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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 at its meeting on 5 March 2024**

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# Local Government, Housing and Planning Committee

To consider and report on matters relating to local government and planning falling within the responsibility of the Cabinet Secretary for Finance and matters relating to housing and tenants' rights within the responsibility of the Cabinet Secretary for Social Justice 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 5 March 2024, the Local Government, Housing and Planning Committee considered the following affirmative instruments:
  - [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Expiry of Section 10: Extension\) Regulations 2024](#)
  - [The Rent Adjudication \(Temporary Modifications\) \(Scotland\) Regulations 2024](#)

# The Regulations

2. On 24 January 2024, the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights laid a package of three statutory instruments to support Part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") coming to an end on 31 March 2024. The three statutory instruments are as follows:
  - [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Expiry of Section 10: Extension\) Regulations 2024](#) – this affirmative instrument contains regulations to modify the 2022 Act to change the time when section 10 and, by consequence, schedule 3 of the Act expire.
  - [The Rent Adjudication \(Temporary Modifications\) \(Scotland\) Regulations 2024](#) – this affirmative instrument changes how rent for a private residential tenancy is determined on referral by a tenant to a rent officer or the First-tier Tribunal, as the case may be. It also changes how rent in relation to statutory assured tenancies is determined on referral by a tenant to the tribunal.
  - [The Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(Saving Provisions\) Regulations 2024](#) – this negative instrument contains saving provisions following expiry of the provision in Part 1 of the 2022 Act to facilitate the transition away from the emergency measures.
3. Schedule 3 of the 2022 Act confers powers to modify the existing rent adjudication process. Scottish Ministers have laid a Statement of Reasons before Parliament to set out the reasons why the regulations should be made.
4. In the longer term the Scottish Government plans to introduce a housing bill which will introduce some form of rent control and may contain changes to the eviction process.
5. As an interim measure, the Rent Adjudication modification regulations will change the existing process of rent adjudication from 1 April 2024. These changes will last until April 2025, although they can be extended for a further year at a time with parliamentary approval.
6. The Scottish Government says that the amended system will:
  - ” ...help protect tenants from steep and unmanageable rent increases which could be experienced if there is a sudden move to open market rent from rent levels that have been suppressed during the period that the rent cap has been in force.”
7. Under the system proposed in these regulations, there is no restriction on the increase in rent that a landlord can specify in a rent increase notice (under the 2022 Act, a rent increase notice cannot specify an increase of more than 3% or 6% in exceptional circumstances).
8. If a tenant receives a rent increase notice they can decide to challenge the rent increase through adjudication by a rent officer at Rent Service Scotland or through the First Tier Tribunal (as was the case prior to the emergency legislation).

9. If a tenant decides to take a rent increase notice to adjudication, Rent Service Scotland or the Tribunal may restrict how much the rent can increase by. Under the pre-emergency legislation rent adjudication system, the Rent Officer would set a rent based on the open market rent which could be higher or lower than the proposed rent. The regulations amend this so that on adjudication, the rent will be based on the lowest of three figures:
  - the open market rent,
  - the rent requested by the landlord, and
  - a new taper that supports the transition away from the rent cap
10. The taper can be summarised as follows:
  - If the gap between the market rent and the current rent is 6% or less, then the rent will be set in line with the rent proposed by the landlord.
  - If the gap between the market rent and the current market is more than 6%, then the rent will be increased by 6% plus one third of a percent for each percent that the gap exceeds 6%.
  - If the gap between the market rent and the current is 24% or higher, the rent increase will be capped at 12% of existing rent.
11. All three cases are also subject to the requirement that Rent Service Scotland and the First Tier Tribunal cannot set a higher rent than that requested by the landlord. This is a change to the previous system whereby Rent Service Scotland and the Tribunal could set a rent higher than requested by the landlord.



## Committee Consideration

12. At its meeting on 6 February 2024 the Delegated Powers and Law Reform Committee considered both sets of draft Regulations and agreed not to draw them to the attention of the lead Committee.
13. The Local Government, Housing and Planning Committee took evidence on the draft Regulations on 5 March from the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights. Prior to taking evidence from the Minister the Committee also explored the Regulations with key stakeholders as part of its sessions on Housing to 2040 on [20 February 2024](#) and [27 February 2024](#).

# Conclusion

14. After taking evidence, the Committee was invited to consider the following motions:

S6M-11978— That the Local Government, Housing and Planning Committee recommends that the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024 be approved.

S6M-11979—That the Local Government, Housing and Planning Committee recommends that the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 be approved

15. In both cases the Committee agreed by division (For 5, Against 0, Abstentions 2) to recommend approval of the draft Regulations.

16. However, in expressing its support for this package of instruments, the Committee stresses the importance of monitoring its impact. In particular, the Committee urges the Scottish Government to ensure that there is robust monitoring of the homelessness numbers and the supply of homes in the private rented sector to ensure that the system is not having a deleterious effect on either.

17. The Committee also asks that the Scottish Government monitor the extent to which the Regulations are resulting in landlords setting rent increases at 12%, in line with the maximum rent increase under the taper.

18. The Committee notes that the impact of these Regulations might be different in different parts of Scotland and it is therefore important that there is monitoring of any geographical variations in the impact of the Regulations.

19. The Committee also encourages the Scottish Government to make all efforts to ensure that the system is accessible and understandable to both tenants and landlords. Moreover, there must be robust monitoring of the extent to which tenants and landlords do understand the system.

20. The Committee notes that for all of this monitoring to be effective it is critical that the Scottish Government has robust and reliable data. To that end the Committee invites the Scottish Government to set out how it intends to improve the quality of the data it holds and how it is working with local authorities to also improve the quality of the data they holds.

21. The Committee looks forward to exploring issues around monitoring and data in more detail in the context of the forthcoming housing bill.

