

CALL FOR EVIDENCE QUESTIONS

1. As we approach the Act being in force for almost six months, what effect have the temporary measures had on your planning and/or business models?

Many landlords have advised us that they have brought forward plans to exit the private rented sector because of this legislation. Others who were unsure of their plans have now decided to exit the sector. The primary reasons given for this are:

- (i) Impact of inability to raise rents by an amount sufficient to cover increases in their operating costs - many landlords have business models which are no longer financially viable because of the combination of a rent freeze/cap coinciding with the first significant increases in interest rates for many years. 30% of landlords with mortgages reported in a SAL member survey in December 2022 that their monthly outgoings (including mortgage repayments) were more than the monthly rental income for the property.
- (ii) The regulations have led to a shift in landlords' perception of the risk of their investment in the sector. In particular uncertainty about future policy direction and concerns about their future ability to ensure their investment is financially viable and to be able to end a tenancy in a timely manner should the need arise.

See our response to question 3 for more information on landlords exiting the private rented sector.

Many landlords also plan to apply higher and more frequent rent increases as a result of the rent freeze/cap. See our response to question 4 for more information on this.

2. Whilst the changes to the rent cap only recently came into force, what do you believe the impact of the rent cap increasing from 0% to 3% on private landlords will be?

With landlords typically experiencing increases in their operating costs of significantly more than 3%, this measure is not sufficient to alleviate the financial pressures that landlords are experiencing. With uncertainty about whether the cap will continue post 30 September 2023 and if so, at what rate, landlords are unable to properly manage their business finances. They can apply a 3% increase now which would then be fixed for a year, or hold off until October in the hope that the cap will be raised or removed and enable them to increase rents to a level which better match their property business income with its outgoings.

In a member survey conducted by SAL in March 2023, landlords were asked if the new provision enabling a landlord to apply for a rent increase of up to 6% to cover increases in "prescribed property costs" was sufficient to alleviate any impact of increased private rented property costs on their finances. 69% reported that it was not sufficient.

In the same survey landlords reported needing to increase rents by 15% to alleviate the impact of increased private rented property costs on their finances. Whilst this might seem like a large increase, it should be read in the context of inflation running at over 10% and the majority of landlords not previously raising rents regularly in the past due to historically low inflation and low interest rates, or even discounting rents to help tenants in financial difficulty. A SAL member survey conducted in November 2022 revealed that 54% of respondents' tenants are paying rent below market value, 37% of respondents never increased their tenants' rent mid tenancy (just 8% did it annually) and 60% of respondents have discounted the rent to help tenants in financial difficulty.

3. Do you think the changes that came into force from 1 April will impact investment assessments in the private rental sector in Scotland?

As discussed elsewhere in our response, a 3% increase in the amount of rent landlords can charge is not sufficient to alleviate the financial pressures that landlords are experiencing. Any positive impact of the move from a rent freeze to a 3% rent cap is significantly overshadowed by the knock to landlord confidence caused by the government's decision to introduce such onerous legislation in the first place. Landlords now perceive an ever greater risk to their business models from a government which is prepared to change the legislative framework governing the sector so radically without any prior notice.

A SAL member survey conducted in November 2022 found that the legislation is going to lead to a reduction in the size of the private rented sector in Scotland. 44% of landlords are planning to reduce their portfolio size in the next 5 years (only 13% are planning to expand it). Back in February 2022 when we asked a similar question about plans for the next 10 years, these figures were 34% and 19% respectively. 87% of landlords who are planning to withdraw state that the Cost of Living Act is a factor in their decision or the sole reason (it is the sole reason for 26%)

Landlords were asked how they will go about withdrawing their properties from the market: sell the property to another landlord with tenants in place, wait until the tenants choose to move out or serve notice to evict their tenants. The survey findings indicate that around 10% of tenants in Scotland will be evicted in the next 5 years due in whole or in part to the Cost of Living legislation (it will be the sole reason for 3% of evictions).

In a more recent member survey in March 2023 (after the 1 April 2023 changes to the legislation had been announced) 43% of respondents stated that they are experiencing financial hardship as a result of increases in their private rented property costs. In the same survey 69% of respondents told us that the 6% uplift which can be achieved through an application to the rent officer is not sufficient to cover their additional costs. Based on two member surveys carried out in December 2022 and March 2023 we believe that 57-61% of landlords who are in financial difficulty intend to alleviate that difficulty by selling their rental property.

4. Do you have evidence of behavioural changes as a direct result of the temporary measures currently in force?

There is strong evidence that the two main changes in landlord behaviour resulting from the temporary measures are:

1. Higher and more frequent rent increases in future – a SAL member survey conducted in March 2023 asked if the Cost of Living (Tenant Protection) (Scotland) Act 2022 had changed landlords' attitude and approach to setting rent and increasing rent mid-tenancy. 76% reported that they are more likely to set a higher starting rent when drawing up terms for a new tenancy and 55% stated that in the future they intend to increase rent mid-tenancy whenever that is permitted (in the same question 70% reported that prior to the 2022 Act they did not or rarely increased rent mid-tenancy).
2. An increase in landlords choosing to exit the private rented sector in Scotland - a SAL member survey conducted in November 2022 found that the legislation is going to lead to a reduction in the size of the private rented sector in Scotland. 44% of landlords are planning to reduce their portfolio size in the next 5 years (only 13% are planning to expand it). Back in February 2022 when we asked a similar question about plans for the next 10 years, these figures were 34% and 19% respectively. 87% of landlords who are planning to withdraw state that the Cost of Living Act is a factor in their decision or the sole reason (it is the sole reason for 26%)

There is also some evidence of changes in tenant behaviour:

1. Reluctance to move home – anecdotal evidence from our members suggests that tenants are more reluctant to move home. In particular letting agent members operating student lets have reported receiving significantly fewer tenant notices to end their tenancy than would be normal at this time of year. This is likely to be driven by two factors – a shortage of available properties brought about in part by the legislation driving landlords out of the private rented sector, and the rent freeze/cap resulting in mid-tenancy rents being significantly lower than starting rents for new tenancies.
2. Rent arrears - 25% of SAL members who responded to a survey in December 2022 reported that they have seen an increase in the overall level of rent arrears owed by tenants since the First Minister announced a rent freeze and eviction moratorium on 6 September 2022. The average level of total arrears per respondent before 6 September was reported to be £1394. After 6 September this figure was reported to have risen to £2662. This may be due to tenants struggling to pay their bills during a cost of living crisis, but could also be in part due to tenants choosing not to pay the rent during a time when they know the government has made it more difficult for landlords to evict tenants who are in rent arrears.

5. Is there any other evidence (qualitative or quantitative) you can provide at this stage about the impact of the temporary measures, and/or the changes introduced as of 1 April?

In addition to the evidence outlined in our responses to the other questions in the call for evidence, noteworthy findings from a SAL member survey conducted in March 2023 are as follows:

71% of landlords stated that the provisions on rent freezes and eviction moratoriums in the Cost of Living (Tenant Protection) (Scotland) Act 2022 have had a material adverse impact on their finances.

84% of landlords reported that the legislation has caused them to delay or cancel property upgrades, 59% reported that it has caused them to delay or cancel energy efficiency improvements and 41% reported it has caused them to delay or cancel scheduled property maintenance.

ANNEX B

SUPPORTING TRANSITION AWAY FROM THE EMERGENCY MEASURES

Temporarily removing the ability for rent to increase above the new rent requested by the landlord.

There are concerns that some tenants may be deterred from challenging a rent increase because there is a risk that the Rent Officer or the Tribunal could increase the rent above that being requested by a landlord, if the new rent originally proposed by the landlord was below market value.

Scottish Ministers are considering modifying the existing rent adjudication measures so that, where a tenant makes an application for rent adjudication to the Rent Officer or to the Tribunal, the Rent Officer or Tribunal would only be able to either accept the rent increase proposed by the landlord or reduce it. Under this proposal, the Rent Officer or the Tribunal would not be able to set the new rent for the property to a rent higher than that requested by the landlord. This would also apply in cases where a landlord or tenant with a private residential tenancy appeals a Rent Officer's decision to the Tribunal.

By removing the power of the Rent Officer or the Tribunal to increase the rent above that requested by the landlord, tenants will know that the maximum amount their rent will be increased by will be the amount the landlord has stated in the notification, helping to ensure predictability and stability during the transition out of the recent period of economic crisis.

We consider that this proposed measure would balance the rights of landlords and tenants, as the rent originally proposed would be one that a landlord has fully considered and set themselves. These measures would allow the proposed rent to either be maintained if appropriate, or to be reduced if it is judged to be an unreasonable increase for the property concerned.

Temporarily introducing another comparator for rent adjudication alongside open market rent

As set out above, existing rent adjudication processes are based on setting rent with reference to the open market rent for the property. Scottish Ministers are giving consideration to temporarily introducing another comparator for rent alongside open market rent.

Under these proposals, where a proposed rent was referred to a Rent Officer or the Tribunal for adjudication, the rent determined by the Rent Officer or Tribunal would need to be based on the lower of either open market rent or an alternative measure. There are a range of metrics that could be considered for inclusion as an alternative measure including Consumer Price Index (or CPI +/- a given percentage), Retail Price Index, Consumer Price Index including Housing Costs or an income or earnings related measure that takes account of available data, such as that produced by the Office of National Statistics as part of the Average Weekly Earnings and Annual Survey of Hours & Earnings information.

Determining the adjudicated rent for a property based on the lower of open market rent or an alternative measure could continue to take account of the differences between local markets, whilst also protect individual tenants from rent increases which would be unreasonable in the context of their locality.

What are your views on the transitional options presented?

We would consider it reasonable to prevent the Rent Officer or the Tribunal from setting the new rent for the property to a figure higher than that requested by the landlord.

Capping the rent at CPI or any other index would continue to penalise those landlords whose rents are artificially low because they have chosen not to regularly increase their tenants' rent in the past or have discounted the rent to help tenants in financial difficulty. As set out above, our survey in November 2022 showed that 54% of respondents' tenants are paying rent below market value, 37% of respondents never increased their tenants' rent mid tenancy (just 8% did it annually) and 60% of respondents have discounted the rent to help tenants in financial difficulty.

If, as predicted, CPI falls rapidly later this year then capping rents at CPI would also prevent landlords from repairing the damage done to their finances by rents being frozen and capped during a period of extremely high inflation over the previous 12 months.