end of the 6-month delay period.

Rights awareness

Shelter Scotland advisers report that tenants are unclear of their rights in relation to the Cost of Living Act. Tenants are often misunderstanding the emergency legislation to mean they aren't at risk of eviction, and this may not be the case due to the exemptions within the Act. This lack of clarity caused in part by the Scottish Government's messaging around the Cost of Living Act is causing confusion.

As we highlighted in [our briefings on the Act](#), a large-scale rights awareness raising programme is required to ensure all tenants are aware of their rights in relation to the emergency legislation, and the support that is available to them. We strongly recommend that the Scottish Government writes to all private and social tenants to make them aware of this emergency legislation and the resulting changes to their rights, as it did with the emergency legislation changes during the coronavirus pandemic.

As an indication of the increased need for advice since the middle of September this year, there has been an increased interest in the advice pages on our website, with people seeking to find out what their rights are in the current crisis. Nearly 16,000 people accessed our site looking for this information between 16 September and early December, making clear the need for clear information on housing rights to be provided. We would ask that

additional information should urgently be provided by the Scottish Government for social and private tenants.

Tenant Hardship Grant Fund

Shelter Scotland welcomed the extension of criteria to the Tenant Grant Fund which was announced alongside the emergency measures in the Cost of Living Act. The extension meant that this financial support would be available to tenants with Cost of Living crisis arrears, not just Covid-related arrears.

However, [statistics published in early January](#) show that some local authorities have already spent all their Grant funding, meaning the extended criteria will have no impact unless additional funding is also made available. This does not appear to be forthcoming, with no mention of the Tenant Grant Fund running into 2023/24 in the recently announced Scottish Budget. We've also only this month had sight of the [updated guidance for local authorities](#). Our advisers have not been signposting tenants to the Tenant Grant Fund, as they have not received any communication from local authorities on whether the new extended criteria applies yet, or if the fund is open for applications again. There has been a lack of information available on the council's websites.

There should be clear communication on what support is available across the country, so that where there are funds available, tenants at risk of losing their home are aware of the financial support available.

There should also be adequate monitoring mechanisms put in place to enable accountability on how the money is being spent and how many people have been able to keep their home as a result.

Additional changes and protections required

We understand that more private landlords will likely be struggling to keep their rented properties due to the rising mortgage rates, leading to increased evictions and homelessness as the new Act allows landlords to evict a tenant if they need to sell up due to financial hardship.

We believe that if a private landlord is needing to sell up, they should as a required first option sell their properties to a social housing provider where that is appropriate. Tenants should be offered the opportunity to remain in their home as it is sold and turned into a social tenancy, ensuring fewer tenants are thrust into the homelessness system which is already creaking under the strain in many areas. This should be considered alongside our call for a Scottish Government national acquisition programme to purchase homes on the open market for use in the social rented sector.