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Ariane Burgess (Convener),
Local Government, Housing and Planning
Committee,
The Scottish Parliament,
Edinburgh,
EH 99 1SP

24 January 2023

Dear Convener,

I am writing to provide the Committee with an update on the Scottish Government's intentions for the Cost of Living (Tenant Protection) (Scotland) Act 2022 after Part 1 of the Act expires on 31 March 2024.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 ('the Act') came into force on 28 October 2022 as a temporary response to the impact of the cost crisis on those living in the rented sector. The Act introduced a temporary rent cap and a temporary moratorium on the enforcement of evictions, along with simplifying the process for claiming unlawful eviction damages and increasing the level of damages that can be awarded.

Part 1 of the Act was extended twice and is now due to expire on 31 March 2024. To support a transition away from the rent cap, schedule 3 of the Act contains powers to modify the basis on which rent is determined when a tenant believes a rent increase is excessively high and therefore requests adjudication under the Private Housing (Tenancies) (Scotland) Act 2016 (the '2016 Act') or the Housing (Scotland) Act 1988 (the '1988 Act'). The aim is to 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.

On 24 January, a package of 3 statutory instruments were laid to support Part 1 of the Act coming to an end on 31 March 2024. The three statutory instruments are as follows:

- i. **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. 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.

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- ii. **The 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.
- iii. **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.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024

When the rent cap expires on 31 March 2024, the pre-2022 Act rent adjudication provisions would come back into force, unless a temporary modification is made using the powers in Schedule 3 of the 2022 Act.

Scottish Ministers have carefully considered the wider economic context and feedback from stakeholder engagement, and decided that it is necessary that Section 10 of the Act be extended for twelve months in order to make use of the Act's schedule 3 regulation-making power to support the transition out of the rent cap once Part 1 of the Act is expired.

The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024

Under the 2016 Act, tenants with a private residential tenancy could previously make an application to a Rent Officer (Rent Service Scotland (RSS)) for determination of rent (rent adjudication). A Rent Officer would make a determination on what the rent for the property should be on the basis of market rent for similar properties in the same locality ('open market rent'). Any decision by RSS could be appealed to the First-tier Tribunal by the landlord or the tenant. A similar rent adjudication process exists for tenants with assured tenancies and under the 1988 Act although applications are made to the Tribunal rather than to a Rent Officer. Both processes have been suspended while the emergency Act was in force but will come back into force from 1 April.

Once the rent cap expires, it is anticipated that many landlords will propose rent increases which will proceed as normal, with tenants agreeing to pay the proposed increased rent. Nonetheless, as a result of the suppression of rents during the rent cap, there could be situations where tenants are faced by excessively large rent increases, even though the proposed rent would not exceed the market rent. The temporary change proposed therefore intends to smooth the transition away from the rent cap and protect tenants – where they choose to seek adjudication – from excessively large rent increases which could be experienced if there is a move to open market rent in a single step from rent levels that have been suppressed.

The proposed temporary adjudication process will determine rent based on the lowest of three factors: open market rent, the rent requested by the landlord, and an additional, comparator, defined by a new 'taper' that supports the transition away from the rent cap.

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The rent taper formula can be summarised as follows:

- If the gap between the market rent and the current rent is 6% or less, then the landlord can increase the rent by the proposed amount, as long as this is not more than the market level.
- If the gap between the market rent and the current rent is more than 6%, the landlord can increase the rent by 6% plus an additional 0.333% for each percent that the gap between the current rent and market rent exceeds 6%, as per the formula set out in the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024. However, the total rent increase cannot exceed 12% of the current rent.
- Both cases are also subject to the requirement that RSS and the FTT cannot set a higher rent than that requested by the landlord.

Full details and examples of the proposed rent formula are set out in **Annex A**.

A public consultation with key rental sector stakeholders, issued on 15 December 2023, sought views on the proposed approach, as part of the transition away from the temporary, emergency measures. A total of 64 responses were received, representing the views of landlords, tenants, investors, local authorities and Registered Social Landlords (from a Mid-Market Rent perspective).

The overall response to the proposed amendments to the rent adjudication process was mixed. 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. Similarly, there was a mixed response to the % limits within the temporary comparator, with some respondents citing significantly increased costs for landlords that are not taken account of in the proposed approach and others expressing the view that the upper limit will be unaffordable for many tenants.

In reaching a decision on the most appropriate way to amend the rent adjudication process in order to support a transition away from the emergency rent cap measures, the mixed views of stakeholders were carefully considered. The proposed lower limit of 6% and upper limit of 12% seeks to take account of the differing views in order to strike an appropriate balance between the needs of tenants and landlords.

It is of course vital that both landlords and tenants are made aware of these proposals and the transition away from the emergency measures. A range of communication activities have been planned, including: a Renters Rights national campaign from late February 2024, focussing on raising awareness of existing rights, as well as highlighting that the emergency measures are coming to an end and the new transitional measures that will be put in place; a range of Scottish Government press releases and engagement via Scottish Government social media channels; email communications via key channels such as the Scottish Landlord Register and Tenancy Deposit Schemes; and updating all relevant Scottish Government webpages to reflect the legislative position from 1 April 2024.

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The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024

Part 1 of the Act expires on 31 March 2024, and these regulations make certain saving provisions to facilitate the transition away from the emergency measures. Details of the saving provisions are set out as follows:

Rent cap: The saving provision is needed 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, ensuring that the rent cap restrictions in place at the time the notice was served, or the application was made, comply with the requirements imposed up to and including the 31 March 2024.

Temporary eviction grounds: The saving provisions seek to save certain temporary eviction grounds so that these grounds continue to have effect in relation to eviction notices served before Part 1 expires and in relation to any subsequent proceedings or appeals. The temporary eviction grounds include circumstances in which the landlord is seeking to sell or live in their property to alleviate financial hardship or where the tenant has rent arrears equal to 6 months' rent or more.

Damages for unlawful eviction: The saving provision is needed to keep the unlawful damages provisions for those applications for damages that were made under the emergency Act and have yet to be determined. Without these regulations, this would mean that the process for calculating damages would revert to the measures under the Rent (Scotland) Act 1984 and require tenants to get a costly professional valuation, which would be a significant barrier to progressing a case. This would undermine the objectives of the change in the emergency legislation and undermine access to justice for those who had raised a case while the emergency Act was in force.

The Scottish Government's [latest report](#) to the Scottish Parliament on the operation of the Cost of Living (Tenant Protection) (Scotland) Act 2022 from October 2023 to December 2023, provides an update on the evolving economic context impacting on those who rent their home in the private rented sector.

While there have been some signs of improvement in economic conditions for households in recent months, these improvements follow a period of significant pressure such that, on average, households continue to face economic and financial conditions which are significantly more challenging than they were prior to the cost of living crisis.

The decision on whether to approve this package of statutory instruments is, of course, for the Parliament to make and I look forward to going through the due process on that in the coming weeks.

Your sincerely,

PATRICK HARVIE

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Illustrative Worked Examples

Below are a selection of illustrative worked examples of the approach that would apply under the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024. They present different hypothetical scenarios of rent increases under the proposed approach, illustrating how the taper approach would apply where the difference between current rent and open market rent is between 6% and 24%. Each example considers what would happen were a tenant to refer a rent increase for adjudication.

Example 1

A landlord sets a new rent which is 5% higher than the current rent. The landlord believes the difference between current rent and the open market rent is 5%. Rent increases up to and including 6% are permitted, as long as the new rent does not exceed the open market value. If the tenant took the case to rent adjudication and the open market rent value was confirmed at this 5% level or above, then the rent increase of 5% would be approved. If the rent adjudication concludes the open market rent is lower than the rent proposed by the landlord, rent would be set at the open market level.

Example 2

A landlord sets a new rent which is 8% higher than the current rent. The landlord believes this 8% increase would bring the rent up to the open market value. Rent increases are subject to the taper approach if the proposed rent increase is above 6% of overall rent. If the gap between the current rent and open market rent is 8%, then the rent increase would be capped at an increase of 6.7% higher than existing rent.

Example 3

A landlord sets a new rent which would be 15% higher than the current rent. The landlord believes the open market value is 25% above the current rent. Rents cannot rise by more than 12%. If the gap between current rent and open market rent is more than 24%, rent increases are capped at 12% higher than existing rent. If the tenant took the case to rent adjudication and it was confirmed that the open market value was 24% or higher than the current rent, then the rent increase would be set at an increase of 12% higher than existing rent.

Example 4

A landlord sets a new rent which is 15% higher than the current rent for an existing tenant. The landlord believes the open market value is 15% higher than the current rent. Rents cannot rise by more than 12%. If the gap between the current rent and the open market rent is 15%, then the rent taper formula is applied and the rent increase is capped at 9% higher than existing rent. If the tenant took the case to rent adjudication and it was confirmed that the open market rent was 15% higher than the current rent, then the allowable rent increase would be set at 9% higher than existing rent.

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| Difference between current rent and open market rent | Maximum percentage existing rent can be increased by - 6% to 12% tapering applied on 6% to 24% gap between existing and market rent |
|--|---|
| 0% | 0.0% |
| 1% | 1.0% |
| 2% | 2.0% |
| 3% | 3.0% |
| 4% | 4.0% |
| 5% | 5.0% |
| 6% | 6.0% |
| 7% | 6.3% |
| 8% | 6.7% |
| 9% | 7.0% |
| 10% | 7.3% |
| 11% | 7.7% |
| 12% | 8.0% |
| 13% | 8.3% |
| 14% | 8.7% |
| 15% | 9.0% |
| 16% | 9.3% |
| 17% | 9.7% |
| 18% | 10.0% |
| 19% | 10.3% |
| 20% | 10.7% |
| 21% | 11.0% |
| 22% | 11.3% |
| 23% | 11.7% |
| 24% | 12.0% |
| 24 and above % | 12.0% |

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