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Local Government, Housing and Planning Committee

Subordinate Legislation under the Cost of Living (Tenant Protection) (Scotland) Act 2022 considered by the Local Government, Housing and Planning Committee on 28 February 2023

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Local Government, Housing and Planning Committee

To consider and report on matters relating to local government, housing and planning falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government and the Cabinet Secretary for Finance and the Economy, and matters relating to the Local Government Boundary Commission and local governance review and democratic renewal within the responsibility of the Deputy First Minister.



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Introduction

1. At its meeting on 28 February 2023, the Local Government, Housing and Planning Committee considered the following affirmative instrument:

[Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Amendment of Expiry Dates and Rent Cap Modification\) Regulations 2023](#)

2. At that same meeting the Committee also considered the following related negative instrument:

[Cost of Living \(Tenant Protection\) \(Scotland\) Act \(Early Expiry and Suspension of Provisions\) Regulations 2023](#)

3. Both instruments were previously considered by the Delegated Powers and Law Reform Committee. It considered the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 at its meeting on 31 January and the Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023 at its meeting on 7 February. The Delegated Powers and Law Reform Committee determined that it did not need to draw the attention of the Parliament to either instrument on any grounds within its remit.

Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 and Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023

4. The Cost of Living (Tenant) Protection (Scotland) Act 2022 gives the Scottish Ministers temporary power to cap rents for private and social tenants, as well as for student accommodation. The Act also introduces a temporary pause on the enforcement of eviction orders in certain cases.
5. It was considered in the Parliament as emergency legislation and accordingly the Committee did not have time to undertake scrutiny of the Bill. It did, however, take evidence from stakeholders and the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights ('the Minister') on the issues raised by the proposals on 4 October 2022.
6. The measures in the Act initially apply from 6 September 2022 to 31 March 2023 but the provisions can be extended for two further periods of six months with parliamentary approval. Any provision in the Act can also be ended early or be suspended.
7. The rent cap, which applies to in-tenancy rent increases, had initially been set at 0% from 6 September 2022 until at least 31 March 2023. Ministers have the power to vary the rent cap while it is in force subject to the approval of the Parliament.
8. The Act requires the Scottish Ministers to prepare and lay a report before the Parliament on whether the rent freeze and evictions moratorium remain necessary and proportionate.
9. The first of these reports covering the period from enactment to 31 December 2022 was laid before the Parliament on 12 January 2023.
10. In his statement to the Parliament on the report the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirmed that the Scottish Government would lay secondary legislation to expire the social rented sector rent cap provisions from March 2023.
11. At the same time, the Minister expressed his intention to lay secondary legislation to continue both the temporary pause on the enforcement of eviction orders in certain cases and the rent cap for tenants in the private rented sector beyond the expiry date of 31 March 2023 although he did not confirm what the level of the cap would be for tenants in the private rented sector.

12. The Minister also noted that the rent cap for student accommodation was also under review, but suggested that its effect had been limited due to the different way in which such tenancies are managed.
13. The Minister has subsequently laid regulations to give effect to these intentions.
14. The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 if approved, will increase the rent cap for private sector tenancies to 3%. The Act also currently allows private landlords to apply to Rent Service Scotland to increase their rent by a maximum 3% to cover specified increases in costs in limited circumstances. This limit will be increased to 6%. If approved, the Regulations will also extend the evictions pause until the end of September 2023.
15. The Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023 propose to remove the rent cap provisions for social housing tenancies from 26 February 2023 allowing social landlords to give their tenants notice of any rent increase applying from April onwards. The regulations also propose to suspend the rent cap for student tenancies.

Committee consideration of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 and Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023

16. The Committee took evidence on the both sets of Regulations at its meetings on 21 and 28 February.
17. The Committee would like to thank those who informed its scrutiny of the Regulations. The Committee took evidence from:
 - Timothy Douglas, Head of Policy and Campaigns, Propertymark
 - Sarah-Jane Laing, Chief Executive, Scottish Land and Estates
 - David Melhuish, Director, Scottish Property Federation
 - David Bookbinder, Director, Glasgow and West of Scotland Forum of Housing Associations
 - Mike Callaghan, Policy Manager, COSLA
 - Carolyn Lochhead, Director of External Affairs, Scottish Federation of Housing Associations (SFHA)
 - Sherina Peek, Acting Policy Manager, Association of Local Authority Chief Housing Officers (ALACHO)
 - Fenella Gabrysch, Member, Living Rent

- Gordon MacRae, Assistant Director, Shelter Scotland
- Emma Saunders, National Organiser, Living Rent
- Colin Stewart, Chair, North of Scotland Regional Network of Tenants and Residents

18. In addition, the Committee received written evidence from:

- [Law Society of Scotland](#)
- [Shelter](#)

Conclusions

19. At its meeting on 28 February the Local Government, Housing and Planning Committee considered motion S6M-07703— That the Local Government, Housing and Planning Committee recommends that the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 be approved .

20. The Committee agreed by division (For 5, Against 2, Abstentions 0) to recommend approval of the Regulations.

21. The Committee made no recommendations in relation to the Cost of Living (Tenant Protection) (Scotland) Act (Early Expiry and Suspension of Provisions) Regulations 2023.

22. The Committee will continue to closely monitor the impact of these provisions. As part of informing that work the Committee would welcome an update from the Scottish Government on the timescales for the publication of the annual homelessness statistics in order to see how these are impacting on these statistics.

