

# **2nd proposed extension of the Cost of Living (Tenant Protection) (Scotland) Act 2022**

## **Statement of Reasons**

**SG/2023/100**

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## 2<sup>nd</sup> proposed extension of the Cost of Living (Tenant Protection) (Scotland) Act 2022: Statement of Reasons

### 1. Introduction

1.1 The Cost of Living (Tenant Protection) (Scotland) Act 2022<sup>1</sup> (“the Act”) is a response to the impact of the cost crisis on those living in the rented sector. The Act introduced a temporary rent cap (initially set at 0%) 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.

1.2 The Act was initially due to expire on 31 March 2023, however Scottish Ministers used the powers available to them under section 7(3)(a) of the Act to extend Part 1 for a further period of 6 months to 30 September 2023.

1.3 In addition to being time limited, the Scottish Government has also made clear it will retain and use the provisions within the Act only for as long as they are necessary. As a result, where it has been possible to do so, provisions in the Act have been suspended or expired when they have fulfilled their purpose and the Scottish Government has examined available evidence and views and both supported a change in approach.

1.4 This Statement of Reasons is laid before the Scottish Parliament alongside a set of draft Regulations.<sup>2</sup> This Statement sets out the evidence why the Scottish Government believes it is necessary and proportionate to extend Part 1 of the Act beyond 30 September 2023 for a further, and final, six month period. If approved, the applicable measures would be extended for a final six month period and would expire on 31 March 2024 (or before if they ceased to be necessary and proportionate). Further extension of Part 1 of the Act beyond 31 March 2024 could **not** subsequently be sought due to the sunset provisions in section 7(3)(b) of the Act. However, the accompanying documents published alongside the emergency Act acknowledged that suspension or expiry of the rent cap may lead to significant and unmanageable rent increases for tenants, if rents moved immediately back to open market rent. It was noted in these circumstances, the existing rent adjudication process, based on comparison to market rents for similar properties, would not provide a reasonable mechanism for determining a reasonable rent increase. The emergency Act therefore contains a power to modify the approach to adjudication of rent disputes on, or in anticipation of, the expiry or suspension of the temporary rent cap.

1.5 This Statement of Reasons replaces the need for a formal Report on the review of the operation of the provisions in Part 1 of the Act (per section 9(8)). Notwithstanding this, an updated overview of the Status and Operation of the provisions; stakeholder consultation undertaken (as per section 9(3) of the Act); and duty to provide information and advice for tenants are provided in this Statement of Reasons.

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<sup>1</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022](#).

<sup>2</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Date\) \(No.2\) Regulations 2023](#) (“the extension regulations”)

## **2. Background**

2.1 The Act, which came into force on 28 October 2022, aims to:

- protect tenants by stabilising their housing costs through the introduction of a temporary, variable rent cap;
- where possible, during the cost crisis, reduce impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless by giving them more time to find alternative accommodation;
- seek to avoid tenants being evicted from the private sector by a landlord wanting to raise rents between tenancies during the temporary measures of a moratorium on evictions; and
- increase the level of damages that may be awarded where a landlord carries out an unlawful eviction.

2.2 The Act also contains powers to reform rent adjudication (Schedule 3) in connection with supporting a transition away from the emergency rent cap measures in the private rented sector.

2.3 Section 7 of the Act set out that Part 1 was due to expire on 31 March 2023, with the potential for extension for two periods of 6 months by secondary legislation, subject to the approval of the Scottish Parliament. Annex A provides further background on the emergency Act.

2.4 The Scottish Government has made clear it will retain and use the provisions in the Act only where they remain necessary and proportionate in connection with the cost of living. As a result, provisions in the Act must be expired or suspended if they are no longer considered necessary and proportionate – as demonstrated in the decision by Scottish Ministers earlier in the year to expire the rent cap provisions for the social sector and suspend the rent cap provisions for the student accommodation sector. The Scottish Government must keep Part 1 of the Act under review and prepare reports on their review which must be laid before Parliament.

2.5 The requirement to keep the provisions under review and report remains ongoing, and we will continue to give consideration to the evidence available to us.

## **3. Proposal to extend**

3.1 Scottish Ministers have carefully considered the wider economic context and feedback from stakeholder engagement, and decided that it is necessary and proportionate for Part 1 of the Act to be extended for a further, and final, 6 month period to 31 March 2024.

3.2 In reaching this decision, careful reflection has been given to balancing the views expressed by many stakeholders and partners against the commitment given when the Act was introduced and the statutory duty that the provisions will not remain in place unless necessary. Careful consideration has also been given to striking a fair balance between the protection of tenants and the property rights of landlords.

3.3 Part 1 of the Act can only be extended in its entirety and not on a provision by provision basis. Any provisions that should not be extended therefore need to be expired or suspended through separate regulations. In addition, throughout the proposed six month extension period, if provisions are deemed to no longer be necessary during that time then they must be suspended or expired early. A suspended provision could subsequently be revived if this was considered necessary and proportionate in connection with the cost of living.

3.4 Therefore, proposing that Part 1 of the Act be extended at this time does not mean that all provisions covered by the extension would remain in place until 31 March 2024. The Scottish Government must continue to review whether the provisions remain necessary and proportionate in connection with the cost of living.

3.5 Section 6 provides an overview of the provisions proposed for a further and final extension period, along with an assessment of necessity and proportionality considerations and Annex B provides a summary of Scottish Government actions and recommendations.

#### **4. Updated Economic Context**

4.1 The ongoing cost crisis continues to place people across Scotland in a precarious economic position. Renters, in particular, have lower household incomes, higher levels of poverty and are more vulnerable to economic shocks.<sup>3</sup> Over the period from 2018-2020, 63% of social rented households and 40% of private rented households did not have enough savings to cover even a month of income at the poverty line, compared to 24% of households buying with a mortgage and 9% of households owning outright. Thus rented sector households entered the cost of living crisis in a more vulnerable position than owner occupiers.

4.2 The latest Understanding Scotland: Economy report<sup>4</sup> published in February 2023 found that two-thirds (63%) of Scots surveyed believe that their own personal financial situation has worsened in the last 12 months. A significant proportion of respondents also reported experiencing financial fragility: 25% reported that they were not confident they would be able to pay for an emergency expense of £100 without having to take out a loan or borrow money, rising to 45% for an emergency expense of £500.

4.3 According to recent YouGov polling for the Scottish Government<sup>5</sup>, in late March 2023, levels of concern about paying mortgage/rent were twice as high in the private rented sector than across all tenures as a whole (22% for private renters compared to 11% for all tenures).<sup>6</sup> Private renters were also more likely to say that

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<sup>3</sup> Scottish Government, [Cost of Living Bill - Key Statistics](#).

<sup>4</sup> [Understanding Scotland Report Wave 6](#).

<sup>5</sup> From YouGov online polling for Scottish Government; fieldwork: week 137 – 1-3 November 2022; week 158 – 28-30 March 2023; weekly sample of c.1,000 adults aged 18+ across Scotland each wave; weighted to be fully representative demographically and geographically. Base size for private renters is 117 for March 2023 and 145 for November 2022. Data tables for all adults can be found at [Public attitudes to coronavirus, cost of living and Ukraine: tracker - data tables](#).

<sup>6</sup> This was part of a prompted list of potential concerns in the next 2-3 months.

they were struggling to pay for household bills, including energy bills and rent at least a little<sup>7</sup> and that they were managing less well financially<sup>8</sup> (30% of private renters compared to 22% all tenures as a whole). There has been no significant improvement in these figures since November 2022. In March 2023, a majority of private renters (63%) reported that their mental health had been impacted negatively by the cost of living.<sup>9</sup>

4.4 The conclusion drawn from these qualitative surveys that the economic position has not yet changed fundamentally and many households on low and modest incomes continue to struggle is supported by the latest economic data. People are facing increased costs across the board, and the biggest impact is felt by those on the lowest incomes: the Office for National Statistics estimates that inflation for low-income households was 11.3% in December 2022, as compared with 10.0% for high-income households and 10.5% for all households.<sup>10</sup>

4.5 A comprehensive overview of the latest economic situation was provided in the first report to the Scottish Parliament published on 12 January 2022,<sup>11</sup> and a further update on key indicators is provided below:<sup>12</sup>

- It is estimated that the fuel poverty rate will have slightly decreased from 35% in October 2022 to 34% in July 2023, when the Ofgem energy price cap for the typical dual fuel household will be set at £2,074. Though the Energy Price Guarantee was set at £2,500 from October 2022 and the Ofgem energy price cap will be set at £2,074 from July to September 2023, representing a decrease of £426, the reason that estimated fuel poverty rates from July to September 2023 are similar to those for October 2022 to March 2023 is that during this period the £400 Energy Bills Support Scheme, paid to all households, was in place. This was withdrawn from April 2023. When compared to October 2022, it is estimated that in July 2023 the fuel poverty rate within the private rented sector will have slightly decreased from 48% to 47%. The fuel poverty rates in the social rented sector and for owner occupiers will also have slightly decreased by one percentage point. While the rate in the private rented sector (47%) will be somewhat lower than in the social rented sector (54%), it will be significantly higher than in the owner occupied sector (23%). This analysis shows that there has been little change in the pressures faced by households in all tenures since October 2022.
- Annual Consumer Price Index (CPI) inflation reached a peak of 11.1% in October 2022 (its highest rate since 1981), relative to the 9.9% recorded in

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<sup>7</sup> 66% of private renters compared to 54% of all tenures said they were either Struggling a little OR Struggling somewhat OR Struggling a lot, which has remained relatively steady since polling in November 2022 (then 64% of private renters compared to 53% all tenures as a whole).

<sup>8</sup> Not managing very well OR Having some financial difficulties OR In deep financial trouble. This has increased slightly since polling in November 2022 (which showed 25% among private renters compared to 21% for all tenures as a whole).

<sup>9</sup> Either To some extent OR To a large extent.

<sup>10</sup> ONS, [CPIH-consistent inflation rate estimates for UK household groups](#).

<sup>11</sup> See Section 4, Updated Economic Context, at [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022: first report to the Scottish Parliament](#).

<sup>12</sup> These have been updated where additional data has been released since the report was published.

August 2022 prior to the introduction of the emergency legislation. Since then it has moderated somewhat, declining to 8.7% in April 2023 due to the large increase in energy prices experienced in April 2022 now falling out of the comparison. Annual growth in the electricity, gas and other fuels component of the index remains high at 24.3%, even if this is down from the recent peak of 89.7%. Annual growth in the index for food and non-alcoholic beverages is also elevated, at 19.0% in April 2023, which, apart from the 19.1% recorded in March, is its highest rate since August 1977.<sup>13</sup> Necessities such as food and energy typically form a larger component of low-income households' budgets. While annual CPI inflation is expected to continue to moderate over the course of 2023, it will remain significantly higher than the 2% inflation target, with the Bank of England projecting that it will average 8% in Q2 2023, 7% in Q3 2023, then 5% in each of Q4 2023 and Q1 2024.<sup>14</sup>

- Increases in pay and earnings remain below inflation. For the 3-month period January 2022 to March 2023, annual growth in employees' median seasonally adjusted nominal total pay in Great Britain was 5.8%. Adjusting for inflation, real total pay fell by 3%, a similar fall to the previous three-month period, and among the largest falls recorded since comparable records began in 2001. The annual growth rate in median seasonally adjusted nominal pay in Scotland taken from HMRC PAYE records has increased from 4.8% in August 2022 to 8.6% in March 2023, lower than the level of CPI inflation in each month of this period, with the latest figure for April 2023 being 9.3%, although this is an early estimate and is likely to be subject to revision.
- While the decision by the UK Government to uprate reserved disability and low-income benefits by 10.1% (the inflation rate in September 2022) in 2023-34 will compensate benefit clients for the exceptionally high rate of inflation in 2022-23, they will again face elevated inflation in 2023-24. The UK Government has also decided to freeze Local Housing Allowance (LHA) rates, which apply in the private rented sector, at 2020 levels for the third year running.
- As a result of these trends, in their most recent set of forecasts (May 2023), the Scottish Fiscal Commission projects that over the two-year period from 2021-22 to 2023-24, households will see their real disposable income fall by a cumulative 4.1%, Scotland's highest fall in living standards on record.<sup>15</sup>
- Latest data for Scotland from letting agents shows continuing high growth in rental prices, with Rightmove reporting an annual increase of 12.3%<sup>16</sup> and Citylets an increase of 12.4% in Q1 2023,<sup>17</sup> and Zoopla reporting an increase of 13.0%<sup>18</sup> in January 2023. It should be noted that this data

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<sup>13</sup> ONS indicative modelling estimates.

<sup>14</sup> Bank of England, [Monetary Policy Report – May 2023](#), based on the mean CPI projection conditioned on market interest rate expectations, with other policy measures as announced.

<sup>15</sup> Scottish Fiscal Commission, [Scotland's Economic and Fiscal Forecasts – May 2023](#).

<sup>16</sup> Rightmove, [Rental Trends Tracker – Q1 2023](#).

<sup>17</sup> City Lets, [Quarterly Report – Q1 2023](#).

<sup>18</sup> Zoopla, [UK Rental Market Report - March 2023](#).

relates only to trends in new let rents, and thus do not show the impact of the rent controls for existing tenants. However, although some caveats apply to the data (letting agencies only cover around half of the private rented sector, and each letting agent's data will be affected by its market coverage, which varies by geography and market segment), this data does show that in the absence of legislation there is a high probability of substantial increases in rents for existing tenants, should their rents be increased to the market level.

## 5. Stakeholder Engagement

5.1 A formal public consultation exercise on the draft extension regulations has not been undertaken. However, as part of the ongoing review of the continued necessity and proportionality of the Act and the formal duty to report to Parliament required under the Act, there has been ongoing stakeholder engagement and consultation on the status and operation of the provisions, consideration of any impacts arising from the Act and whether the provisions continue to be necessary and proportionate. The reporting regime would continue should the extension regulations be approved.

5.2 The first Report was laid before Parliament on 12 January 2023 and reports are due three-monthly thereafter within 14 days of the end of each reporting period, unless there has been a Statement of Reasons laid before Parliament during a reporting period. The Statement of Reasons published on 27 January removed the need for a report to be laid at the end of April (per section 9(8) of the Act). The next formal report was therefore due to be laid by 14 July 2023, but this 2<sup>nd</sup> Statement of Reasons would once again remove the need for that report. The requirement to keep the provisions under review remains ongoing and we will also continue to give consideration to the evidence available to us, with interim updates on the Act being provided as required.

5.3 As part of assessing the continued necessity and proportionality of these provisions we have engaged with those representing landlords, letting agents and tenants in both the private and social rented sectors as well as local authorities, the Scottish Housing Regulator and Lenders through the Private Rented Sector Stakeholder Group established in March 2023.

5.4 On 21 April, Scottish Ministers issued a 2<sup>nd</sup> formal call for written evidence to a wide range of rented sector stakeholder groups in respect of the private, social and student rented sectors representing a range of interests. In light of the changes to the Act which came into force on 1 April, the 2<sup>nd</sup> Call for Evidence sought the following views:

Stakeholder Group	Views Sought
Private rented sector landlord (including mid-market rent providers) and	<ol style="list-style-type: none"> <li>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?</li> <li>2. Whilst the changes to the rent cap only recently came into force, what do you believe the impact of the rent</li> </ol>



investor representatives	<p>cap increasing from 0% to 3% on private landlords will be?</p> <ol style="list-style-type: none"> <li>3. Do you think the changes that came into force from 1 April will impact investment assessments in the private rental sector in Scotland?</li> <li>4. Do you have evidence of behavioural changes as a direct result of the temporary measures currently in force?</li> <li>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?</li> </ol>
Private rented sector tenant representatives	<ol style="list-style-type: none"> <li>1. As we approach the Act being in force for almost six months, do you believe the provisions in the Act have helped to support private tenants?</li> <li>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 tenants will be?</li> <li>3. Do you have evidence of tenant and/or landlord behavioural changes as a direct result of the changes to the temporary measures?</li> <li>4. Are you aware of any evidence that tenants experience suggests that landlords not meeting the terms of the emergency requirements (seeking to increase rent above the cap, unlawful evictions etc)?</li> </ol>
Social rented sector representatives, and student accommodation representatives	<ol style="list-style-type: none"> <li>1. As we approach the Act being in force for almost six months, what do you believe is the impact of the temporary moratorium on the enforcement of eviction orders provisions?</li> <li>2. Similarly, what do you believe is the impact of the temporary unlawful eviction provisions?</li> <li>3. Do you have evidence of tenant and/or landlord behavioural changes as a direct result of the remaining temporary measures?</li> <li>4. Please provide any further views and/or evidence in relation the remaining temporary measures here.</li> </ol>

5.5 Given the temporary nature of the Act, the 2<sup>nd</sup> Call for Evidence also sought views from private rented sector representatives on how best to transition away from the emergency rent cap protections for the private rented sector when that time comes. This is in relation to the powers contained in Schedule 3 of the Act which allow for the modification of the basis on which rent will be determined in cases where a tenant has referred a rent increase notice to a rent officer under the Private Housing (Tenancies) (Scotland) Act 2016. Responses to this particular part of the Call for Evidence have not been analysed as part of this Statement of Reasons, however they will help inform further policy development in this area.

5.6 A summary of responses to the call for evidence – along with a summary of wider stakeholder engagement - can be found in Annex B.

5.7 Section 3 of the Act requires that Scottish Ministers must take steps to ensure that tenants affected by the provisions of Part 1 receive appropriate information, advice and support. Annex C provides information on action taken to meet this statutory requirement.

## **6. Provisions proposed for extension**

### **6.1 Schedule 1: Rent Cap for residential tenancies (Paragraphs 1 and 2 of Schedule 1 of the Act)**

6.1.1 The Act introduced a temporary cap on in-tenancy rent increases for the majority of private sector tenancies (initially set at 0%), which was backdated to 6 September 2022 in order to prevent landlords seeking to increase a tenant's rent between the Programme for Government announcement of the 'rent freeze' and commencement of the Act.

6.1.2 The 'permitted rate' (the 'rent cap') has been set at 3% since 1 April and applies to most existing tenancies in the private rented sector. There are no restrictions on rent setting for any new tenancies; the rent cap only restricts in-tenancy rent increases.

6.1.3 Notwithstanding the rent cap, landlords have a safeguard available to them and can apply to Rent Service Scotland (RSS) to increase the rent for a let property above the rent cap (up to 6%) in connection with defined 'prescribed property costs'. Landlords must give their tenant notice in writing when they make such an application.

6.1.4 An application may only be made if a landlord has had an increase in these defined costs, during the preceding six months, and 'prescribed property costs' are defined as follows:

- the interest payable in respect of any mortgage or standard security over the rental property;
- any insurance premium payable by a landlord relating to insurance connected to offering the property for rent, for example 'landlords' insurance' (excluding general building and property insurance); and
- any 'service charge(s)' related to the rental property that are recoverable from the tenant via their rent as part of the contractual arrangement between tenant and landlord.

6.1.5 A landlord can apply to increase the rent to recover up to the lower of either 50% of the increase in these costs or 6% of the existing rent. The existing protection which only allows a landlord to raise rents once per 12 months still applies.

6.1.6 If an application is approved by RSS, the resultant rent increase will not come into effect until (at the earliest) 12 weeks after the date the landlord made the application. A landlord or tenant is able to appeal the RSS' decision by applying to the First-tier Tribunal for Scotland (Housing and Property Chamber) within 14 days to have the RSS calculation reviewed.

6.1.7 As of 29 May 2023, RSS have received the following applications:

<b>Timeframe</b>	<b>Landlord 3% Prescribed Property Costs application</b>	<b>Landlord 6% Prescribed Property Costs application</b>	<b>Tenant rent cap verification request application</b>
28 October 2022 to 31 March 2023	47 applications received and 38 decisions made.		
1 April 2023 to 29 May 2023		603 applications received and 446 decisions made	16 applications received and 16 decisions made

**Table 1: Summary of applications received by Rent Service Scotland under the Cost of Living (Tenant Protection) (Scotland) Act 2022**

6.1.8 Since 1 April 2023, 16 Tenant verification applications have been received of which 10 were verified at the 3% cap. 6 applications had rent increase notices that exceeded the 3% cap, 1 at 6%, 2 at 7%, 1 at 15%, 1 at 25% and 1 at 45% and these were capped at 3% by the Rent Officer.

6.1.9 47 Landlord applications for 3% prescribed property costs were received up to 31<sup>st</sup> March 2023 with 20 incomplete applications having to be returned and 0 withdrawn. 38 decisions were made and 9 decisions have not been made as no supporting documentary evidence of costs were received. Of the 47 applications, 47 were for interest payable in respect of a mortgage or standard security, 0 were for landlord insurance other than general building and contents and 0 were for service charges relating to the property.

6.1.10 Since 1 April 2023, 603 Landlord applications for 6% prescribed property costs have been received with 191 incomplete applications having to be returned and 1 withdrawn. 446 decisions were made. Of the 603 applications, 595 were for interest payable in respect of a mortgage or standard security, of this 595, 15 also requested an increase due to landlord insurance and 3 requested an increase for all 3 prescribed costs; 1 was for landlord insurance other than general building and contents and 7 were for service charges relating to the property.

### Consultation

6.1.11 The 2<sup>nd</sup> Call for Evidence, along with ongoing informal consultation with stakeholders, has provided valuable information on the views of key stakeholders – including landlords, tenants, housing rights organisations and investors – on the operation and impact of the measures. Scottish Ministers have considered these as part of assessing the continued necessity and proportionality of the measures.

6.1.12 In addition, Scottish Government officials continue to discuss the emergency Act and its impact with a range of tenant, landlord, investor and educational representative bodies as part of wider rented sector discussions.

6.1.13 The Private Rented Sector Stakeholder Group (as per para 5.3) has been formed which comprises of tenant, landlord and investor representation from across the private rented sector. The primary remit of this group is to inform the policy development for our proposed longer-term rented sector reforms in Scotland. Whilst the emergency Act is not the primary focus of the Stakeholder Group, it has formed part of discussions and feedback derived in this setting has been valuable.

#### Necessity and Proportionality

6.1.14 In order to assess the use and continued necessity and proportionality of the private rented sector rent cap and safeguards, Scottish Ministers have taken into account:

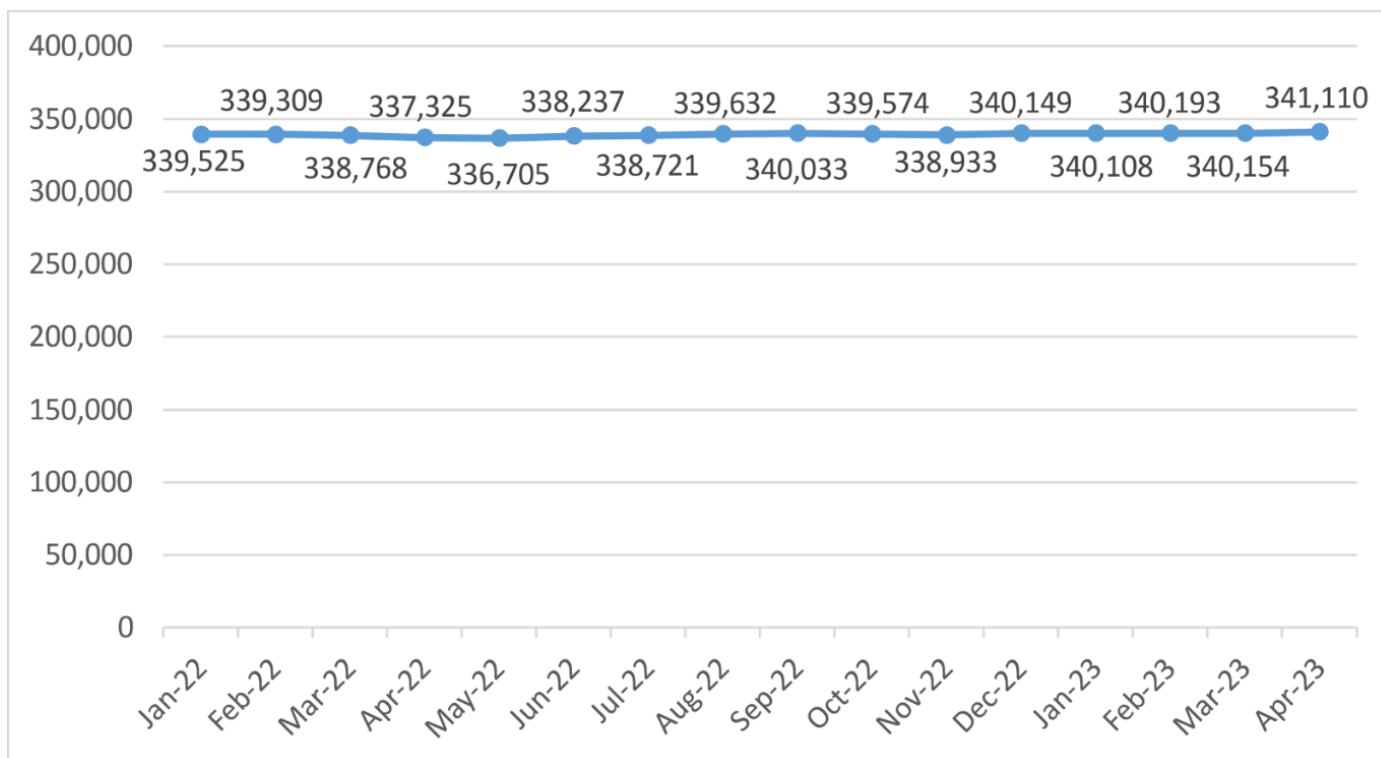
- the evolving economic context and the likely impact on households resident in the private rented sector;
- information from stakeholders regarding the impact and effect of the measures on landlords and tenants to date; and
- information from other sources to seek to identify any unintended or unanticipated impacts that may have arisen as a result of the measures.

6.1.15 The concerns detailed by consultees in response to the Call for Evidence have been carefully considered but there remains limited supporting information that demonstrates the potential effects raised.

6.1.16 For example, there is no strong empirical evidence at present to substantiate the anecdotal claims from some consultation respondents that landlords are leaving the sector. The most comprehensive up-to-date measure of the overall supply of privately rented properties is the number of properties registered on the Scottish Landlord Register. There are some limitations of this data source, such as the fact that registrations last for a period of three years and there could be a time lag in landlords de-registering properties which are no longer available for rent. In the case of any landlords looking to leave the sector or reduce their portfolio, it should also be recognised that the process could take several months from freeing up properties to completing sales.

6.1.17 Nevertheless, subject to these limitations, Figure 1 shows that the number of registrations has been steady across the period January 2022 to April 2023. In particular, the number of properties registered in April 2023 was slightly (0.4%) higher than in August 2022. We will continue to track data from the Scottish Landlord Register on a monthly basis.

**Figure 1. Number of properties registered on the Scottish Landlord Registration System each month between January 2022 and April 2023**



6.1.18 Taking account of the overall evidence on the impact of the cost crisis, at present the rent cap provisions remain necessary and continue to pursue the prescribed aim in the public interest of ensuring that tenants in the private rented sector were, and are, protected against the impact of the wider economic conditions, through stabilisation of their housing costs. This is at a time when the economic data demonstrates that the cost crisis is continuing to have a significant and detrimental impact on household finances, and particularly those living in the private rented sector.

6.1.19 The Scottish Government therefore considers that it is necessary and proportionate for the measures which cap in-tenancy rent increases in the private rented sector to be extended.

6.1.20 In terms of the proportionality of the rent cap, there are powers to amend the level of the rent cap combined with the ability to vary the landlord safeguard (provided through the prescribed property costs provisions), enabling Scottish Ministers to take tailored and agile action in response to any changes in the economic environment. This enables them to ensure that their response continues to be proportionate – as already demonstrated in the regulations which came into force on 1 April 2023, increasing the rent cap from 0% to 3% and the prescribed property costs safeguard from 3% to 6%.

6.1.21 Having assessed the up to date economic assessment, the Scottish Government considers that the rent cap continues to strike a fair balance between

the public interest and the interference with landlords' rights inherent with the measures. No further changes are deemed to be necessary at this present time, due to the economic evidence available on the impact of the continuing cost crisis.

6.1.22 Statistics provided by Rent Service Scotland show that a proportion of private landlords are making use of the safeguard, where they can evidence defined prescribed property costs. As of 29 May 2023, 603 applications have been made by private landlords under the 6% prescribed property costs safeguard. There are around 340,000 privately rented properties in Scotland.<sup>19</sup>

6.1.23 As set out during the passage of the Bill, the purpose of including the provision for landlords to make an application to have a rent increase considered in respect of defined prescribed property costs was to provide a suitable safeguard which takes account of the individual circumstances of landlords. We have reviewed the level and those property costs that are permitted to ensure that they strike a balance. Based on the evidence provided by stakeholders and set out in Section 3, we remain of the view that the prescribed property costs remain necessary and proportionate in balancing the rights of tenants and landlords, and taking account of the impact that the cost crisis may be having on some landlords.

6.1.24 The current approach is finely balanced and there will continue to be close monitoring of economic data and gathering of evidence on impacts of the measures. Evidence on whether, or not, the financial burdens on households begins to lift will be closely monitored alongside the impacts of the rent cap measures. Whether, or not, emerging and contemporaneous evidence supports an amendment to the level of the rent cap or and/or safeguards continuing to be necessary and proportionate remains under continued consideration.

6.1.25 The Scottish Government has considered the implications of expiry or suspension of the rent cap in the private rented sector. With no cap on rent increases, tenants in the private rented sector would have little protection against high in-tenancy rent increases at a time of ongoing pressure on household finances, due to the high increases in market rents.

6.1.26 The Scottish Government is of the view that the extension of the rent cap measures in the private rented sector, if approved by Parliament:

- i. would be likely to positively impact on equal opportunities across those with protected characteristics, as this provision will continue to provide tenants with greater confidence about their housing costs and the security of a stable home;
- ii. would not have any detrimental impacts on island communities, local government and sustainable development;
- iii. would continue to help address socio economic disadvantage and reduce the inequalities that are associated with being disadvantaged;
- iv. would appropriately and proportionately balance the interests of landlords by taking into account that the ongoing impacts of the cost crisis may also be experienced by some landlords, the application of a safeguard allowing a

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<sup>19</sup> See Figure 1 below.

landlord to make an application to increase the rent to a level above that which is offered by the rent cap, in connection with prescribed property costs, would continue to allow for the individual circumstances of landlords to be taken into account; and

- v. would not negatively impact the rights and wellbeing of children and by reducing the harms caused by eviction for children and their families, the Act is contributing to promoting the health of children and young people and supporting their education.

6.1.27 As part of assessing the continued necessity and extension of the rent cap provisions, we have reviewed the impact assessments carried out as part of the development of the Act and the available data and evidence on operation of the provisions since they came into force. More information on this can be found in Annexes E, F and G.

6.1.28 The Scottish Government considers that the purpose of the rent cap provisions (as per the draft Regulations laid alongside this Statement<sup>20</sup>), which is the social protection of tenants (by stabilising their housing costs), remains a legitimate aim.

6.1.29 The Scottish Government considers that extension of the rent cap measures is an proportionate and necessary response to the ongoing cost crisis, and strikes an appropriate and proportionate balance between the public interest in the form of protection for tenants during the current economic situation, and the property rights of landlords.

## **6.2 Schedule 2: Rent cap for student residential tenancies (as defined by paragraph 4 of Schedule 1 of the Act)**

6.2.1 The rent cap provisions relating to student residential tenancies (paragraph 4, Schedule 1) were suspended on 30 March 2023.<sup>21</sup> The suspension of the rent cap in relation to student residential tenancies was necessary due to the evidence of minimal impact with regard to that particular part of the rental sector.

6.2.2 Suspension of the rent cap provisions for student residential tenancies means that they ceased to have effect as at the date of their suspension but a power for the provisions to be revived during the lifetime of Part 1 of the Act exists, should evidence support that being necessary and proportionate.

6.2.3 Although assurances were received from the majority of institutional and Purpose Built Student Accommodation providers that there would be no in-contract rent increases, these assurances do not cover all providers with certainty, and it is therefore proposed that the suspended provisions are extended – in their current form – to allow for them to be revived, should the evidence show that this was necessary and proportionate.

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<sup>20</sup> The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Date) (No. 2) Regulations 2023

<sup>21</sup> [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Early Expiry and Suspension of Provisions\) Regulations 2023 \(legislation.gov.uk\)](#)

6.2.4 While a number of institutions have increased accommodation costs in the Purpose Built Student Accommodation they own by up to 9%<sup>22</sup>, these increases apply to new tenancies for the coming academic year and, as such, would not have been covered by the provisions in the Act, given that the Act as a whole covers only in-tenancy rises, not those for new tenancies. It is the annual re-letting of tenancies in the Purpose Built Student Accommodation sector which means that the Act provisions apply in a very different way, rather than that they are Purpose Built Student Accommodation. The current Review of Purpose Built Student Accommodation, which considers a number of issues including affordability, is nearing completion and officials are working with the Review Group to finalise and agree recommendations for Ministers.

6.2.5 There is no proposal at present to revive these provisions.

### **6.3 Protection against eviction (Eviction from residential properties: restrictions on enforcement). Schedule 2 of the Act, sections 1, 2, 3, 4, 5 and 6**

#### Description and Operation of the Provisions

6.3.1 Part 1, Schedule 2 temporarily pauses the enforcement of eviction actions in the private rented, social rented and student accommodation sectors from 6 September 2022 onwards, with relevant exemptions in relation to specified circumstances, and it also amends the process for the determination of damages for an unlawful eviction.

6.3.2 The temporary moratorium on evictions aims to help to reduce the negative impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless during the cost crisis. It provides more time for people to seek support and to find alternative accommodation that meets their needs and some responses to the call for evidence (considered below) indicate that the evictions moratorium provisions may be contributing positively to that aim. In response to the Call for Evidence, City of Edinburgh Council stated: *“Tenants within the Private Rented Sector have longer periods of time in the property if notice is served. This means that further prevention activities can be achieved and where possible, homelessness can be avoided.”*

6.3.3 A number of safeguards are in place to allow evictions to proceed without the moratorium in limited circumstances. The pause does not apply where:

- the tenant has engaged in antisocial or criminal behaviour (student residential tenancies, private and social sectors);
  - the tenant has abandoned the property (private and social sector);
  - where the property is to be sold by a lender (private sector only);
  - the tenant is no longer an employee of the landlord (private and social sector);
- and

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<sup>22</sup> [Glasgow University to increase rents by nearly 10% - BBC News](#)



- the property is subject to demolition or requires substantial work and suitable alternative accommodation will be available for the tenant (social sector only).

6.3.4 There are also three amended/new temporary grounds for eviction where the moratorium will not apply where:

- landlord intends to sell the let property due to financial hardship (this applies to private sector only);
- landlord intends to live in the let property due to financial hardship (private sector only);
- tenant has substantial rent arrears which add up to 6 months' rent or more in the private rented sector, or £2,250 or more in the social rented sector (private and social rented sectors).

6.3.5 If an eviction order is granted by the Tribunal or Sheriff Court for any of these reasons, the eviction order can be progressed in accordance with the rules that apply to these eviction grounds. Where an eviction order or decree was granted before the legislation came into force or where the landlord raised eviction proceedings before the legislation came into force and served an eviction notice before the announcement on 6th September 2022, the case will not be caught by the moratorium and will still be able to be enforced in line with the normal legal requirements in place prior to the emergency legislation.

6.3.6 As set out above, where a landlord is prevented from enforcing an order for eviction while the moratorium is in effect, the enforcement of that order can only be delayed for a maximum period of 6 months.

6.3.7 As of 30 May 2023, data from the First-tier Tribunal (Housing and Property Chamber) shows that there have been a total of 1,412 applications for eviction from September 2022 to 30 May 2023. This is an increase from the same period the previous year, when there were 1,133 applications for evictions, although volumes in the previous year will have been impacted on by eviction measures in place through the Coronavirus (Scotland) Act 2020. The total number of eviction applications includes eviction action relating to the Coronavirus Act period, post Coronavirus Act period and under the Cost of Living (Tenant Protection) (Scotland) Act 2022. Data on the status of these applications is only available in relation to Coronavirus Act cases and Cost of Living Act cases (detailed below), and it is therefore not possible to indicate how many of the total number of applications resulted in an Order for eviction being granted, refused, or withdrawn.

6.3.8 Out of the total number of eviction applications, 630 fall within the scope of the Act's provisions. Of the 630 applications received, 350 are awaiting outcome. The remaining 280 applications are broken down as follows:

	<b>Granted</b>	<b>Refused</b>	<b>Rejected</b>	<b>Withdrawn</b>	<b>Dismissed</b>
<b>Sep-22</b>	-	-	-	-	-
<b>Oct-22</b>	-	-	-	-	-

<b>Nov-22</b>	-	-	-	-	-
<b>Dec-22</b>	-	-	1	11	-
<b>Jan-23</b>	-	-	3	17	-
<b>Feb-23</b>	6	-	3	21	-
<b>Mar-23</b>	32	5	4	36	1
<b>Apr-23</b>	25	-	3	21	-
<b>May-23</b>	60	-	7	23	1
<b>Total</b>	<b>123</b>	<b>5</b>	<b>21</b>	<b>129</b>	<b>2</b>

**Table 2. Number of First-tier Tribunal (Housing and Property Chamber) eviction applications falling within the scope of the Cost of Living Act provisions, by status and month of outcome as at 30 May 2023**

6.3.9 The total of 123 evictions granted equates to a lower average monthly level than the pre-pandemic average of 69 evictions granted per month across the year 2019/20, although it may take some time for the Cost of Living Act evictions applications received so far to reach an outcome.

6.3.10 In the social rented sector only summary cause data from the Scottish Courts is available. Latest available figures on the total number of social sector summary cause eviction applications registered at courts show a decrease over the period since August 2022, with the number of applications registered falling from 458 in August 2022 to 308 in March 2023. However it should be noted that these are overall figures and do not specifically identify the number of applications that fall within the scope of the emergency legislation. Whilst eviction application figures in March 2023 remain above the monthly levels seen prior to this each month between April 2020 and July 2022, the Coronavirus (Scotland) Act 2020 was in force from 7 April 2020 to 30 September 2022 and had a significant impact on the number of summary cause eviction applications registered by the courts during this period.

6.3.11 Feedback from the call for evidence shows minimal concern on the operation of the moratorium, the main view being that this is mostly due to eviction already being a last resort for social landlords and therefore the eviction moratorium provisions for the social sector are having a minimal impact. However, a number of social sector representatives did outline concerns about the definition of substantial rent arrears in the emergency Act, as it is being perceived by some tenants as an acceptable level of debt to accrue before action can be taken.

### Consultation

6.3.12 In order to assess the continued necessity and proportionality of the provisions, the Scottish Government has considered various sources of information, formally and informally, including a 2<sup>nd</sup> Call for Evidence to key stakeholders – issued to landlord and tenant representatives, housing rights organisations, investors and educational establishments and providers of student accommodation. We also

sought written evidence on the impact of the measures from local authorities and persons who represent the interests of tenants and landlords that may be affected by the provisions, and any other person considered appropriate.

6.3.13 Tenants' representatives reported being broadly supportive of the moratorium. Age Scotland said they "*supported the emergency response to protect households living in the private rented sector from unsustainable in-tenancy rent increases and eviction proceedings*" particularly given the "*financial pressures facing low income households across Scotland, especially [...] higher energy costs.*" Feedback from Citizens Advice Scotland noted that: "*the provisions in the Act have helped to support some private tenants, in terms of [...] delaying or even avoiding eviction during the cost of living crisis*".

6.3.14 There are continued concerns amongst private and social rented sector landlord representatives, suggesting that the moratorium has encouraged both the non-payment of rent and reduced the incentive for tenants in rent arrears to work with their landlord to repay arrears, leading to larger rent arrears putting the tenancy at risk. In addition, it has been suggested that private landlords may be becoming more cautious in the selection process for new tenancies, which could lead to an increase in homelessness for those more vulnerable households who may be considered a higher risk to house. However, it was also highlighted that the moratorium has made some landlords more willing to engage with their tenants, provided more time for prevention activities before moving towards legal action and encouraged more active support to help tenants sustain their tenancy.

6.3.15 In addition, to provide an indication as to the impact of these provisions on Sheriff Officers going forward, we are continuing to engage with The Society of Messengers-at-Arms and Sheriff Officers to collect information on enforcement of evictions.

6.3.16 Whether there have been any unintended or unanticipated impacts arising from the measures is being assessed, but there is limited data available to date, to verify the extent and validity of the issues raised. This will continue to be investigated and monitored closely.

### Necessity and Proportionality

6.3.17 In order to assess the use and continued necessity and proportionality of these provisions across the private, social and student accommodation sectors, the Scottish Ministers have taken into account the evolving economic context of the cost crisis which continues to place pressure on households, along with evidence from key stakeholders regarding the impact and effect of the measures on landlords and tenants. Each sector is considered in turn as follows:

#### Private rented sector

6.3.18 As noted above, while there have been a total of 630 applications for eviction under the Act, of these only 123 have been granted with the first determinations being made in February. Alongside the moratorium there are existing safeguards for landlords experiencing financial hardship, and there is a maximum additional delay

of 6 months. Although there has only been a small impact on landlords, the peace of mind and protection the moratorium provision provides tenants while the rent cap is in place is significant, and it is twofold:

- firstly, avoiding landlords ending a tenancy to raise the rent. Although it is a criminal offence to evict a tenant without a court or Tribunal order or decree, the moratorium provides additional protection to tenants from unfair or unlawful eviction action pursued by private landlords in order to seek a new tenant (which would allow them to set a new, higher rent afresh because the rent cap only applies to in-tenancy rent increases) in direct response to the temporary rent freeze; and
- secondly, to help reduce impacts on the health and wellbeing of tenants associated with being evicted, and by providing those being evicted with additional time to access support and find alternative accommodation.

6.3.19 Therefore, the measures remain a proportionate and necessary approach at this time.

### Social Rented Sector

6.3.20 Social rented households are more likely to have lower incomes than households in other tenures, with Scottish Household Survey results for 2019<sup>23</sup> showing 60% of social rented households having a net income of £20,000 or less, compared to 38% of private rented households, 41% of households who own outright, and 14% of households buying with a mortgage.

6.3.21 Social rented households are also more likely to be financially vulnerable (defined as households with savings which would cover less than one month of income at the poverty line), with Scottish Government Statistics on Wealth in Scotland<sup>24</sup> showing 63% of social rented households being estimated to be financially vulnerable, compared to 40% of private rented households, 24% of households buying with a mortgage and 9% of households owning outright.

6.3.22 Around two-thirds (66%) of social rented households are receiving some level of support for housing costs through Housing Benefit or Universal Credit, with the equivalent figure for private rented sector households being 29%<sup>25</sup>.

6.3.23 A number of stakeholders noted that evictions are a last resort and that therefore the moratorium has not imposed a significant impact. Therefore, the evidence of impact indicates that this is not an immediate and significant obstacle to sector practices. We consider that the measures, alongside the landlord safeguard and exemptions, remain proportionate in order to pursue the aim of helping reduce impacts on the health and wellbeing of social sector tenants by being evicted and/or being made homeless at a time when they are already struggling as a result of financial stress resulting from the cost crisis, and providing those being evicted with additional time to access support and find alternative accommodation.

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<sup>23</sup> [Scottish Household Survey Annual Report Tables 2019](#)

<sup>24</sup> [Scottish Government Statistical publication on Wealth in Scotland 2006-2020](#)

<sup>25</sup> (As reported in [Cost of Living Bill - Key Statistics](#), based on DWP StatXplore Tables for May 2022, compared with latest available rented stock figures)

## Student rented sector

6.3.24 While evictions in the student sector continue to be reported as rare by sector representatives, there remains a possibility that evictions could take place. In addition, the majority of those in halls of residence and purpose build student accommodation are under the age of 21. Taken alongside the wider economic landscape associated with the ongoing cost crisis, we consider these provisions continue to be necessary in order to help reduce impacts on the health and wellbeing of tenants by being evicted and/or being made homeless at a time when they may already be struggling as a result of financial stress resulting from the cost crisis.

6.3.25 Given the reported infrequency of eviction action, alongside the landlord safeguard and exemptions, the interference with landlords' rights imposed by the moratorium is relatively minimal and is proportionate with the aim of the Act as regards these provisions and with providing those being evicted with additional time to access support and find alternative accommodation.

## Proposal

6.3.26 Further extending these provisions which introduce restrictions on the enforcement of evictions will continue to give tenants more time to access alternative accommodation, helping to reduce the negative impacts on the health and wellbeing of tenants caused by being evicted and/or being made homeless at a time of greater financial stress resulting from the ongoing cost of living crisis. For tenants in the private rented sector, it will also continue to provide protection by making it easier and more meaningful for tenants to challenge an unlawful eviction and receive appropriate damages where an unlawful eviction is found to have occurred and continues to make it more difficult, more expensive and higher risk for a landlord to pursue an illegal eviction rather than going through the lawful routes, therefore continuing to dis-incentivise this behaviour.

6.3.27 As before, the Scottish Government has considered the implications of expiring the provisions restricting the enforcement of evictions in certain circumstances. As there has not been any significant change in current economic circumstances, renters remain particularly vulnerable to the continued impacts of the cost crisis. Expiring this protection at this time would mean that tenants in the private rented sector would not be protected from private landlords seeking to end a tenancy to raise rents above the rent cap. In addition, tenants in both the private and social rented sectors would not benefit from the additional time to find alternative accommodation provided by the 6 month pause in the enforcement of eviction action, which could increase the negative impact on those being evicted during the cost of living crisis.

6.3.28 Provisions under the Act include a number of safeguards for landlords. The exemptions help to ensure, alongside provision that restricts the pause in any individual enforcement action to a maximum of 6 months, that an extension of the evictions moratorium remains a proportionate and necessary response to the ongoing cost crisis. It is recognised that there are some circumstances where enforcement of an eviction order or decree should be able to proceed to protect

communities and to strike an appropriate balance between protection of tenants and the property rights of landlords.

6.3.29 As part of assessing the continued necessity and extension of the provisions, we have reviewed the impact assessments carried out as part of the development of the Act and the available data and evidence on operation of the provisions since they came into force. No material changes to the findings from the impact assessments have been identified in relation to the extension of this provision.

6.3.30 The Scottish Government is of the view that extension of measures to pause the enforcement of certain evictions, if approved by the Parliament, would:

- i. likely positively impact on equal opportunities across those with protected characteristics, as this provision will continue to provide support to all tenants being evicted with appropriate safeguards for landlords;
- ii. would not have any detrimental impacts on island communities, local government and sustainable development;
- iii. would continue to help address socio economic disadvantage and reduce the inequalities that are associated with being disadvantaged;
- iv. would appropriately and proportionately balance the interests of landlords to recover their property and support to tenants vulnerable to the impact of the cost crisis by providing greater time to access support and find alternative accommodation; and
- v. would not negatively impact the rights and wellbeing of children and by reducing the harms caused by eviction for children and their families, the Act is contributing to promoting the health of children and young people and supporting their education through the provision of housing stability.

6.3.31 The Scottish Government's view is that extension of this provision continues to be a proportionate and reasonable response to the cost of living emergency and appropriately balances the property rights of landlords and the protection of tenants. This is because this provision includes a range of exemptions to the restrictions on the enforcement of eviction for landlords to ensure that evictions can continue to be enforced in certain circumstances. These include where the landlord is being negatively impacted by the cost crisis and needs to sell or live in the let property to alleviate financial hardship; or if there are substantial rent arrears. In addition, where the enforcement of an eviction is paused, the pause in enforcement of any individual eviction order/decreed is for a maximum period of 6 months.

#### **6.4 Protection against eviction (Unlawful evictions: notification and determination of damages). Schedule 2, section 7 and 8**

6.4.1 Further extension of these provisions would mean that the additional unlawful eviction protections would continue. These measures make it easier and more meaningful for a tenant to challenge an unlawful eviction and, where an unlawful eviction is found to have occurred to receive an appropriate level of damages. This would also continue to make it more difficult, more expensive and higher risk for a landlord to pursue an unlawful eviction rather than going through the lawful routes, dis-incentivising this type of behaviour.

6.4.2 Tenant representatives and advice groups reported being supportive of the unlawful evictions provisions. Living Rent said that the provisions had “*protected tenants by clearly outlining to landlords that attempts at illegal/unlawful eviction will be severely punished*” and they called for the unlawful evictions provisions to become a permanent legislative protection. Other responses said that the provisions had helped to prevent landlords abusing grounds for eviction and allowed tenants to more easily demonstrate and challenge wrongful use of an eviction ground.

6.4.3 Six cases within the scope of the Act have been made to the First-tier Tribunal for Scotland (Housing and Property Chamber) since these provisions came into force, they are in the process of being determined. This is double the number of cases determined by the Tribunal during 2022 and may demonstrate that the new process is easier and more accessible for tenants to challenge an unlawful eviction.

6.4.4 The Scottish Government considered the implications of not extending this provision, however, the measure remains necessary to support the effective operation of the rent cap and moratorium provisions, support tenants and ensure tenants can more easily challenge any unlawful practices and be appropriately compensated. Under permanent legislation, the default position is that tenants would need a professional surveyor valuation of the difference between the landlord’s interest in the property with and without a sitting tenant. This is an expensive process. Feedback from stakeholders<sup>26</sup> indicates that this can lead to a nil valuation creating a significant barrier to challenging an unlawful eviction.

6.4.5 The Scottish Government has assessed the potential impact of the extension of these provisions on human rights, children's rights and equality rights and considers that the extension of these measures will have a positive impact across those with protected characteristics.

## 7. Rights and Equalities Considerations

7.1 The Scottish Government acknowledged in its 1<sup>st</sup> [report](#) on the Act published in January, that some provisions have more significant impacts on rights and equality than others.

7.2 The following Impact Assessments were undertaken for the Act as part of the development of the Bill which was introduced to Parliament on 3 October 2022:

- Business and Regulatory Impact Assessment<sup>27</sup>
- Child Rights and Wellbeing Impact Assessment<sup>28</sup>
- Data Protection Impact Assessment<sup>29</sup>
- Equality Impact Assessment<sup>30</sup>
- Fairer Scotland Duty Impact Assessment<sup>31</sup>

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<sup>26</sup> [Briefing on reform of the law on damages for unlawful eviction - August 2020.](#)

<sup>27</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: business regulatory impact assessment.](#)

<sup>28</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: children's rights and wellbeing impact assessment.](#)

<sup>29</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: data protection impact assessment.](#)

<sup>30</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: equalities impact assessment.](#)

<sup>31</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: Fairer Scotland Duty assessment.](#)

- Island Communities Impact Assessment<sup>32</sup>

7.3 The human rights impacts were summarised in the Policy Memorandum<sup>33</sup> for the Bill.

7.4 The Scottish Government's justification for why each individual provision in the extension regulations continues to be necessary and proportionate beyond the end of 30 September 2023 is set out in this Statement of Reasons. If approved, the measures would be extended for a final six month period and would expire on 31 March 2024 (or before if they ceased to be necessary or proportionate). Extension of Part 1 of the Act beyond 31 March 2024 could **not** subsequently be sought due to the sunset provisions in section 7(3)(b) of the Act.

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<sup>32</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Bill: island communities impact assessment.](#)

<sup>33</sup> [Policy Memorandum](#)



## Further background to Cost of Living (Tenant Protection) (Scotland) Act 2022

1. On 27 January 2023, Scottish Ministers laid regulations<sup>34</sup> and a Statement of Reasons<sup>35</sup> before the Scottish Parliament in order to extend and vary the remaining provisions within Part 1 of the Act for a further 6 months to 30 September 2023.
2. That Statement of Reasons set out that the economic position had not yet changed fundamentally and many households on low and modest incomes, continue to struggle. After taking the wider economic context and stakeholder engagement into account, Scottish Ministers proposed that whilst the Act should be extended for a further 6 month period, it was recognised that the ongoing impacts of the cost crisis may also be experienced by some private landlords, and therefore it would be proportionate to raise the rent cap in the private rented sector to allow within-tenancy rent increases of up to 3%.
3. The voluntary approach to rent setting taken by landlords in the social sector was intended to achieve an average rental increase of less than £5 a week across the sector as a whole. A Scottish Housing Regulator (SHR) report<sup>36</sup> published 15 March 2023 confirms that this is the case, with an average rent increase across the social sector for 2023-24 of 5.07%, equivalent to £4.38 per week (or just under £19 per month). The average increase is 3.80% (£3.07 per week) for local authorities and 5.34% (£5.05 a week) for housing associations. As rents in the private rented sector are generally significantly higher<sup>37</sup> than those in the social sector, allowing a maximum rent increase of 3% for rents in the private rented sector equates to a similar average rent increase for tenants in two-bedroom properties (the most common property size in the private rented sector).<sup>38</sup> The Scottish Government considers that this gives a measure of parity to landlords in the private and social sectors in monetary terms, whilst continuing to protect tenants from unaffordable rent increases whilst the pressures of the cost crisis continue. It should be noted that social sector rents are set for each fiscal year, so these rents increases will apply for a full 12 months, reinforcing the parity of treatment of the social and private rented sectors.
4. In recognition of the increase in the rent cap from 1 April, the safeguard for landlords introduced by the Act – in the form of the ability to apply to a Rent Officer to increase the rent for a let property above the rent cap in connection with defined ‘prescribed property costs’ – was also increased from 3% to 6%. The previous

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<sup>34</sup> [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Dates and Rent Cap Modification\) Regulations 2023.](#)

<sup>35</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 - proposed extension: statement of reasons.](#)

<sup>36</sup> Scottish Housing Regulator, [Rent increases by Scottish social landlords 2023/24 - March 2023.](#)

<sup>37</sup> Scottish Government, [Cost of Living Bill - Key Statistics.](#)

<sup>38</sup> The average two-bedroom private rent was £736 in the 12 months to September 2022 (see Table 6 in Section 8 of Scottish Government, [Private Sector Rent Statistics, Scotland, 2010 to 2022.](#)) This dataset is primarily based on new let rents, but even when reducing this figure by 10% to reflect that rents for existing tenants tend to be lower than new let rents (see discussion in Annex C of the [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 - proposed extension: statement of reasons](#)), a 3% increase would equate to £19.87 per month and a 6% increase to £39.74 per month.

extension regulations also extended the following provisions in the Act for a further 6 month period to 30 September 2023:

- Eviction from residential properties: Restrictions on enforcement (Schedule 2 – paragraphs 1, 2, 3, 4, 5 and 6); and
- Protection against eviction: Unlawful evictions (notification and determination of damages) (Schedule 2 – paragraph 7).

## Summary of the Scottish Governments actions and recommendations

Provision	Subject	Action	Relevant section in statement	Further Info
Schedule 1, paragraph 1 and 2	Rent cap for private residential tenancies	<b>Extension</b>	See section 6.1	See the Policy Note accompanying the extension regulations.
Schedule 1, paragraph 4	Rent cap for student residential tenancies	<b>Continued Suspension</b>	See section 6.2	See the Policy Note accompanying the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Early Expiry and Suspension of Provisions) Regulations 2023
Schedule 2, paragraphs 1, 2, 3, 4, 5 and 6	Eviction from residential properties: restrictions on enforcement	<b>Extension</b>	See section 6.3	The extension of the moratorium on the enforcement of eviction orders will continue across the private rented sector, social rented sector and student accommodation sectors. See the Policy Note accompanying the extension regulations.
Schedule 2, paragraph 7	Unlawful eviction	<b>Extension</b>	See section 6.4	See the Policy Note accompanying the extension regulations.

## Duty to provide information and advice to tenants

1. Section 3 of the Act requires that Scottish Ministers must take steps to ensure that tenants affected by the provisions of Part 1 receive appropriate information, advice and support.

2. In recognition of this, a wide range of information has been published for both private, social and student tenants on the Scottish Government [website](#), as follows:

- information for [private tenants](#) on the eviction moratorium and rent cap;
- information on the emergency measures for [social housing tenants](#); and
- information on the emergency measures for students living in [purpose built student accommodation and student halls](#) (in addition, links to this page was also provided via the Student Information Scotland website).

3. To reflect the changes to the Act that came into force on 1 April 2023, all relevant pages providing information to tenants were fully updated.

4. Communication activity to help drive up awareness of tenants new rights has continued to be taken forward by the Scottish Government at regular intervals and key points of change, including:

- a Scottish Government news release and social media activity in relation to our announcement in January to seek to extend the emergency measures from 1 April and vary the rent cap for the private rented sector;
- a further news release and social media activity when the Parliament approved the extension of the emergency measures;
- on 1 April, when the changes to the emergency Act came into force, the following awareness raising activity took place:
  - direct email communication with all registered landlords via local authorities took place;
  - direct email communication with all registered letting agents; and
  - engagement with the three Tenancy Deposit Schemes took place, to facilitate dissemination of information with tenants registered to their relevant newsletters – raising awareness and providing further information on the changes to the emergency measures.

5. In May, the Scottish Government undertook further social media activity to promote awareness of the emergency Act and tenants' rights. Information on the rent cap and evictions moratorium provisions within the Act, as well information about financial support for tenants featured in a series of posts published on Scottish Government Twitter channels.

## Summary of 2<sup>nd</sup> Call for Evidence

**Note:** The following summary was prepared on the basis of evidence supplied in response to a targeted call for evidence from key stakeholder groups by the Scottish Government in April/May 2023.

The evidence outlined in these submissions was drawn from a wide variety of sources including; anecdotal evidence, lived experience examples, internal stakeholder data such as member surveys, stakeholder perspectives and externally published data.

In most cases, it has not been possible for Scottish Government analysts to verify the data provided in these submissions.

In total, 38 responses were received to the call for evidence, as follows:

- 4 from tenant representative and advice groups;
- 4 from housing professionals membership organisations;
- 1 from an independent private landlord; and
- 29 from landlord/financial/investor representative groups, local authorities and housing associations, of which;
  - i. 6 represent interests in the private rented sector;
  - ii. 15 represent interests in the social rented sector;
  - iii. 5 represent interests in both the private and social rented sector;
  - iv. 3 represent interests from student accommodation providers.

## Main findings

### 1. Private Sector Rent Cap: 1 April 2023 increase from 0% to 3%

1.1 As the Cost of Living (Tenant Protection) (Scotland) Act has been in force for over six months, stakeholders were asked whether the provisions within the Act had helped to support private tenants. Some responses from advice groups and tenant representative organisations reported that the provisions in the Act may have helped to prevent substantial rent increases, delayed or even avoided eviction during the cost of living crisis and continue to provide reassurance and protection to tenants. These organisations called for protections to remain in place to provide support to tenants in what they say remains an unprecedented economic position.

1.2 Although many responses noted it was too soon to judge the impact of the rent cap increasing from 0% to 3% as of 1 April, some financial/investor stakeholders advised that their members viewed this as a positive move, and described the increase as welcomed, allowing a degree of flexibility for private landlords. However, several private landlord representative bodies advised the increase was not sufficient to alleviate financial pressures on landlords. It was also suggested that the uncertainty around whether the Act will be extended after 30 September 2023 is making it difficult for landlords to manage their finances. As a result, several stakeholders have reported landlords delaying rent increases until the cap is lifted,

which may result in a high number of significant rent increases occurring at the same time.

1.3 Across the board, private landlord representative bodies set out significant concerns that the emergency measures may be leading to landlords leaving the sector due to their business no longer being financially viable and concerns about further legislation having a detrimental impact. One landlord group referred to a member survey carried out in March 2023, which found that 44% of landlords surveyed reported an intention to reduce their portfolio size in the next 5 years, with 19% intending to expand. Of those intending to reduce their portfolio, 87% cite the Act as a factor in their decision, or the sole reason (26%). A local authority provided information from their landlord registration data to evidence the decline in private sector landlords in recent years; at the end of 2021/22 4,907 landlords with a total of 7,626 properties were registered, however at the end of 2022/23 this had fallen to 4,640 and 7,368 respectively.

1.4 Some landlord groups suggested that the current safeguard within the legislation relating to a maximum 6% uplift for prescribed property costs is not sufficient to cover the additional cost of borrowing for landlords with Buy to Let mortgages given the scale of interest rate rises in recent months. A Mid-Market Rent (MMR) provider with a large portfolio of properties also raised concerns around the bureaucracy of the application process, which requires an individual application for each property given each rent increase affects an individual tenancy, stating that this places an excessive demand on staff and would detract from their work to support tenants facing financial difficulty.

1.5 It was also suggested by a number of private landlord representative bodies that, as a direct result of the emergency measures, landlords behaviours are changing including raising rents significantly between tenancies, or intending to do so in the future to offset rising property costs. They note that the fear of rent controls in the future is also reported by landlords as a contributing factor in setting higher rents. A landlord representative group also observed a higher reluctance in tenants to move property due to mid-tenancy rents being lower than rents for new tenancies. A further concern was that some surveyed landlords reported to be delaying planned improvement works, with specific concerns raised around the level of investment required to meet minimum energy efficiency standards, particularly in older homes.

1.6 A response from an advice group reported accounts of landlords attempting to apply rent increases of above the 3% cap, and apply rent increases without the correct notice period, which they feel may be going unreported in some cases.

1.7 Private landlord representative bodies also raised concerns around investment and financial planning in the MMR sector. Increased construction costs coupled with the rent cap were cited as reasons for delaying or halting development of sites designated for MMR, as they are no longer deemed to be financially viable. Anecdotal evidence provided suggests this comes at a time of increased demand for MMR as a result of the decline in availability of private rented sector properties. In responses from a local authority and social sector organisations, their view is that MMR properties should be considered separately to any rent cap measures, as they already have a strategic commitment to keep rents as low as possible and need to

build financial reserves in order for their business model to remain viable and to maintain properties to a good standard for tenants.

1.8 Some financial/investor stakeholders set out examples of new Build to Rent developments being placed on hold due to the impact of the emergency measures, asserting that this was primarily due to decreased investor confidence and uncertainty around future legislation. A particular issue was the concern that investor confidence had been impacted negatively by the introduction of the emergency legislation, without prior consultation.

1.9 In addition some landlord and financial/investor stakeholder respondents set out that the risks of investing in Scotland have now increased, making it less attractive to financial institutions than other parts of the UK. Some other concerns point out that alongside regulatory changes, wider economic issues are also presenting challenges in the housing sector, such as the cost price inflation on building materials, supply chain issues and skills and labour constraints. They feel that the culmination of the emergency legislation and economic challenges will have a negative impact on the supply of housing across all tenures. Furthermore, a financial sector respondent noted that lenders may begin to consider lending policy where the ability to evict non-paying tenants is restricted.

1.10 Many private landlord representative bodies stressed their concerns around the impact the emergency measures are having on the supply of housing, with reference made to a combination of factors. Responses highlight the potential impact of the departure of landlords from the private rented sector, the decline in investment in Scotland's housing stock and changing demands post-Covid as factors that will compound to exacerbate the issue of housing supply. One group also emphasised that these potential impacts may be felt more acutely in rural areas.

1.11 In addition, several respondents have called for transparency and clarity on how and when the emergency legislation will be lifted, and stressed the need for further support for landlords.

## **2. Expiry of the Social Sector Rent Cap**

2.1 A voluntary, collective agreement was reached on rent setting for 2023-24 with social landlords, and the rent cap provisions were expired for the social rented sector from 26 February. Several responses welcomed the expiry of the rent cap in the social renter sector, which they say has allowed for rent reviews that account for affordability whilst promoting and maintaining investment in housing stock.

## **3. Suspension of the Student Accommodation Rent Cap**

3.1 The rent cap for student accommodation was suspended on 31 March, with Ministers recognising its limited impact on annual rents set on the basis of an academic year. There was limited response to the call for evidence from student tenant representative organisations. Of those who responded, a minimal impact on the student rented sector was reported.

3.2 The main theme emerging from the responses received related to the supply of student rented accommodation. Respondents reported experiencing an increased demand on university-managed accommodation. As students look to the private rented sector as an alternative, there was a common concern among respondents that the temporary rent cap measures may have had the unintended effect of causing landlords and investors to choose to exit the sector, therefore further constricting supply of private rented properties. One educational stakeholder response urged the Scottish Government to consider what actions it can take to promote investor and business confidence to increase supply of Purpose Built Student Accommodation and private properties more broadly.

#### **4. Evictions Moratorium**

4.1 From a social sector perspective, due to eviction already being a last resort, the eviction moratorium provisions appear to be having minimal impact. Some respondents highlighted that where eviction action is taken in relation to rent arrears, the amount already accumulated is usually above the threshold set out in the legislation. Some respondents also highlighted that the moratorium has made some landlords more willing to engage with their tenants, provided more time for prevention activities before moving towards legal action and encouraged more active support to help tenants sustain their tenancy. It is also noted by one local authority that the moratorium has helped to protect their scarce supply of temporary accommodation.

4.2 However, a number of social sector representatives have outlined concerns about the definition of substantial rent arrears i.e. equal to or more than £2,250, as it is being perceived as an acceptable level of debt by some. They state that the moratorium may have resulted in tenants not paying rent, or deprioritising the payment of rent, and reduced the incentive for tenants already in rent arrears to work with their landlord. They say this is leading to larger arrears, putting the tenancy at risk in the longer term. One social sector landlord highlighted that rent arrears are higher in this financial year than last, however stated it would be impossible to evidence whether this was due to perceptions of eviction being less likely or other factors. Responses also raised concern about the impact of increasing rent arrears both on housing association finances and tenants accumulating such debts, without offering any obvious reduction in the number of evictions taking place.

4.3 Some financial/investor stakeholder respondents set out examples of new build social housing developments being placed on hold, or revising business plans, due to the impact of the emergency measures, financial uncertainty and difficult forecasting. A particular issue of concern in this respect was the impact on investor confidence caused by the introduction of the emergency legislation without prior consultation.

4.4 Two responses from local authorities referred to increases in the number of homelessness applications from private rented sector tenants due to landlords selling their properties, although one of the responses refers to the limited evidence available on this as well as there being no evidence to confirm that this is a direct consequence of the legislation, and the other is based on an analysis of financial year homelessness figures by broad category which are not split by a post October



2022 time period. There are concerns that an increase in the number of homelessness applications will create significant challenges in terms of availability and rent levels in the private rented sector, as well as placing an additional demand on social housing.

4.5 Social sector tenant representative groups say policy that protects tenants and their families is welcomed, and feel the temporary moratorium on evictions is providing some well-needed breathing space during the cost of living crisis.

4.6 One tenant representative group suggests some private tenants have been more likely to question and sometimes contest a notice to quit, as well as feel more able to have the time to find suitable alternative accommodation, since the introduction of the legislation.

4.7 A response from an advice group highlighted the issue of unlawful evictions, stating that some landlords are not complying with the correct eviction procedures and may not properly understand the provisions. They note that demand for advice about unlawful evictions has been growing recently, as well as demand for advice on threatened homelessness due to possession action. A tenant representative group said that they felt the temporary unlawful eviction provisions have deterred illegal evictions and called for this to remain a permanent fixture in legislation. They note that whilst most landlords are complying with the emergency legislation, they have heard some anecdotal evidence of landlords threatening evictions to pressure tenants into agreeing to rent increases above the 3% rent cap.

4.8 There was a limited response from educational stakeholders regarding the impact of the evictions moratorium on the student rented sector. One response reported that there is evidence to suggest that the evictions moratorium has made it difficult to move students on from accommodation at the end of their tenancies, therefore making it more difficult to manage the flow of supply.

4.9 For the private rented sector, one tenant representative group flagged the importance of the emergency measures remaining in place as they are crucial to continue to support tenants and provide reassurance whilst the unprecedented economic situation persists. They feel that the temporary unlawful evictions provisions should be a permanent fixture as they help to prevent landlords abusing grounds for eviction and allow tenants to more easily demonstrate and challenge wrongful use of an eviction ground.

4.10 One private rural landlord representative group suggests that the eviction moratorium measures may have resulted in behavioural changes between landlord and tenant, with landlords moving to eviction proceedings more quickly than they would otherwise have done in the absence of the emergency measures. It was also suggested landlords are becoming more cautious in the selection process for new tenancies making access to the private rented sector more difficult. They also highlighted the issue of landlords delaying or cancelling property upgrades, such as energy efficiency improvements, which they feel is particularly damaging to a sector with high levels of fuel poverty. In relation to the eviction moratorium measures, they also noted that it is common for farms and estates to have employees who, as part of their terms, have the option to occupy a property. Previously these properties

would be let out with the understanding that the tenant would leave if an employee chose to occupy the property. The group advised that these properties are now not being let out as it is deemed too high risk that the tenant will not leave on request. Similarly, the group reported that some holiday lets are usually let for longer terms in the winter, with tenants being asked to leave in the summer, but increased perception of risk has resulted in these lying empty over winter.

4.11 Another response from a social sector tenant representative group stressed the need for guidance around how debt will be handled when the moratorium is lifted, and say that without a clear approach and guidance to the sector, eviction rates may end up being just as high as they might have been without the moratorium.

4.12 A number of responses referenced the length of time taken to bring evictions proceedings to the First-tier Tribunal. An advice group highlighted cases where this has dissuaded clients from making an application. Another response highlighted that, where substantial arrears required to evict a tenant must be equal to, or greater than, six months' rent, the lengthy tribunal process may result in arrears going considerably beyond this amount by the time an eviction order is granted. They urged that any transition away from the emergency legislation should be coupled with an increase in resource provided to Rent Officers and the First-tier Tribunal in order that delays are reduced.

4.13 Many responses across all sectors called for the Scottish Government to continue raising awareness of the emergency legislation to ensure both tenants and landlords are aware of their rights, and understand how the provisions apply to their specific circumstances. Many respondents highlighted the need for continued consultation and post-legislative scrutiny to understand the potential unintended consequences of the legislation.

## Summary of Rights and Equalities Considerations

Impact Assessment	Private Rented Sector Rent Cap	Moratorium on the enforcement of eviction orders	Unlawful eviction damages
Business and Regulatory Impact Assessment	See Annex F, providing an update to the Business Regulator Impact Assessment and Financial Memorandum.	No material changes to findings from the impact assessment have been identified in relation to the extension of this provision.	No material changes to findings from the impact assessment have been identified in relation to the extension of this provision.
Child Rights and Wellbeing Impact Assessment	<p>No material changes to findings from the impact assessment have been identified.</p> <p>Whilst there may be some households where even the modest rent increase allowed under the 3% cap causes an increase in financial hardship, we consider that the rent cap ensures that rent increases are proportionate and therefore continue to protect households against high rent increases whilst the cost crisis is ongoing.</p> <p>A 3% rent cap will mitigate against a disproportionate impact on private landlords who may also be experiencing increased costs due to the cost crisis, allowing them to maintain their properties and meet other expenses, and we consider that the amendment to the cap and to the landlord safeguards achieves this balance.</p> <p>The Scottish Government is therefore</p>	<p>No material changes to findings from the impact assessment have been identified.</p> <p>Extension of this provision does not negatively impact the rights and wellbeing of children; rather, by reducing the harms caused by eviction for children and their families, the Act is contributing to promoting the health of children and young people and supporting their education.</p>	<p>No material changes to findings from the impact assessment have been identified.</p> <p>Extension of this provision does not negatively impact the rights and wellbeing of children; rather, by deterring unlawful evictions, it will reduce the harms caused by unlawful eviction for children and their families. By continuing to make it easier for those affected to challenge and unlawful eviction and seek damages, the Act is contributing to promoting the health of children and young people and supporting their education.</p>

Impact Assessment	Private Rented Sector Rent Cap	Moratorium on the enforcement of eviction orders	Unlawful eviction damages
	<p>satisfied that the extension and amendment of this provision does not negatively impact the rights and wellbeing of children, and will continue to support young people by stabilising housing costs for them and their families.</p>		
<p>Equalities Impact Assessment</p>	<p>No material changes to findings from the impact assessment have been identified.</p> <p>Whilst there may be some households where the 3% cap on rent increases causes an increase in financial hardship, we consider that the amended rent cap will ensure that rent increases are proportionate and therefore continue to protect households against high rent increases whilst the cost crisis is ongoing.</p> <p>The 3% rent cap mitigates against a disproportionate impact on private landlords who may also be experiencing increased costs due to the cost crisis, allowing them to maintain their properties and meet other expenses, and we consider that the rent cap and landlord safeguards offered via the 6% Prescribed Property Costs achieves this balance.</p>	<p>No material changes to the findings from the impact assessment have been identified in relation to the extension of this provision.</p> <p>Extension of this provision is likely to positively impact on equal opportunities and across those with protected characteristics, as this provision will continue to provide support to most tenants being evicted, while providing appropriate safeguards for landlords.</p>	<p>No material changes to the findings from the impact assessment have been identified in relation to the extension of this provision.</p> <p>Extension of this provision is likely to positively impact on equal opportunities and across those with protected characteristics, as this provision will continue to provide support to all tenants to make it easier to challenge an unlawful eviction and to be awarded appropriate damages.</p>

Impact Assessment	Private Rented Sector Rent Cap	Moratorium on the enforcement of eviction orders	Unlawful eviction damages
	<p>The Scottish Government is therefore satisfied that the extension of this provision will not negatively impact across those with protected characteristics, and instead is likely to have a positive impact during this period of continuing extraordinary economic challenge.</p>		
<p>Fairer Scotland Duty</p>	<p>No material changes to the findings from the impact assessment have been identified in relation to the extension of this provision.</p> <p>Whilst there may be some households where the 3% cap on rent increases causes an increase in financial hardship, we consider that the amended rent cap will ensure that rent increases are proportionate and therefore continue to protect households against high rent increases whilst the cost crisis is ongoing.</p> <p>The 3% rent cap mitigates against a disproportionate impact on private landlords who may also be experiencing increased costs due to the cost crisis, allowing them to maintain their properties and meet other expenses, and we consider that the rent cap and landlord safeguards offered via the 6% Prescribed</p>	<p>No material changes to the findings from the impact assessment have been identified in relation to the extension of this provision.</p> <p>Extension of this measure, alongside the rent cap, continues to help address socio economic disadvantage and reduce the inequalities that are associated with being disadvantaged by providing those being evicted with additional time to access support and find alternative accommodation.</p>	<p>No material changes to the findings from the impact assessment have been identified in relation to the extension of this provision.</p> <p>Extension of this measure continues to help address socio economic disadvantage and reduce the inequalities that are associated with being disadvantaged by making it easier for tenants to challenge and unlawful eviction and to be awarded appropriate damages.</p>

Impact Assessment	Private Rented Sector Rent Cap	Moratorium on the enforcement of eviction orders	Unlawful eviction damages
	<p>Property Costs achieves this balance.</p> <p>It is the Scottish Government's view that the extension and amendment of this provision will continue to help address socio-economic disadvantage and reduce the inequalities that are associated with being disadvantaged.</p>		
Island Communities	<p>No material changes to the findings from the impact assessment have been identified in relation to the extension of this provision. Whilst there may be some households where the 3% cap on rent increases causes an increase in financial hardship, we consider that the rent cap ensures that rent increases are proportionate and therefore continue to protect households against high rent increases whilst the cost crisis is ongoing.</p> <p>The 3% rent cap mitigates against a disproportionate impact on private landlords who may also be experiencing increased costs due to the cost crisis, allowing them to maintain their properties and meet other expenses, and we consider that the rent cap and landlord safeguards offered via the 6% Prescribed</p>	No material changes to findings from the impact assessment have been identified in relation to the extension of this provision.	No material changes to findings from the impact assessment have been identified in relation to the extension of this provision.

Impact Assessment	Private Rented Sector Rent Cap	Moratorium on the enforcement of eviction orders	Unlawful eviction damages
	<p>Property Costs achieves this balance.</p> <p>Given the available data suggests that the impacts of the cost crisis may be greater in some island communities, due to the already higher cost of living and the continued higher prevalence of fuel poverty experienced in these communities (figures in Annex G show that fuel poverty rates will remain higher in rural than in urban areas when the Ofgem energy price cap is set at £2,074 for a typical household in July 2023), we do not consider that the extension and amendment of this provision is likely to affect private landlords and tenants disproportionately in island communities compared to communities on the Scottish mainland.</p>		
Data Protection	No material changes to findings from the impact assessment have been identified in relation to the changes and extension of this provision.	No material changes to findings from the impact assessment have been identified in relation to the extension of this provision.	No material changes to findings from the impact assessment have been identified in relation to the extension of this provision.

## Key updates to the Business Regulatory Impact Assessment (BRIA) and Financial Memorandum

1. This Annex discusses the impact of a further six month extension on key estimates which were set out in the [Business Regulatory Impact Assessment](#) (BRIA) and [Financial Memorandum](#) which accompanied the introduction of the Cost of Living (Tenant Protection) Bill, and which were updated in [Annex D of the Statement of Reasons](#) which accompanied the first six month extension.
2. In the BRIA/Financial Memorandum, it was estimated that in the absence of legislation around 55,000 private rented households may experience a rent increase over a six month period. This was based on an assumption that 50% of landlords would raise rents,<sup>39</sup> applied to the number of tenancies (an estimated 110,000) where there would be an opportunity to raise rents in a six month period.<sup>40</sup> High and low estimates were provided around this central estimate to reflect potential behaviour change by landlords given current economic conditions: the high estimate of 70% was designed to reflect the possibility that landlords may have been more likely than usual to increase rents due to the high level of inflation and increases in mortgage costs, and the low estimate of 30% to represent the possibility that landlords may have been slower than usual to increase rents due to the economic pressures on tenants, giving a range of 33,000 to 77,000.
3. The number of properties that will be affected by the six month extension from October 2023 to March 2024 depends not only on the share of landlords who wish to raise rents for sitting tenants, but also on how landlords have responded to the emergency legislation in previous periods. In the BRIA update accompanying the first extension, it was noted that landlords who would have wished to raise rents in the first period of the legislation from September 2022 to March 2023, but who were prevented from doing so due to the cap being set at 0%,<sup>41</sup> may choose to raise rents in the period April to September 2023 when the general rent cap has increased to 3% and the cap for the alternative ground of increases in prescribed property costs to 6%. If they do raise rents during this period, and there is no further change in tenancy, these landlords will not be able to raise rents in the period October 2023 to March 2024 since under a Private Residential Tenancy the rent cannot be raised more than once in a 12 month period.
4. However, some landlords will have experienced a change of tenancy during the period September 2022 to March 2023. Assuming that landlords do not raise

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<sup>39</sup> This estimate was informed by findings from the RentBetter research on landlord behaviour, as discussed in the BRIA/Financial Memorandum.

<sup>40</sup> As discussed later, under a Private Residential Tenancy, the rent cannot be increased more than once in a 12 month period, and landlords are unlikely to raise the rent in the first 12 months of the tenancy. There are around 340,000 privately rented properties, and at any one time around 65% of tenants have been at their current address for more than 12 months. Using these two statistics and assuming that rental anniversary dates are evenly spread over the year so that half of anniversary dates fall within a six month period gives the estimate of 110,000 properties where landlords could potentially increase the rent for a sitting tenant during a 6 month period.

<sup>41</sup> Up to a 3% increase in rent was permitted for the alternative ground of increases in prescribed property costs during this period, but only 47 applications were received.



rents during the first 12 months of a tenancy (especially as the rent cap does not apply between tenancies, so landlords are free to increase rents at the point of new let), and assuming there has been no further change in tenancy, the landlord may wish to raise the rent when these new tenancies reach their 12 month anniversary during the period October 2023 to March 2024. There are an estimated 38,000 properties which fall into this category. This gives a range of between 38,000 properties and 110,000 properties where the landlord could raise the rent for a sitting tenant over the 6 months from October 2023 to March 2024. On the central assumption that 50% of landlords who can raise rents for sitting tenants in fact wish to do so, this gives a range of between 19,000 and 55,000 properties affected by the extension of the rent cap.<sup>42</sup>

5. The amount of rent foregone by landlords will depend on what rent increase they would have been able to apply in the absence of this legislation. As set out earlier in this Statement of Reasons, the most recent data from letting agents relating to Q1 2023 suggests that new let rents in Scotland were growing by around 12% to 13% annually. However, during the course of 2023, inflation is projected to fall gradually, and this may similarly be reflected in rental trends. For example, Zoopla project that rental growth in the UK may ease towards 4%-5% by the end of 2023.<sup>43</sup> Furthermore, the cap applies to rent increases for existing tenants, not new tenants, and the gap in average rent levels between existing and new tenants suggests that rent increases for existing tenants may typically be lower on average than increases between tenancies.

6. We therefore cost three scenarios relating to what rental growth for existing tenants would otherwise have been:

- i. Rental growth of 3% or below – there will be no foregone rental income.
- ii. Rental growth of 5% – with a permitted rent increase of 3%, the foregone rental growth is 2%.
- iii. Rental growth of 10% – with a permitted rent increase of 3%, the foregone rental growth is 7%. This scenario is a very much an upper-end scenario, which assumes that new let rental growth continues at current elevated levels despite projected falls in inflation, and also assumes that rents on existing lets grow at the same rate as new let rents.

7. The impact of the rent growth cap is calculated using an average monthly rent of £736, which is most recently published average two bedroom rent (the most common size of privately rented property) in Scotland.<sup>44</sup> This gives the following scenarios:

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<sup>42</sup> See Table D2 for estimates of properties affected for high and low assumptions of the share of landlords who wish to raise rents.

<sup>43</sup> Zoopla, [Rental Market Report](#).

<sup>44</sup> See Table 6 in Section 8 of Scottish Government, [Private Sector Rent Statistics, Scotland, 2010 to 2022](#). The data covers the 12 month period to September 2022. While average rents in September 2022 to March 2023, the relevant base period, are likely to be higher than this, it should be noted that the published rent statistics are derived largely from new let rents, and rents for existing tenants tend to be somewhat lower on average than new let rents. For simplicity, and in the absence of precise information to calculate the net impact of these offsetting adjustments, which would in any event not materially affect the estimates set out here, we have used the published average rent figure.

**Table F.1: Foregone rental revenue per property per month under different rental growth scenarios**

	Assumed rental growth in absence of cap		
	3% or lower	5%	10%
Foregone revenue per property per month	-	£15	£52

8. The next table presents estimates of foregone rental income across the private rental sector as whole. These estimates range between £1.0m and £23.8m, illustrating the uncertainties relating to future rental growth as well as to landlord behaviour, both in terms of whether they decide to increase rent for sitting tenants and also how they have previously responded to the emergency legislation.

**Table F.2: Total foregone revenue over a six month period across the private rented sector under different scenarios relating to landlord behaviour and rental growth**

Properties where rents are increased		Total foregone revenue for different rental growth rates in absence of cap		
Number	As % of properties where rents could be increased	3%	5%	10%
<b>Based on assumption that no landlords capped in September 2022 to March 2023 raise rents in April 2023 to September 2023</b>				
33,000	30%	-	£2.9m	£10.2m
55,000	50%	-	£4.9m	£17.0m
77,000	70%	-	£6.8m	£23.8m
<b>Based on assumption that all landlords capped in September 2022 to March 2023 raise rents in April 2023 to September 2023</b>				
11,400	30%	-	£1.0m	£3.5m
19,000	50%	-	£1.7m	£5.9m
26,600	70%	-	£2.3m	£8.2m

9. Note that the tables above only give illustrative scenarios of the impact of increasing rents under the general 3% provision, and do not include the alternative ground to increase rents up to a maximum of 6% if prescribed property costs have increased. Where a landlord is able to increase rents under this ground, then the foregone revenue will be lower than presented in the above tables.

10. One type of prescribed property cost which has seen significant increases is mortgage costs,<sup>45</sup> although in recent months fixed rate mortgage rates have moved down from their highs reached towards the end of 2022.<sup>46</sup> However, landlords with fixed rate mortgages which reach the end of the fix period are likely to experience an increase in costs, since the period of the fix is generally at least two years. It is estimated that over the course of six months, there will be around 10,000 properties (around 3% of the total private rented stock) where a fixed rate mortgage reaches its end of term and there has been no change in tenant during the previous 12 months. It was previously estimated that the average increase in costs would be around £300 per month, but due to mortgage rates being below the peaks reached towards the end of 2022 it is more likely that the average increase will be in the £200 to £300 range.<sup>47</sup>

11. Whether landlords with variable rate mortgages will be able to apply for an increase based on prescribed property costs will depend on whether variable rates continue to rise or whether they stabilise or fall in the six months prior to the landlord issuing a rent increase notice. It is estimated that around 10% of all private rented sector properties in Scotland have a variable rate mortgage. Given the estimated range set out in paragraph 4 of between 38,000 and 110,000 properties (depending on past landlord responses to the emergency legislation) where the landlord could raise the rent for the sitting tenant over the period of the second extension, this suggests that there will be between 3,800 and 11,100 such properties with a variable rate mortgage.<sup>48</sup> Any increases in variable rate mortgage costs during the six months prior to rent increase notice being served are likely to be significantly smaller than increases in fixed rate mortgage costs during the corresponding period, since for fixed rate mortgages the comparison is with the mortgage rate at least two years ago.<sup>49</sup> To give an idea of the potential magnitude of variable mortgage costs increases, each 0.25% point increase in the variable mortgage rate is estimated to increase variable mortgage costs by an average of around £20 per month, which is similar to a 3% increase in the average two-bedroom rent.<sup>50</sup>

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<sup>45</sup> Data limitations mean that the estimates relating to number and type of mortgages discussed in this and following paragraphs should be regarded as indicative. The estimated costs also depend on future trends in interest rates.

<sup>46</sup> According to MoneyFacts, the average advertised 2-year fixed mortgage rate has declined from 6.47% in November 2022 to 5.26% in May 2023, while the 5-year fixed rate has declined from 6.32% to 4.97%. These data are for residential mortgages, but buy-to-let mortgages are likely to have followed similar trends.

<sup>47</sup> It should be noted that while the Bank of England rate has increased by a cumulative 4.4 percentage points since December 2021, the increase in mortgage rates has been smaller than this because the margin of mortgages rates over bank rate has decreased.

<sup>48</sup> The number actually affected by the cap will also depend on the share of landlords who wish to raise the rent for a sitting tenant. In the central case above it was assumed that 50% of all landlords who could raise rents for a sitting tenant do in fact wish to do so. Within this overall share, there are likely to be higher or lower shares for particular segments of the market, such as those with mortgages.

<sup>49</sup> Since most fixed rate periods are for at least two years (as mentioned above).

<sup>50</sup> If the increase in mortgage costs during the six months prior to a rent notice being served were £20, since an application under the prescribed property cost ground is based on a 50:50 sharing between landlord and tenant, this would support a £10 increase in the rent on this ground. In such a case, whether it would make sense for a landlord to use the general maximum 3% rent uplift or submit an application for prescribed property costs would depend on whether they had incurred other prescribed property costs.

12. For properties with a fixed rate mortgage, an increase of £200 to £300 equates to around 30% to 40% of an average two-bed rent, but it should be borne in mind that:

- Even in normal market conditions, a seller is unlikely to pass anywhere near a 100% of a cost increase onto buyers, since the market price is constrained by the buyers' responsiveness to price increases. In the current rental market, tenants are particularly affected by cost of living pressures, which will limit their ability to pay higher rents, and in turn limit how much the market rent can increase by.
- This is particularly the case when very large cost pressures affect only a segment of the market, since the market rent is determined independently of an individual landlord's financing decisions since they will be competing with other landlords who have made different financing decisions.

13. As an illustration of the above considerations, data from Zoopla show that annual growth in new let rents in Scotland in October 2022, following the surge in mortgage rates after the UK Government mini-budget in September 2022, was 11.3%, well short of the increase in costs that might have been incurred by some landlords due to higher mortgage costs, despite new let rents being free to be set at market rates.

14. In terms of the number of applications that might be received by Rent Service Scotland for the 6% increase due to prescribed property costs, in the first two months of the April to September 2023 extension, 603 applications were received. If this rate continues, that would equate to around 1,809 applications for the full 6 month period, although it should be noted that applications in the beginning of the period could be boosted by landlords who chose not to put in an application in the first period of operation of the legislation, when the prescribed property costs cap was set at 3%. To the extent that this is the case, there could be a lower rate of applications in remaining months of the first period of extension, as well during the second period of extension from October 2023 to March 2023, especially if stabilisation/reduction in mortgage rates continues which means that landlords with variable mortgage rates do not make applications.

15. Tenants also have the right to refer a rent increase notice to a Rent Officer to verify whether a proposed rent increase is in line with the rent cap. From 1st April 2023 to 29 May 2023, Rent Service Scotland has received 16 tenant verification applications to confirm the 3% increase is in line with the legislation, which suggests that relatively few applications for this will be received.

16. The extension of the rent cap for a further 6 months may have an impact on certain incentives to invest. The incentive to invest in new supply will not be initially affected because the cap does not apply to new lets. Furthermore, as the legislation cannot be extended beyond 31 March 2024 at the latest, landlords of new units which are let for the first time after 31 March 2023 are unlikely to raise rents for sitting tenants during the period of operation of the legislation. There is a provision under the Act to amend the rent adjudication process after (or in anticipation of) the expiry of the rent cap to aid in the transition out of the emergency measures. Any proposed use of this power would be subject to stakeholder engagement and the approval of the Scottish Parliament. It is worth noting in this context that the latest

data from the Scottish Landlord Register does not show any decrease in the number of properties registered over the period of the operation of the emergency legislation.<sup>51</sup>

17. However, there is a degree of tension between protecting existing tenants and preserving incentives for landlords to invest in the quality of the property and continue to provide existing rental accommodation. The ONS produces estimates of the costs of regular repair and maintenance of a dwelling as part of the CPI. Annual growth in this series, which was 7.5% in September 2022, has decreased somewhat to 5.6% in March 2023. This increase relates to a portion of the landlord's total costs: data from HMRC show that for non-incorporated landlords in the UK, repairs and maintenance comprised 25% of total allowable expenses, and 12% of total income declared. In extending the protection for tenants for a further six months, the intention has been to ensure that any rent increases are sufficiently modest so that they do not impose significant additional pressure on tenant budgets while cost of living pressures remain acute (which will help them to sustain their tenancy), while allowing some uplift for landlords to help them meet any cost increases from maintaining properties to the required standard, from higher mortgage rates, or from other sources.

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<sup>51</sup> See Figure 1 in the main body of this document, as well as the discussion in the paragraphs immediately above Figure 1 which relate to the interpretation of this data source.

### Estimated levels of fuel poverty in urban and rural areas

The following tables set out projected fuel poverty levels across urban and rural areas, which have been updated to reflect the Ofgem energy price cap being set at £2,074 for a typical household from July 2023. The projections use the same methodology as other projections of fuel poverty contained in the Updated Economic Context section of the first report to the Scottish Parliament.<sup>52</sup>

**Table G.1: Fuel poverty rate by rural urban classification 2013/2014**

	Fuel poverty rate October 2022	Fuel poverty rate July 2023	Percentage point change
Large urban areas	35%	35%	0%
Other urban areas	33%	32%	-1%
Accessible small towns	31%	31%	0%
Remote small towns	44%	40%	-4%
<b>Urban Subtotal</b>	<b>34%</b>	<b>34%</b>	<b>-1%</b>
Accessible rural	28%	28%	0%
Remote rural	52%	50%	-2%
<b>Rural Subtotal</b>	<b>37%</b>	<b>36%</b>	<b>-1%</b>
<b>Scotland</b>	<b>35%</b>	<b>34%</b>	<b>-1%</b>

Note: estimates in this table are to the nearest one percentage point but percentage point changes have been calculated using unrounded estimates. Therefore, any differences are due to rounding.

<sup>52</sup> [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022: first report to the Scottish Parliament.](#)

**Table G.2: Households in fuel poverty by rural urban classification 2013/2014**

	Households in fuel poverty October 2022	Households in fuel poverty July 2023	Change
Large urban areas	310,000	310,000	0
Other urban areas	290,000	280,000	-10,000
Accessible small towns	70,000	70,000	0
Remote small towns	40,000	40,000	0
<b>Urban Subtotal</b>	<b>710,000</b>	<b>690,000</b>	<b>-10,000</b>
Accessible rural	80,000	80,000	0
Remote rural	80,000	80,000	0
<b>Rural Subtotal</b>	<b>160,000</b>	<b>150,000</b>	<b>0</b>
<b>Scotland</b>	<b>860,000</b>	<b>850,000</b>	<b>-20,000</b>

Note: estimates in this table are to the nearest 10,000 households but changes have been calculated using unrounded estimates. Therefore, any differences are due to rounding.



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