



## Cost of Living (Tenant Protection) (Scotland) Act 2022

Written Evidence to Local Government, Housing and Planning Committee

Date: July 2023

### **About Scottish Land & Estates**

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.

## Introduction

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The nature of the SLE membership is diverse with some members having in excess of 200 residential properties throughout their estates, others only have one or two. Our membership provides over 13,000 homes across rural Scotland. As a result, different members have been impacted in different ways. Those with smaller numbers of properties and those with mortgages or business loans have been disproportionately affected as they have less of an income cushion. However, the common factor is that rural landlords are key to rural communities as providers of homes, including affordable homes, which make up for the shortage of social housing provision.

There is a clear picture that is now in the public domain that illustrates the disproportionate impact this legislation has had on landlords because they, like tenants are exposed to inflation and are impacted across the full breadth of their costs. The impact on mortgage rates, something the tenant is not exposed to, is particularly onerous with some landlords now paying monthly mortgage repayments that are greater than the rent charged due to the unfortunate timing of remortgaging requirements. Furthermore, there is the well documented impact this legislation is having on the supply of private rented properties which is inflating rents and exasperating homelessness.

As a priority the Scottish Government must act in a manner that allows the imbalance of supply and demand to be redressed so that open market rents can settle at a more affordable level. Society can ill afford for the exodus of private landlords to continue. Landlords need to be given credit for the service they provide, and the many good landlords should not be punished for the failings of the few.

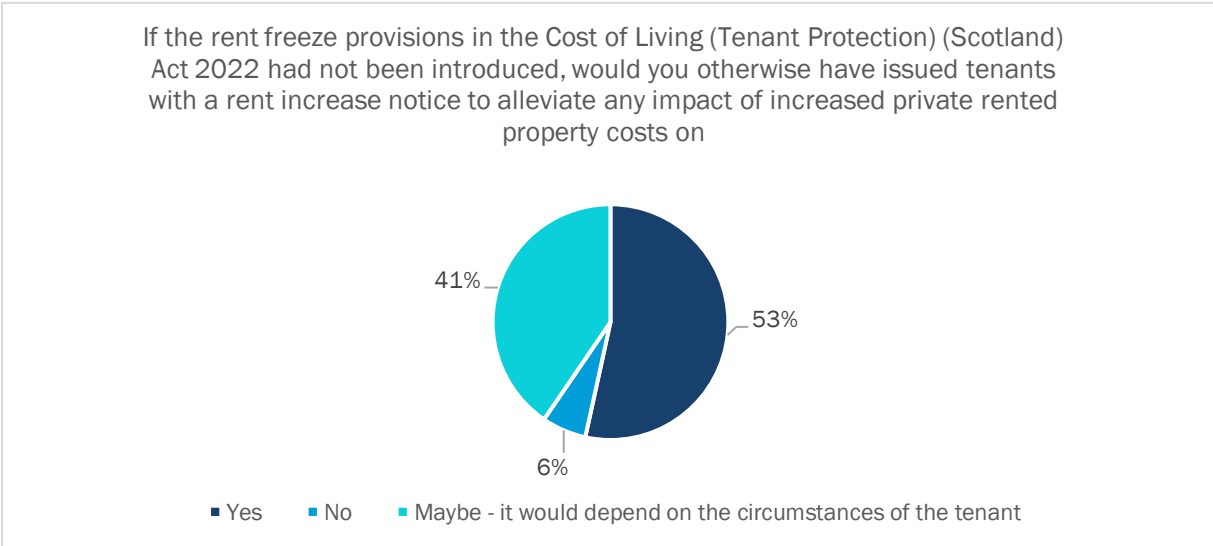
The full impact on supply of the sale of PRS properties and exit from the market landlords will be delayed because, to realise the best price vacant possession is required, therefore sale or change of use will not take place until the tenant ends their tenancy.

**We believe that by extending the provisions by a further 6 months to 31 March 2024 will exasperate the supply issues and make matters worse for tenants in the long run. The earliest any rents be in fact be increased is 1 July 2024 due to landlords being prohibited from serving a 3% rent increase notice before 1 April 2023.**

We would also like to draw attention to the evidence presented by Lord Davidson on behalf of the coalition who petitioned the Judicial Review of this legislation. The determination is at this point still outstanding.

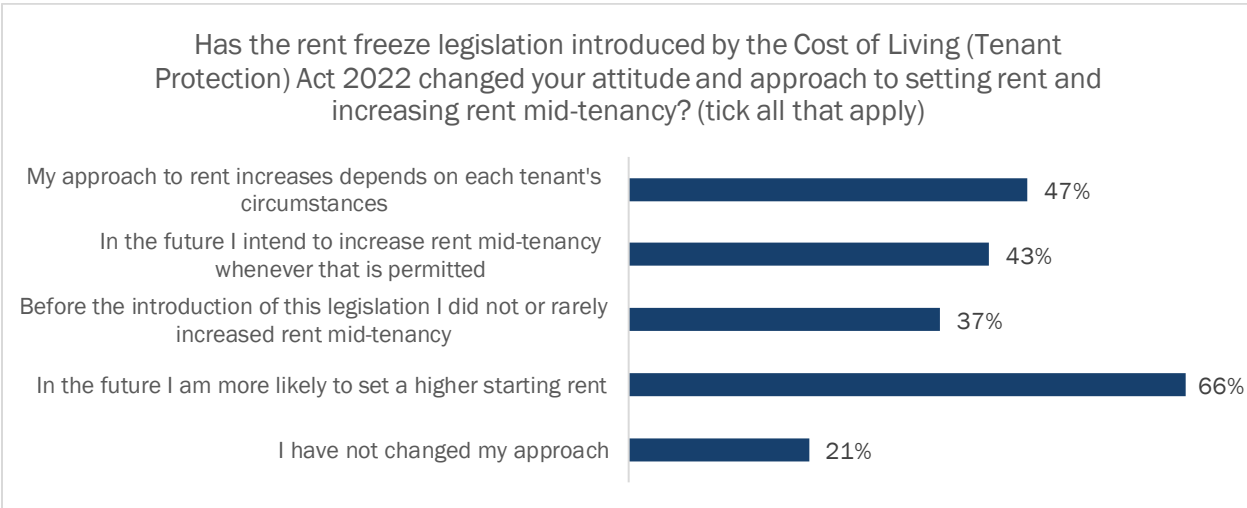
**1. Impact the measures have had on planning and/or business models**

- Landlords now more likely to implement an annual rent review regime.
- Disruption to planning of / delay to implementing energy efficiency improvements.



When asked how they would have acted had this legislation not been introduced, only 53% reported that they would have raised rents to try and reduce their losses, with the remainder reporting that they would not have raised the rent (6%) or would have taken account of their tenant’s circumstances before increasing the rent (41%). It should be remembered when considering these figures that this legislation capped the rent for well off tenants as well as the vulnerable.

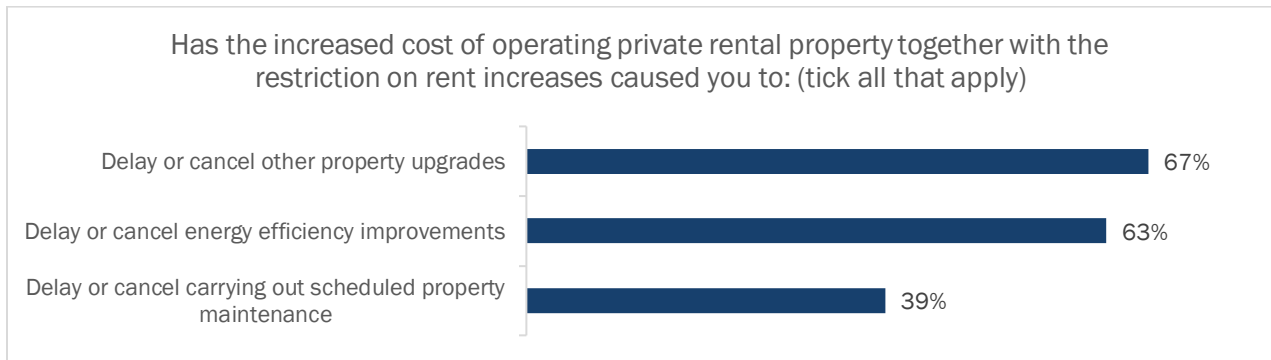
As far as the landlord’s attitudes and approach to setting rent is concerned now, only 21% of respondents claimed not to have changed their approach, while there was a sobering 66% who are more likely to set a higher starting rent in the future to mitigate any losses.



In considering that this legislation was designed to help tenants cope with the cost of living crisis, the fact that it caused 67% of respondents to delay or cancel property upgrades and 63% delay or cancel energy

efficiency improvements is a damaging consequence. Yet, this impact was foreseen. In the Policy Memorandum presented to parliament, this observation was not valued for what the effect could mean in reality, even though fuel costs were one of the main reasons the legislation was introduced in the first place: *“Whilst there is the potential for adverse effects such as a reduction in supply or in investment in property quality and energy efficiency measures, the Scottish Government is of the view that this is mitigated by the temporary nature of the measures and the safeguards set out above”.*

By extending these conditions, for landlords, there is now a very permanent feel to this, which will further impact their decisions.



It is crucial to note here that the tenant is the immediate beneficiary of such works, in terms of comfort and, most importantly, energy saving costs – and this is in a sector that the government knows already has a significant level of fuel poverty. Given the extreme cost of energy that were already in place prior to this legislation being introduced, the benefits that many rural tenants would have gained from such measures would have most likely been greater than any increase in rent. Had the government consulted the rural private rented sector adequately before rushing through these measures they would have better understood the degree to which this legislation might undermine the efforts to upgrade the housing stock.

To support the drop off in landlords carrying out energy efficiency work, the Minister for Zero Carbon Buildings, Active Travel & Tenants Rights has provided a written answer (S6W-17423) showing the number of Private Rented Sector Landlord Loans for energy efficiency improvements that have been agreed and claimed since January 2022: From January to April 2022 there were 38 funding agreements put in place, and 42 loans claimed. In the same period to 2023 there were 40 funding agreements put in place, but only 20 claimed. This shows a 50% drop off in implementation of projects (pointing to supply issues does not wash because they were already present before 2022). He tells us that “the scheme is delivered through a demand-led model where funding is applied for by the applicant directly who in turn is responsible for sourcing an approved installer and paying funding to them once works are complete. Once a funding agreement has been put in place, applicants have 12 months to claim the funding.” There is clearly the appetite amongst landlords to make energy efficiency improvements, but they need to have income in order to repay the loan. With the need to meet the forthcoming EPC requirements in the near future the demand for these loans should be increasing, instead it is declining. It should be noted that there is no “rural uplift grant” for rural landlords even though the Scottish Government has acknowledged the additional costs rural property owners face.

## **2. Impact of the rent cap increasing from 0% to 3% been on private landlords**

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- **Positive impact of the rent cap increasing to 3% in July marginal at best, because of still higher interest rates and inflation**
- **Landlord losses from the rent freeze over the previous 10 months from 6<sup>th</sup> September 2022 are permanent.**

To illustrate the increase in the rent cap in the context of landlord costs, a monthly rent of £500pcm (£116pw) with a 3% increase in rent equates to an additional £15 per month (£3.46 per week). This alone will not cover the increase to the cost of buildings insurance which goes up with inflation year on year. Our member survey showed that the cost of keeping properties compliant, and repairs and contractor costs have on average increased by 85%. But most compelling, is the impact on those landlords with mortgages who have seen their mortgage costs more than double. With interest rates continuing to rise, many more landlords are going to be affected in the coming months in a similar way as their fixed terms come to an end. Landlords would not have passed on all their costs to the tenant, but to be made to burden the full impact of the economic situation lacks balance, especially as the “prescribed costs” mechanism is too limited and inadequate to cover real costs, which is why so few landlords have applied to the First-tier Tribunal for the extra increase – it is simply not worth the effort given the length of time the process takes and extra costs incurred by going through this lengthy process.

Reference to ICIA in the Policy Memorandum (81) referred to the higher cost of living in island communities. This is the same also for rural communities, and especially the more remote. The increased costs do not choose between landlords and tenants – they are all impacted. The rents are also significantly lower in rural and island communities than in less remote locations. So, the rural landlord not only has higher property management costs, but the income from letting out is eroded to a higher degree by the lack of choice and cost of trades. A simple example can be given by how one rural heating engineer based in Selkirk charges mileage on top of the boiler servicing charge, which adds notably to the cost of a service.

## **3. Impact on investment assessments in the private rental sector in Scotland**

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An investment assessment considers the income potential of an investment and therefore it goes without saying that there will be a negative impact on investment values as the income potential is artificially constrained in an inflationary environment. Furthermore, there has been no change to the eviction process. Irrespective of the fact that a landlord can apply to the First-tier Tribunal to gain vacant possession, there is no guarantee that this will be granted, and the process takes considerable time and resource.

Evidence shows that the negative impact on a sale without vacant possession can be as much as 30%, and the sale process is slower as the market is smaller and is now shown to be declining as landlords leave the sector. What could be an attractive proposition for existing investors in the BTL market, these would-be PRS investors are being constrained by the Additional Dwelling Supplement and high interest rates.

What's more, where the value of the already owned assets are downgraded due to poor income projections, the borrowing power is also eroded which impacts an investor's ability to expand.

This also has an impact on rural portfolios. While these tend to be long established, in general they are reducing. This is because the ability for owners to carry out renovations to maintain the private rental stock is now significantly restricted as the future income is impossible to forecast with any certainty. Selling does pass the renovation onto another party, but unfortunately not always to be a main residence where there is a housing shortage. Second home ownership and affluent retirees/ downsizers often buy up rural property that the local workforce is crying out for if only they could afford to buy and renovate them. When retained by estates, alternative use for holiday letting is commonly the preferred alternative due to the future income projections which see a much shorter payback period for the higher renovation costs, as well as greater legislative certainty.

#### **4. Behavioural changes as a direct result of the temporary measures**

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- **Landlords are leaving the Private Rented Sector and selling rental properties.**
- **Landlord's attitude to risk has heightened.**
- **Relationship between landlord and tenant is less amicable.**
- **Unscrupulous tenants are using the legislation to their advantage and not paying their rent.**
- **Landlords are less likely to be inclined to give a defaulting tenant a second chance.**
- **Landlords that like short-term letting between employees will no longer risk letting.**

The full extent of the impact on supply will not be known for many months not just due to the eviction moratorium but mostly because most landlords that plan to, will not sell until their existing tenant chooses to leave unless the cost of mortgage or business loans forces their hand sooner. SLE has surveyed rural letting agencies throughout Scotland and can confirm that all respondents have already reported a clear trend in the fall in supply as landlord clients withdraw from the market.

Landlords attitude to risk has changed and they are more concerned about rent arrears because the eviction process at the First-tier tribunal is so long that the period of arrears is likely to extend far longer than six months, and the landlord is unlikely to see any of the arrears even in the event of a successful eviction. The direct impact here is that landlords are setting the bar higher when letting out properties. The unfortunate situation here is that it is the more vulnerable renters who have no history or a poor credit rating for whatever reason will find it far harder to find a new home.

Landlords maintain their feeling is that previous existing trust has been eroded because of the legislation. A more business-like and timely approach to collecting rent to avoid arrears building up will be contributing to this. However, there are instances of late rent payment and rent arrears amongst tenants known to be able to pay, and in a recent case reported to us, a tenant has giving their notice to leave and is refusing to pay rent asking the landlord to take it from their deposit.

Landlords are moving to eviction proceedings sooner than they otherwise would have. An example where landlords would give the benefit of the doubt to a tenant was provided by one landowner where they, in the past, have rehoused a tenant in a more affordable property on their estate, whereas now

they consider a tenant struggling to pay rent as too risky and would not provide that option due to the increase of overall risk should the tenant still be unable to pay.

It is common for farms and estates to have employees who as part of the terms of employment have the option to occupy a tied cottage. It is the same with the Church of Scotland who provide manses for their ministers. When these manses, farmhouses or cottages are not occupied by ministers or employees, traditionally, rather than the property being left empty, they would be let out on a standard tenancy until such time as they were needed to be taken back for the minister or employee. Such tenants understood the terms of these arrangements. The situation now is that these properties are simply not being let out at all, because without the guarantee that they will be able to be taken back for their primary purpose when required, on balance it is less of a risk keeping the property empty than letting it out. The impact of this is not only financial but also further damages the housing supply.

Future legislation needs to have better provision to take account of these scenarios, and also that there is a better understanding of the need for short-term accommodation that is not holiday lets, and how that was once provided. There are many situations where tenants are coming to an area for a short period of time whether for seasonal work, contract work or for travel or study. Private renting used to offer a degree of flexibility especially when long-term letting was not the primary activity for that landlord.

These short-term tenants are now in the melee of all tenants, while the properties that were once let on short term leases (not holiday lets) are now not being let at all because the owner needs security of tenure for their primary activity. An example would be a flat used for an extra chef brought in for the high season at an Argyll hotel. It is only required through the summer season so in the winter the hotel proprietor prefers to let it on a long lease. Now, they don't offer the long-term option through the winter because it is not worth the risk of them not getting it back, so the property lies empty through the winter months when it could have provided emergency short-term / stop gap housing. There are many tourism businesses and agricultural businesses that once let out property on longer leases around the accommodation needs of their employees, but no longer can risk it should they not get their property back when they need to accommodate their workers. There is a similar situation with succession planning whether for retiring farm or estate workers or family members.

Legislation that is good for one tenant often has unintended consequences for others. To avoid behavioural impacts, scenarios need to be better stress tested.

## 5. Transitional Provisions

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- **Most landlords take account of their tenant’s financial position before considering increasing rent.**
- **If the temporary rent cap period is extended beyond to 31 March 2024 it will heighten the risk of a more notable reaction when the provisions do expire.**
- **Precautionary transitional measures to avoid unreasonable rent increases could be justified but:**
  - **Transitional measures may see the Tribunal overwhelmed.**
  - **Applications should be time limited to avoid tenants using it as a delay tactic to paying rent.**
  - **Better resourcing is required to speed up the adjudication process.**

The Minister has noted that it is likely that any rent increases proposed by landlords will be reasonable and will proceed as normal. This sentiment is supported by our evidence laid out in section 1 which shows that irrespective of the legislation, many landlords care about the welfare of their tenants, and so it would be perverse to suggest that this sentiment would change once the rent cap is expired. This sentiment has been confirmed in a subsequent survey specifically on rent increase intentions should the extension be granted to 31 March 2024. As the data shows, most landlords take account of their tenant’s position before considering increasing rent. Furthermore, as many landlords have already taken advantage of the fact they could implement a 3% rent increase, that reviewed rent is now fixed for a year so there is unlikely to be an avalanche of rent reviews if provisions were to end in September 2023. If the temporary rent cap period is extended beyond to 31 March 2024 it will heighten the risk of such a reaction when the provisions do eventually expire – and therefore possible added burden on the Tribunal.

However, it is known that unscrupulous landlords do unfortunately exist, there are however already safeguards in place through the Rent Service Scotland to deal with these issues. However, we also believe these measures can only act as a deterrent to unreasonable rent increases if landlords are well informed of the processes, and tenants are well informed so that they know that they can utilise the process to avoid paying over the odds. Furthermore, the correct support should be made available for vulnerable tenants so that they are able to and not afraid to use the adjudication process. There is a serious risk that because there is essentially nothing to lose by applying to the Tribunal there will be a massive influx of applications so there will be major resourcing issues. There needs to be adequate safeguards put in place to avoid this happening such as the landlord or tenant being required to present to the other party rental evidence to prove that the proposed rent is un/reasonable before an application can proceed. Furthermore, any measures must be date sensitive to avoid unscrupulous tenants using the transitional measures as a delay tactic to paying a fair rent.

Any action from the government must include providing adequate resource to rent officers and the overstretched First-tier Tribunal so that it can process adjudication applications quickly and effectively, but as a priority it must act to steady the rental market so that the imbalance of supply and demand can be redressed.

### **For more detailed information:**

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