

# Local Government, Housing and Planning Committee

## 8th Meeting, 2024 (Session 6), Tuesday 5 March 2024

### Regulations under the Cost of Living (Tenant Protection) (Scotland) Act 2022

#### Introduction

1. On 24 January 2024, the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights laid a package of three statutory instruments to support Part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“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 2022 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 2022 Act to facilitate the transition away from the emergency measures.

2. The purpose of this paper is to provide information to help inform the Committee’s consideration of these three instruments.

3. The Minister for Zero Carbon Buildings, Active Travel and Scottish Government officials will provide evidence to the Committee on the three instruments at the meeting.

4. In relation to the two affirmative instruments, the Minister will then move the following motions:

**S6M-11978**— 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 be approved.

**S6M-11979**—That the Local Government, Housing and Planning Committee recommends that the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 be approved

5. Both draft regulations were laid on 24 January and have a reporting deadline of 12 March.
6. The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024, the negative instrument, was also laid on 24 January, but has a reporting deadline of 11 March.

## Background

7. Schedule 3 of the 2022 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.
8. In the longer term the Scottish Government plans to introduce a housing bill which will introduce some form of rent control and may contain changes to the eviction process.
9. The following describes the proposed changes contained in these Regulations to the rent adjudication process 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.
10. 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.
11. 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.”
12. 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).

13. 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).

14. If a tenant decides to take a rent increase notice to adjudication, Rent Service Scotland may restrict how much the rent can increase by. 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:

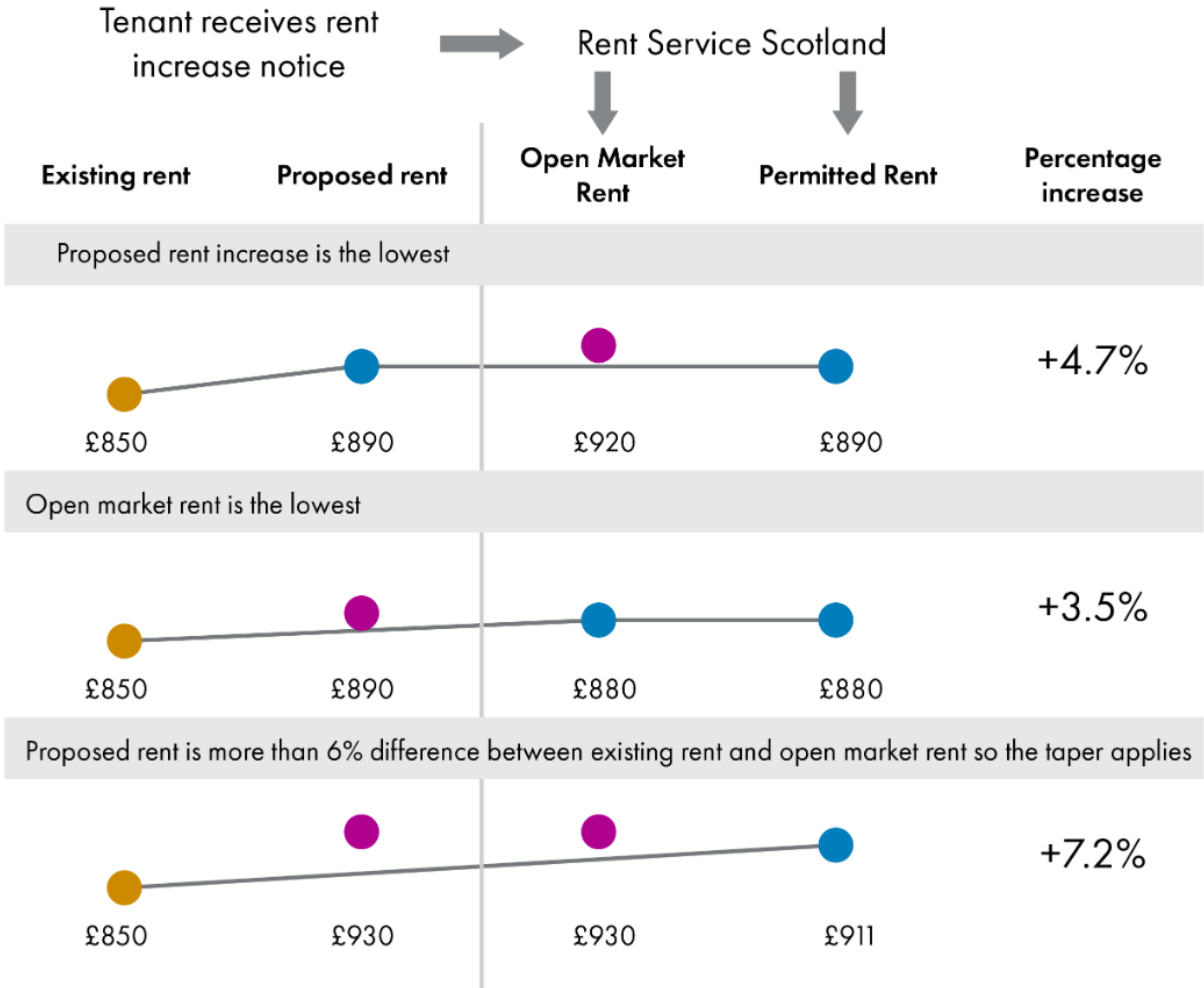
- the open market rent,
- the rent requested by the landlord, and
- a new taper that supports the transition away from the rent cap

15. 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.

16. 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. This is a change to the previous system whereby Rent Service Scotland and the Tribunal could set a rent higher than requested by the landlord.

17. 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.



18. [SPICe has also published a blog containing a calculator](#) that will allow tenants and landlords to estimate the potential rent on adjudication (noting that the final decision is for a Rent Officer to make)

- 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).
- 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.

19. 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.”

20. 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.”

21. 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.

22. Further information can be found in a [SPICe blog](#).

## **Delegated Powers and Law Reform Committee Consideration**

23. The Delegated Powers and Law Reform Committee considered the draft regulations on 6 February and confirmed that it had [no points to raise](#).

## **Conclusion**

24. The Committee is invited to consider the above information in its consideration of the following sets of Regulations:

- The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024
- The draft Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024
- The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024

**Clerks to the Committee**  
**February 2024**