

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

## **7th Meeting, 2024 (Session 6), Tuesday 27 February 2024**

### **Housing to 2040 and Cost of Living (Tenant Protection) (Scotland) Act 2022 regulations**

#### **Introduction**

1. This is the Committee's second session focussing on both the Scottish Government's Housing to 2040 strategy and the regulations made under the Cost of Living (Tenant Protection) (Scotland) Act 2022.
2. At its meeting of 5 December 2023, the Committee agreed to scrutinise the Scottish Government's housing strategy, Housing to 2040 (H2040), with a focus on scrutiny of the impact of H2040 around the following key questions on housing that it agreed as part of its work programme discussion in June 2023:
  - Are we building enough homes or bringing enough homes back into use to meet Scotland's current and future housing needs?
  - Are we building homes with a focus on placemaking?
  - Are we creating and sustaining a mix of housing that is financially and physically accessible to all?
  - Are we building homes and retrofitting home to provide for affordable warmth and zero emissions?
  - Are we ensuring that new and existing homes are safe and of a high quality?
3. As part of its consideration of H2040 the Committee agreed to ask witnesses on their views on the affordable housing supply budget.
4. At its meeting of 6 February 2024, the Committee also agreed to ask the witnesses for their view on the package of statutory instruments making provision in light of the expiry of Part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 on 31 March 2024.

5. Last week the Committee took evidence from members of the strategy board for H2040. This week the Committee will take evidence from:

- Chris Birt, Associate Director for Scotland, Joseph Rowntree Foundation;
- Dr Caroline Brown, Director of Scotland, Ireland and English Regions, Royal Town Planning Institute;
- Stephen Connor, Development Manager, Tenants Information Service;
- Emma Jackson, Social Justice Strategic Lead, Citizens Advice Scotland;
- Eilidh Keay, Representative, Living Rent;
- Professor Ken Gibb, Director, UK Collaborative Centre for Housing Evidence, University of Glasgow;
- Gordon MacRae, Assistant Director (Communications & Advocacy), Shelter Scotland;
- David Melhuish, Director, Scottish Property Federation;
- Ronnie Macrae, Chief Executive Officer, Community Housing Trust;
- Rhiannon Sims, Senior Policy Officer, Crisis;
- Chris Stewart, President, Royal Incorporation of Architects in Scotland

### **Housing to 2040 – Background**

6. H2040, published in April 2021, sets out a [vision](#) for what housing in Scotland will look like in 2040 and includes a set of [principles to guide policy-making](#). It is supported by a [route map](#) which shows how the Scottish Government will achieve the vision. H2040 was produced following consultation and engagement with the housing sector, wider stakeholders and the public.

7. The vision covers the following aims:

- A well functioning housing system
- High quality, sustainable homes

- Sustainable communities
- Homes that meet people's needs

8. The H2040 route map is split into four sections:

- More homes at the heart of great places
- Affordability and choice
- Affordable warmth and zero emissions homes
- Improving the quality of all homes

9. Key measures in the strategy include; decarbonising heat in all homes, tackling high rents in the private sector, setting a single set of standards for housing quality and accessibility, increasing affordable housing supply and continuing with an updated plan to end homelessness and rough sleeping.

## **Governance**

10. As noted earlier, the Committee will be hearing this week from the strategy board for H2040. It was set-up to assess progress towards the H2040 vision. The board is co-chaired by the Minister for Housing and the COSLA Community Wellbeing spokesperson, with the remit to provide:

- strategic oversight of policy development and delivery by identifying interconnections and helping to resolve tensions
- accountability on progress to the H2040 vision by providing advice on the development of an appropriate measurement framework and tracking progress
- ownership of H2040 beyond government by supporting and driving a partnership approach to policy development and delivery
- a long-term view beyond parliamentary cycles by championing a focus on outcomes
- the ability to involve 'end users' by bringing a range of views into consideration

11. The board is supported by an internal Scottish Government steering group, to provide operational level assurance of progress and to escalate issues to the board as needed. Three meetings of the board have been held to date. [Minutes of two of those meetings are available online.](#)

## Affordable Housing Supply Budget

12. [The Scottish Government's commitment is, working with partners, to deliver 110,000 affordable homes by 2032. Of this total, the target is that 70% \(77,000\) will be available for social rent and 10% will be in remote, rural and island communities.](#)

13. To progress towards the long-term target, the [Scottish Government plans to invest £3.5 billion this parliamentary term](#) in its Affordable Housing Supply Programme (AHSP). [In their recent budget, the Scottish Government set out plans](#) to spend £556 million on the AHSP in 2024-25.

14. The 2024-25 budget represents a decrease of £196 million in cash terms (-26%), or a real-terms cut of £205 million (or -27%) compared to the 2023-24 budget

15. In its correspondence with the Committee (see below), the Scottish Government has highlighted that this decision has resulted from the UK Government's failure to inflation proof its capital budget and that, "This is on top of the disastrous impact Brexit has had on construction supply chain issues, labour shortages and the inflationary pressures driven by UK government financial mismanagement."

16. The letter states that the Scottish Government remains focussed on delivering the target and is bringing forward the review scheduled for 2026-27 to 2024, with a focus on deliverability.

## Correspondence from the Scottish Government

17. [The Committee wrote to the Minister for Housing and the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights](#) ahead of this session.

18. [The Committee received a response.](#) In addition to the points made about the affordable homes budget covered above, the letter notes that:

"Overall, there has been good progress on delivering some of the key actions within the strategy with work broadly in line with the intent set out in the document. To give a few examples, we are continuing our work to deliver high quality affordable homes, improving energy efficiency and working towards solutions for decarbonising Scotland's homes, improving the rights of tenants, notably by bringing forward a Housing Bill, and working to end homelessness. In addition, as noted in the Programme for Government, we have committed to progress the provision of longer-term, settled housing for displaced Ukrainians."

19. Further details are also provided in response to key questions the Committee is interested in.

### **Witness submissions**

20. To inform the session, the Committee has received submissions from the following organisations who are participating in the session:

- [Joseph Rowntree Foundation](#);
- [Royal Town Planning Institute](#);
- [Tenants Information Service](#);
- [Living Rent](#);
- [Professor Ken Gibb, Director, UK Collaborative Centre for Housing Evidence, University of Glasgow](#);
- [Shelter Scotland](#);
- [Scottish Property Federation](#);
- [Communities Housing Trust](#);
- [Crisis](#)

21. In addition, the Committee has received the following submissions:

- [Scottish Land and Estates](#)
- [Association of Scottish Self-Caterers](#)

### **Cost of Living (Tenant Protection) (Scotland) Act 2022 - regulations**

22. On 24 January, a package of 3 statutory instruments were laid to support Part 1 of the 2022 Act coming to an end on 31 March 2024. A [SPICe Briefing explains the detail of the provisions in the Act](#). The three statutory instruments are as follows:

- [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Expiry of Section 10: Extension\) Regulations 2024](#) – this affirmative instrument contains regulations to modify the emergency Act to change the time when section 10 and, by consequence, schedule 3 of the Act expire.

- [The draft Rent Adjudication \(Temporary Modifications\) \(Scotland\) Regulations 2024](#) – this affirmative instrument changes how rent for a private residential tenancy is determined on referral by a tenant to a rent officer or the First-tier Tribunal, as the case may be. It also changes how rent in relation to statutory assured tenancies is determined on referral by a tenant to the tribunal.
- [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Saving Provisions\) Regulations 2024](#) – this negative instrument contains saving provisions following expiry of the provision in Part 1 of the emergency Act to facilitate the transition away from the emergency measures

23. Schedule 3 of the Act confers powers to modify the existing rent adjudication process. Scottish Ministers have laid a [Statement of Reasons](#) before Parliament to set out the reasons why the regulations should be made.

24. In the longer term the Scottish Government plan to introduce a housing bill which will introduce some form of rent control and may contain changes to the eviction process.

25. The following describes the proposed changes to the rent adjudication as it applies to private residential tenancies. A similar process is in place for statutory assured tenancies (which are less common) with the First-tier Tribunal considering adjudication applications.

26. As an interim measure, the Rent Adjudication modification regulations will change the existing process of rent adjudication from 1 April 2024. If approved these changes will last until April 2025, although they can be extended for a further year at a time with parliamentary approval.

27. The Scottish Government says that the amended system will:

“...help protect tenants from steep and unmanageable rent increases which could be experienced if there is a sudden move to open market rent from rent levels that have been suppressed during the period that the rent cap has been in force.”

28. Under the proposed system, there is no restriction on the increase in rent that a landlord can specify in a rent increase notice (under the 2022 Act, a rent increase notice cannot specify an increase of more than 3% or 6% in exceptional circumstances).

29. If a tenant receives a rent increase notice they can decide to challenge the rent increase through adjudication by a rent officer at Rent Service Scotland (as was the case prior to the emergency legislation).

30. If a tenant decides to take a rent increase notice to adjudication, Rent Service Scotland may restrict how much the rent can increase. Under the pre-emergency

legislation rent adjudication system, the Rent Officer would set a rent based on the open market rent which could be higher or lower than the proposed rent. The regulations amend this so that on adjudication, a Rent Officer at Rent Service Scotland will set a rent based on the lowest of three figures:

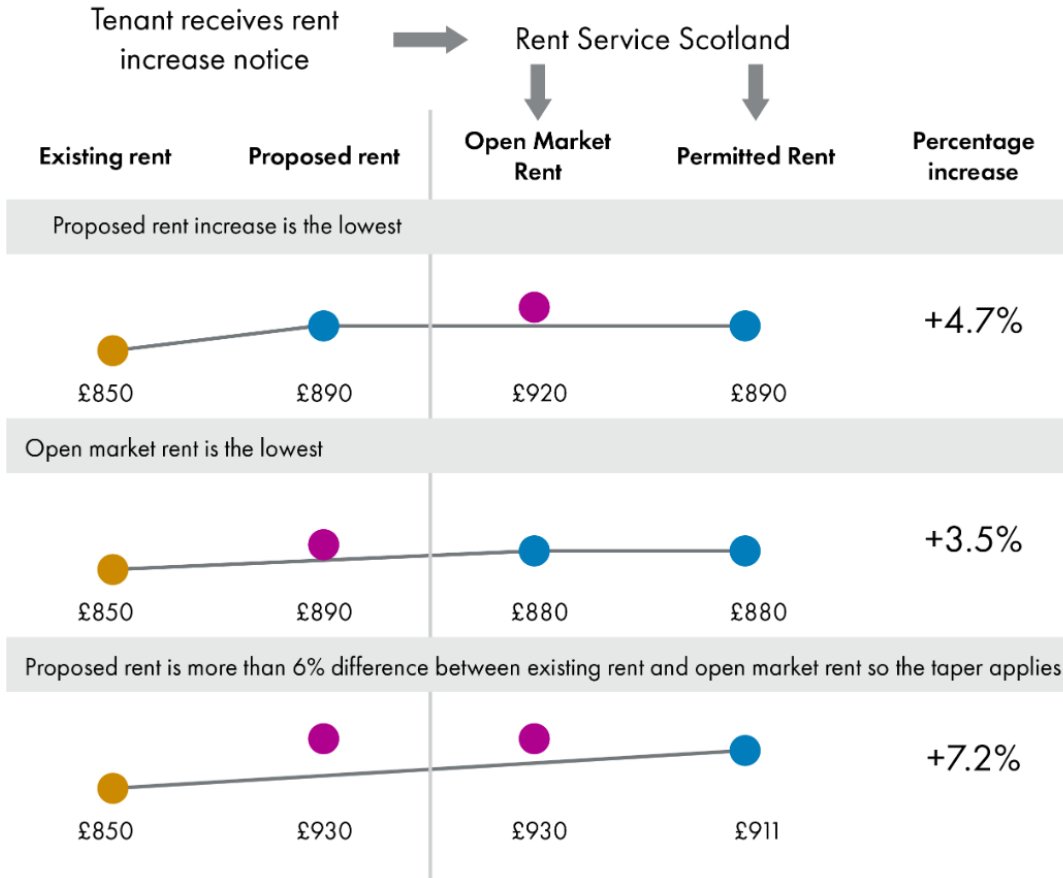
- the open market rent,
- the rent requested by the landlord, and
- a new taper that supports the transition away from the rent cap

31. The taper can be summarised as follows:

- If the gap between the market rent and the current rent is 6% or less, then the rent will be set in line with the rent proposed by the landlord.
- If the gap between the market rent and the current market is more than 6%, then the rent will be increased by 6% plus one third of a percent for each percent that the gap exceeds 6%.
- If the gap between the market rent and the current is 24% or higher, the rent increase will be capped at 12% of existing rent.

32. All three cases are also subject to the requirement that the RSS and FTT cannot set a higher rent than that requested by the landlord.

33. The Scottish Government has provided further information the how the taper works in its letter to the Committee. SPICe has prepared the diagram below to give some examples of how this might work in practice.



34. The regulations contain a saving provision to preserve rent increase notices or prescribed property cost applications (and any subsequent referrals, applications or appeals) served before Part 1 of the emergency Act expires (31 March 2024). This means for example, that if a landlord served a tenant with a rent increase notice in February 2024, that would still take effect and the landlord could not serve a new one (unless the tenant agrees otherwise).

35. For a private residential tenancy, there are existing rules about rent increase notices that still apply:

- Rents can only be increased once in every 12 months
- Landlords must give their tenant at least 3 months' notice of any rent increase.

36. The Scottish Government has engaged with key stakeholders on the proposed approach. [There was a mixed response to the proposals, as the Policy Note to the regulations outlines:](#)



“Some respondents felt the process should return to the pre-Cost of Living Act process immediately, however, a number of responses welcome the proposed changes as a necessary part of the transition away from the emergency measures.”

37. The Scottish Government consulted on two options for the upper boundary of the comparator, 10% and 15%. There were different views on what the levels should be. The Scottish Government says that “the proposed lower limit of 6% and upper limit of 12% of current rent seeks to take account of the differing views in order to strike an appropriate balance between the needs of both tenants and landlords.”

38. The regulations also provide for a saving provision for the end of the eviction provisions and the damages for unlawful eviction contained in the 2022 Act.

## **Next steps**

39. At its meeting next week (5 March) the Committee will hear from the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights on the regulations made under the Cost of Living (Tenant Protection) (Scotland) Act 2022. The Committee will reflect on its next steps on its wider work in relation to Housing to 2040.

**Clerks to the Committee and Kate Berry, Senior Researcher, SPICe  
February 2024**