

Local Government, Housing and Planning Committee

20th Meeting, 2023 (Session 6)

Tuesday 12 September 2023

SSI cover note for the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) 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 \(Amendment of Expiry Date\) Regulations 2023](#).

Background

2. 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.

3. It was considered in the Parliament as emergency legislation and accordingly the Committee did not have time to undertake scrutiny of the Bill. The Committee 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.

4. The Cost of Living (Tenant Protection) (Scotland) Act 2022 was initially due to expire on 31 March 2023, however Scottish Ministers used the powers available to them to extend Part 1 for a further period of 6 months to 30 September 2023.

5. On 1 June 2023, the [Scottish Government published a statement of reasons](#) setting out the evidence why it believes it is necessary and proportionate to extend the measures for a further 6 months.

6. The draft regulations before the Committee now would extend the effect of Part 1 for a further and final 6 months to 31 March 2024. Apart from extending the date to which the legislation applies the regulations do not make any other changes. Therefore, the current position would remain the same i.e.:

- Most in-tenancy private rent increases are capped at 3%

- Alternatively, private landlords can apply to a rent officer for increases of up to 6% to help cover certain cost increases incurred over the preceding six months.
- Some evictions orders approved by the First-tier Tribunal cannot be enforced for six months. Some eviction orders can still be enforced.
- Increased damages for unlawful evictions of up to 36 months' worth of rent would continue to be applicable.

7. Further information on the Regulations is contained at Annex A.

Delegated Powers and Law Reform Committee consideration

8. At its meeting on 13 June 2023 the Delegated Powers and Law Reform Committee considered the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023 and was content with that instrument.

Local Government, Housing and Planning Committee consideration of the Regulations

9. The Committee has until 13 September 2023 to consider the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023.

10. The Committee took evidence on the previous set of regulations extending the application of Part 1 of the Act from stakeholders at its meetings on [21 February 2023](#) and from the [Minister on 28 February 2023](#).

11. Given that the approach to the Regulations before the Committee today is identical to the once taken in the previous set of Regulations the Committee agreed to invite written evidence from stakeholders rather than oral evidence. The Committee received the following responses:

- [Living Rent](#)
- [Propertymark](#)
- [ALACHO](#)
- [Scottish Land and Estate](#)
- [Scottish Association of Landlords](#)

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

13. It will then debate the following motion in relation to the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023:

S6M-09290— That the Local Government, Housing and Planning Committee recommends that Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023 be approved

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

Annex A

Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) Regulations 2023

Title of Instrument: [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022
\(Amendment of Expiry Date\) Regulations 2023.](#)

Type of Instrument: Affirmative

Laid Date: 1 June 2023

Circulated to Members: 1 June 2023

Meeting Date: 12 September 2023

Minister to attend meeting: Yes

Motion to approve: S6M-09290

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

Reporting deadline: 13 September 2023

Purpose

1. The draft regulations before the Committee now would extend the effect of Part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 for a further and final 6 months to 31 March 2024. Apart from extending the date to which the legislation applies the regulations do not make any other changes. Therefore, the current position would remain the same i.e.:

- Most in-tenancy private rent increases are capped at 3%
- Alternatively, private landlords can apply to a rent officer for increases of up to 6% to help cover certain cost increases incurred over the preceding six months.
- Some evictions orders approved by the First-tier Tribunal cannot be enforced for six months. Some eviction orders can still be enforced.
- Increased damages for unlawful evictions of up to 36 months' worth of rent would continue to be applicable.

2. A copy of the Explanatory Notes and the Policy Notes are included below.

Procedure for Affirmative instruments

3. The draft **Regulations were** laid on 1 June 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-09290 (set out in the agenda), proposed that the Committee recommends the approval of the Order.

Recommendation

4. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 13 September 2023.

Scottish Government Explanatory Note

5. 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(2) of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 (S.S.I. 2023/82) extended the expiry date to 30 September 2023. Regulation 2 of these Regulations amends section 7(1) of the 2022 Act so that Part 1 will instead expire on 31 March 2024.

Scottish Government Policy Note

POLICY NOTE

COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022 (AMENDMENT OF EXPIRY DATE) REGULATIONS 2023

SSI 2023/XXX

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 7(3)(b) of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the Act”) and all other powers enabling them to do so.

Purpose of the instrument

2. To extend Part 1 of the temporary Act for a further, and final, six month period from the end of 30 September 2023 to the end of 31 March 2024, at which time Part 1 of the Act will expire.

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 and by increasing damages for unlawful evictions.
4. The provisions in Part 1 of the Act were originally due to expire at the end of 31 March 2023 but were extended, and varied, by the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 until 30 September 2023. These regulations also saw the variable rent cap increased from 0% to 3% and the related Prescribed Property Costs safeguard increased from 3% to 6% from 1 April 2023.
5. 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. Following the voluntary agreement that was 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 2023 to expire the rent cap provisions for the social rented sector due to them no longer being necessary or proportionate. These regulations also suspended the rent cap for student residential tenancies, due to the provisions effectively not impacting on the student residential sector.

6. These draft regulations now seek approval from Parliament to extend the expiry of Part 1 of the Act to 31 March 2024.

Policy objectives

Extension of the Act

7. The ongoing cost crisis continues to place people across Scotland in a precarious economic position. Renters, in particular, have lower household incomes, higher levels of poverty and are more vulnerable to economic shocks. Over the period from 2018-2020, 63% of social rented households and 40% of private rented households did not 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. Thus rented sector households entered the cost of living crisis in a more vulnerable position than owner occupiers.
8. The latest Understanding Scotland: Economy report published in February 2023 found that two-thirds (63%) of Scots surveyed believe that their own personal financial situation has worsened in the last 12 months. A significant proportion of respondents also reported experiencing financial fragility: 25% reported that they were not confident they would be able to pay for an emergency expense of £100 without having to take out a loan or borrow money, rising to 45% for an emergency expense of £500.
9. According to recent YouGov polling for the Scottish Government , in late March 2023, levels of concern about paying mortgage/rent were twice as high in the private rented sector than across all tenures as a whole (22% for private renters compared to 11% all tenures). Private renters were also more likely to say that they were struggling to pay for household bills, including energy bills and rent at least a little and that they were managing less well financially⁶ (30% of private renters compared to 22% all tenures as a whole). There has been no significant improvement in these figures since November 2022. In March 2023, a majority of private renters (63%) reported that their mental health had been impacted negatively by the cost of living.
10. The conclusion drawn from these qualitative surveys that the economic position has not yet changed fundamentally and many households on low and modest incomes continue to struggle is supported by the latest economic data. 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 estimates that inflation for low-income households was 11.3% in December 2022, as compared with 10.0% for high-income households and 10.5% for all households.

11. A comprehensive overview of the latest economic situation was provided in the first report to the Scottish Parliament published on 12 January 2022 , and a further update on key indicators is provided below:

- It is estimated that the fuel poverty rate will have slightly decreased from 35% in October 2022 to 34% in July 2023, when the Ofgem energy price cap for the typical dual fuel household will be set at £2,074. Though the Energy Price Guarantee was set at £2,500 from October 2022 and the Ofgem energy price cap will be set at £2,074 from July to September 2023, representing a decrease of £426, the reason that estimated fuel poverty rates from July to September 2023 are similar to those for October 2022 to March 2023 is that during this period the £400 Energy Bills Support Scheme, paid to all households, was in place. This was withdrawn from April 2023. When compared to October 2022, it is estimated that in July 2023 the fuel poverty rate within the private rented sector will have slightly decreased from 48% to 47%. The fuel poverty rates in the social rented sector and for owner occupiers will also have slightly decreased by one percentage point. While the rate in the private rented sector (47%) will be somewhat lower than in the social rented sector (54%), it will be significantly higher than in the owner occupied sector (23%). This analysis shows that there has been little change in the pressures faced by households in all tenures since October 2022.
- Annual Consumer Price Index (CPI) inflation reached a peak of 11.1% in October 2022 (its highest rate since 1981), relative to the 9.9% recorded in August 2022 prior to the introduction of the emergency legislation. Since then it has moderated somewhat, declining to 8.7% in April 2023 due to the large increase in energy prices experienced in April 2022 now falling out of the comparison. Annual growth in the electricity, gas and other fuels component of the index remains high at 24.3%, even if this is down from the recent peak of 89.7%. Annual growth in the index for food and non-alcoholic beverages is also elevated, at 19.0% in April 2023, which, apart from the 19.1% recorded in March, is its highest rate since August 1977.11 Necessities such as food and energy typically form a larger component of low-income households' budgets. While annual CPI inflation is expected to continue to moderate over the course of 2023, it will remain significantly higher than the 2% inflation target, with the Bank of England projecting that it will average 8% in Q2 2023, 7% in Q3 2023, then 5% in each of Q4 2023 and Q1 2024.
- Increases in pay and earnings remain below inflation. For the 3-month period January 2022 to March 2023, annual growth in employees' median seasonally adjusted nominal total pay in Great Britain was 5.8%. Adjusting for inflation, real total pay fell by 3%, a similar fall to the previous three-month period, and among the largest falls recorded since comparable records began in 2001. The annual growth rate in median seasonally adjusted nominal pay in Scotland taken from HMRC PAYE records has increased from 4.8% in August 2022 to 8.6% in March 2023, lower than the level of CPI inflation in each month of this period, with the

latest figure for April 2023 being 9.3%, although this is an early estimate and is likely to be subject to revision.

- While the decision by the UK government to uprate reserved disability and low income benefits by 10.1% (the inflation rate in September 2022) in 2023-34 will compensate benefit clients for the exceptionally high rate of inflation in 2022-23, they will again face elevated inflation in 2023-24. The UK Government has also decided to freeze Local Housing Allowance (LHA) rates, which apply in the private rented sector, at 2020 levels for the third year running.
- As a result of these trends, in their most recent set of forecasts (May 2023), the Scottish Fiscal Commission projects that over the two-year period from 2021-22 to 2023-24, households will see their real disposable income fall by a cumulative 4.1%, Scotland's highest fall in living standards on record.
- Latest data for Scotland from letting agents shows continuing high growth in rental prices, with Rightmove reporting an annual increase of 12.3%¹⁴ and Citylets an increase of 12.4% in Q1 2023¹⁵, and Zoopla reporting an increase of 13.0%¹⁶ in January 2023. It should be noted that this data relates only to trends in new let rents, and thus do not show the impact of the rent controls for existing tenants. However, although some caveats apply to the data (letting agencies only cover around half of the private rented sector, and each letting agent's data will be affected by its market coverage, which varies by geography and market segment), this data does show that in the absence of legislation there is a high probability of substantial increases in rents for existing tenants, should their rents be increased to the market level.

12. 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 31 March 2024 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 (<https://www.legislation.gov.uk/ssi/2023/8/contents/made>) 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. The rent cap in the student accommodation sector has been suspended since 30 March 2023 and will remain suspended unless evidence supports revival of these provisions being sought.

13. 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 laying these Regulations.

14. 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 31 March 2024. 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.

Consultation

15. 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.
16. A 2nd 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 statutory Statement of Reasons report, laid alongside these regulations, provides a summary of the responses received.

Impact Assessments

17. 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 30 September 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 and proportionality of the provisions beyond the end of 30 September 2023, assessment of the rights and equality impacts of extension has also been undertaken.

Financial Effects

18. The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no BRIA is necessary, although key updates have been provided as part of the Statement of Reasons accompanying these regulations. As outlined above, the Scottish Government considers that, in many cases, previous findings remain valid. Further information has been provided, where relevant and/or helpful, in the Statement of Reasons.