

Local Government, Housing and Planning Committee

6th Meeting, 2023 (Session 6)

Tuesday 28th February 2023

SSI cover note for the following instruments:

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

Background

1. The purpose of this paper is to provide information for the Committee's consideration of 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. 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

3. 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.

4. 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.

5. 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.

6. The rent cap, which applies to in-tenancy rent increases, had 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.

7. 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.

8. The first of these reports covering the period from enactment to 31 December 2022 was laid before the Parliament on 12 January 2023.¹

9. 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.

10. 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.

11. 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

12. The Regulations giving effect to the intention expressed by the Minister have now been laid before the Parliament. The Committee began its consideration of the Regulations at its meeting on 21 February and will conclude consideration at its meeting on 28 February.

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

13. 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

¹ <https://www.gov.scot/publications/cost-living-tenant-protection-scotland-act-2022-first-report-scottish-parliament/>

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%.

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

15. Further information is contained at Annex A.

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.

18. Further information is contained at Annex B.

Delegated Powers and Law Reform Committee consideration

19. At its meeting on 31 January 2023 the Delegated Powers and Law Reform Committee considered the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Early Expiry and Suspension of Provisions) Regulations 2023. While the Committee was content with the instrument, Jeremy Balfour MSP highlighted his concerns in relation to this legislation. The full transcript of the discussion can be read in the [Official Report](#) for the meeting.

20. The Delegated Powers and Law Reform Committee subsequently considered the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 at its meeting on 7 February 2023 and was also content with that instrument.

Local Government, Housing and Planning Committee consideration of the Regulations

21. The Committee has until 16 March 2023 to consider the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 and 6 March 2023 to consider the Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023.

22. The Committee held an initial evidence session with stakeholders on the Order at its meeting on 21 February 2023. The Committee took evidence from the following stakeholders:

- Timothy Douglas, Head of Policy and Campaigns, Propertymark
- Sarah-Jane Laing, Chief Executive, Scottish Land and Estates
- David Melhuish, Director, Scottish Property Federation
- David Bookbinder, Director, Glasgow and West of Scotland Forum of Housing Associations
- Mike Callaghan, Policy Manager, COSLA
- 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)
- Fenella Gabrysch, Member, Living Rent
- Gordon MacRae, Assistant Director, Shelter Scotland
- Emma Saunders, National Organiser, Living Rent
- Colin Stewart, Chair, North of Scotland Regional Network of Tenants and Residents

23. The Committee also received written evidence from:

- [Shelter](#)
- [Law Society of Scotland](#)

24. This is the Committee's final evidence session on the instruments.

25. At the meeting, the Committee will take evidence from the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights on both set of Regulations.

26. It will then debate the following motion in relation to the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023:

S6M-07703— That the Local Government, Housing and Planning Committee recommends that the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 be approved

27. The Committee must decide whether or not to agree to the motion, and then report to Parliament.

28. It will then separately consider the Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023.

Annex A

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

Title of Instrument: [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022
\(Amendment of Expiry Dates and Rent Cap Modification\)
Regulations 2023](#)

Type of Instrument: Affirmative

Laid Date: 27 January 2023

Circulated to Members: 27 January 2023

Meeting Date: 28 February 2023

Minister to attend meeting: Yes

Motion to approve: S6M-07703

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 16 March 2023

Purpose

1. 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%.
2. If approved, the Regulations will also extend the evictions pause until the end of September 2023.
3. A copy of the Explanatory Notes and the Policy Notes are included below.

Procedure for Affirmative instruments

4. The draft **Order** was laid on 27 January 2023 and referred to the Local Government, Housing and Planning Committee. The Order is subject to affirmative procedure (Rule 10.6). It is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the Order should be approved.

The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights has, by motion S6M-07703 (set out in the agenda), proposed that the Committee recommends the approval of the Order.

Recommendation

5. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 16 March 2023.

Scottish Government Explanatory Note

1. These Regulations amend the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") so as to change the expiry date of Part 1 of that Act. Part 1 was originally scheduled to expire on 31 March 2023. Regulation 2 amends section 7 of the 2022 Act so that Part 1 will instead expire on 30 September 2023.

2. These Regulations also, from 1 April 2023, modify the permitted rate as specified in the Housing (Scotland) Act 1988 ("the 1988 Act"), and the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The permitted rate in each of those Acts is the percentage above which a landlord may not increase the rent for a residential tenancy. This restriction on increasing the rent in residential tenancies is known as the rent cap.

3. The rent cap was introduced for assured tenancies under the 1988 Act, and private residential tenancies under the 2016 Act, via modifications to those Acts made by the 2022 Act. The rent cap was initially set at 0% with powers for the Scottish Ministers to substitute a different percentage via regulations. Regulations 3(2) and 4(2) modify the rent cap provisions in the 1988 and 2016 Acts so as to substitute 3% as the new rent cap from 1 April 2023 onwards.

4. The 2022 Act also modified the 1988 and 2016 Acts by enabling landlords to apply to a rent officer to raise the rent above the permitted rate to reflect increases in prescribed property costs. An appeal against the rent officer's decision can be made to the First-tier Tribunal for Scotland by the landlord or the tenant. The increase in rent under this procedure is limited to 50% of the increase in costs or 3% of the current rent, whichever is lower. Regulation 3(3) to (5) and regulation 4(3) to (5) modify the 1988 and 2016 Acts so as to provide that the increase in rent under this procedure is limited to whichever is the lower of 50% of the increase in costs, or 6% of the current rent from 1 April 2023 onwards.

Scottish Government Policy Note

POLICY NOTE

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

SSI 2023/XXX

1. 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

2. 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

3. 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.

4. 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

5. 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.

6. 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.

7. 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.

8. 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

9. 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.

10. 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

11. 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

12. 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

13. 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.

Annex B

SSI cover note for: Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2023

SSI 2023/21

Title of Instrument: [Cost of Living \(Tenant Protection\) \(Scotland\) Act \(Early Expiry and Suspension of Provisions\) Regulations 2023](#)

Type of Instrument: Negative

Laid Date: 19 January 2023

Circulated to Members: 20 January 2023

Meeting Date: 28 February 2023

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 6 March 2023

Purpose

1. 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.
2. 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.

Procedure for Negative Instruments

3. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

4. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

EXPLANATORY NOTE

1. These Regulations expire and suspend certain provisions of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”).
2. Paragraph 3 of schedule 1 of the 2022 Act modifies the Housing (Scotland) Act 2001 in order to impose a variable 0% rent cap in relation to Scottish secure tenancies and short Scottish secure tenancies. Regulation 2 of these Regulations expires paragraph 3 on 26 February 2023.
3. Paragraph 4 of schedule 1 of the 2022 Act provides a variable 0% rent cap in relation to student residential tenancies. Regulation 3 of these Regulations suspends operation of paragraph 4, that suspension coming into force on 30 March 2023.
4. An impact assessment has not been produced for this instrument.

POLICY NOTE**COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT (EARLY EXPIRY AND SUSPENSION OF PROVISIONS) REGULATIONS 2023****SSI 2023/8**

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

Purpose of the instrument

2. The purpose is twofold: - First, to expire provisions in the Act relating to the rent cap in the social rented sector as captured by paragraph 3 of Schedule 1 of the Act from 26 February 2023. These provisions are being expired following the voluntary agreement that has been reached with the social sector and the intention to expire the provisions was announced on 21 December 2022. Secondly, to suspend provisions in the Act relating to the rent cap in the student residential tenancies as captured by paragraph 4 of Schedule 1 of the Act (university or college halls of residence or purpose-built student accommodation) from 30 March 2023.

Legislative background

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

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

5. This instrument is being laid following close monitoring of the operation of the Part 1 provisions across all sectors, stakeholder engagement and a targeted consultation exercise. To ensure that the Act is necessary and proportionate in connection with the cost of living, the evidence gathered supports expiry of the rent cap in the social rented sector from 26 February 2023 due to a voluntary agreement being reached with the sector (more detail below); and, 1 Cost of Living (Tenant Protection) (Scotland) Act 2022 (legislation.gov.uk) suspension of the rent cap in the student tenancy sector from 30 March 2023 due to the emerging lack of impact that the measures are having on these tenancy types.

Policy objectives

Social rented sector

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

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

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

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

Student residential tenancies

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

11. Regulation within the student residential sector is based on adoption of the voluntary UNIPOL National Codes, with the majority of PBSA suppliers also being members of the Association for Student Residential Accommodation (ASRA) and College and University Business Officers (CUBO). Student tenancies are regulated by

the terms of the contract between the accommodation provider and the student, and common law. These contracts typically cover the whole academic year. There is therefore only a very slight possibility of a contract that permits in-tenancy rent increases arises, as this would only occur in accommodation where the provider has not adopted the UNIPOL codes or is not a member of ASRA.

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

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

Consultation

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

15. Scottish Ministers were also committed to providing a further opportunity for individual organisations to respond to understand how the measures are affecting

those working directly in the social housing rented sector in Scotland. As such, a Call for Evidence was issued to the tenant Regional networks, Registered Tenant Organisations, Registered Social Landlord Chief Executives and Local Authority Directors of Housing as part of the statutory section 9 review of the operation of Part 1 of the Act. Consultation responses were considered alongside the views obtained from the Short Life Task and Finish Group to inform this instrument.

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

Impact Assessments

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

Financial Effects

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