

Cost of Living (Tenant Protection) (Scotland) Act 2022: Call for Evidence

Response from Propertymark

December 2022

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,000 members. We are member-led with an executive Board of practicing agents who we work closely with to ensure that we uphold high-standards of professionalism and are able to advocate for legislative change on behalf of the sector.

Overview

2. Propertymark recognises the need to protect people living in the private sector during this period of economic challenges. The Private Rented Sector (PRS) is an invaluable resource for affordable, safe housing in Scotland which should be encouraged and developed to bring in good landlords and letting agents and reduce the significant pressures on the housing market as a whole. The PRS is important because social housing in Scotland is in very high demand, in the year 2021 (April 2020 – March 2021) there was a total of 144,881 applications to the waiting list for Local Authority housing in Scotland (not including the areas that no longer hold council stock, including Glasgow City, meaning that the actual numbers of applications for all social housing are much higher)¹. Not everyone who requires social housing would be suitable for the PRS but a large majority of those who have applied for local authority housing could find suitable accommodation in a private rented property.
3. Propertymark believes that imposing stringent restrictions on the PRS such as capping rents dissuades landlords from investing in the market, consequently reducing supply which not only increases demand and decreases quality in the sector but can put additional pressure on the social rented sector. We know that landlords were already leaving the sector before the emergency legislation came into force. In 2016, the Scottish Household Survey showed that the PRS accounted for 15% of households in the country, with circa 370,000 households. In 2018, 340,000 households were recorded. Figures released by the Scottish Government in February 2020 confirmed that the figure had fallen again to 325,649 properties. Furthermore, the cost-of-living crisis has been felt strongly by all sections of society, with mortgage interest rates increasing, rising energy bills and high prices of fuel which has consequently pushed up the cost of other services such as maintenance and repair services for landlords. The crisis has undeniably had an effect on tenants as well as landlords.
4. Propertymark agents² report that they have worked hard to reassure their current group of landlord customers they work with by reiterating that the policy changes brought in via the Cost of Living (Tenant Protection) (Scotland) Act 2022 are temporary measures due to

¹ [statistics.gov.scot : Housing Lists](https://statistics.gov.scot/housing-lists)

² Propertymark Scottish member survey December 2022: Received 94 responses, totalling 169 lettings agency branches who manage more than 46,000 rented properties.

emergency circumstances. However, the temporary nature of the new rules bring uncertainty. Alarmingly, if these changes are extended or become permanent then landlords are saying that they are considering leaving the sector. As the rules do not cover the rest of the UK some agents have also said that landlords may consider looking to move their portfolio to other parts of the UK that have less restrictions, further reducing supply of property for people to rent in Scotland.

Key concerns

- Landlords are struggling with affordability and are looking to leave the sector in Scotland.
- The temporary measures are disproportionate to the scale of the problem and have only driven more landlords out of the sector.
- The temporary nature of the legislation means that the impact is not fully realised yet but if the changes are extended then there will be greater consequences.
- The private rented sector is part of the solution to resolve the housing crisis, encouraging landlords into the market will increase supply and ultimately push rents down.

Key statistics

Since the introduction of the Act:

- 85% of agents report that landlords have expressed a wish to sell their properties.
- 68% of agents have already seen an increase in notices to sell due to the temporary measures.
- 87% of agents said that landlords had no desire to increase their portfolio.
- 86% of agents said that landlords came to them for advice on the legislation.
- 83% of agents said that landlords would be inclined to increase rents between tenancies as a result of the Act to cover impending and rising costs.

Have the temporary measures had a direct effect on your planning and/or business models?

5. Yes, our agents have told us that the temporary measures have directly affected business planning in three ways. Firstly, the introduction of the Act is disproportionate to the scale of the problem in Scotland and creating an environment that the property and housing market in Scotland is not suitable for investment. Secondly, the measures are impacting the finances of landlords. Thirdly, a reduction in the appetite of landlords to remain in the sector and expand their portfolios. The PRS is an invaluable resource that fills a gap in the market, it provides housing for those who do not need social housing and for those who cannot afford to buy their own home. Evidence shows that demand is outstripping supply significantly. For example, in September 2022 Belvoir Lettings Edinburgh stated that they had “released two flats to the market, and within 48 hours had received over 1,000 enquiries for each of them from potential tenants.” Creating additional financial pressures on landlords and reducing incentives to stay in the sector has a direct impact on the number of properties available. The Scottish Government should be seeking ways to encourage more landlords into the market, which will reduce demand and ultimately improve standards and costs for tenants, whereas the current measures are clearly having the opposite effect.

6. The legislation changes are disproportionate to the scale of the problem in Scotland, with many of our agents saying that landlords did not raise rents in the last year. For example, a letting agent in Glasgow said, “we paused all rent increases during the pandemic – some landlords withdrew all rent charges, others reduced amounts due, and we have capped rent increases at 5% a very reasonable response for 2-3 years pause. We do not barter rent prices or offer to the highest bidder, and we check at length a tenants affordability prior to a tenancy commencing.” Furthermore, Scottish Government statistics show that the average monthly rent has increased from last year, for 2-bedroom properties it has increased by £43 per month, which is 6.2% increase, compared to the Consumer Prices Index including owner occupiers’ housing costs (CPIH) which rose by 8.8% in the 12 months to September 2022³. It is important to note that figures of rent increases are based predominantly on advertised rents, showing an increase of rent charges when a property is advertised, rather than showing any actual increases made during a tenancy. One of our agents said, “many landlords who have not increased rent and had properties below market value for years are now considering this position and feeling they must raise to market rent from now on and keep up with annual increases, whereby before they had not considered it.”

7. Whilst our members recognise that the rising cost-of-living has affected tenants, there are real concerns that the emergency measures are having a significant impact on landlord financial circumstances. A number of agents responded to our survey saying that the cost-of-living crisis and rising prices were having an impact on landlords as well. The increase in mortgage rates, yet not being able to increase rents to cover costs, meant that pressure was put on landlords’ finances and may in turn mean that things like minor repairs or routine maintenance are not prioritised. Only six agencies we surveyed said that landlords had expressed a desire to increase the size of their portfolio, 82 agencies (87%) said that landlords had no desire to increase their portfolio. This will have a direct impact on supply. Furthermore, according to Rightmove data for the whole of the UK, “Tenant demand is up 20% compared with last year, and available properties to rent is down 9%” in Q3 July- September 2022.⁴ Consequently, demand for rental properties is increasing but the supply of properties is stagnating and likely to decrease as landlords leave the sector.

8. Landlords have faced increased financial pressure in recent years from legislative change which has seen their tax burden increase. Increased rates of Additional Dwelling Supplement under Land and Buildings Transaction Tax on buy-to-let properties, the withdrawal of tax relief on mortgage interest costs and replacement with a 20% tax credit, removal of the 10% Wear and Tear Allowance for fully furnished properties being replaced with an at-cost relief, maintaining Capital Gains Tax (CGT) for rented property at 28%, when it was reduced to 18% for other assets, a rise in corporation tax from 19% to 25% from 2023 as well as Local Housing Allowance freezes. Alongside the Scottish Government’s decision to introduce legislation to cap rents, these all influence the decision to become a landlord in Scotland. 85% of agencies surveyed reported that landlords had expressed a wish to withdraw from the PRS and sell

³ [Consumer price inflation, UK - Office for National Statistics](#)

⁴ [Rightmove-Rental-Trends-Tracker-Q3-2022.pdf](#)

their properties and 68% of agents have already seen an increase in notices to sell due to the temporary measures.

What has been the impact of these temporary measures on your perception of risk associated with involvement in the rental sector in Scotland?

9. There are two main impacts which have directly corresponded with landlord desire to leave the PRS in Scotland. Firstly, is the concern around the ‘substantial rent arrears’ eviction exemption. Secondly, landlords are now looking to raise rents when they can in between tenancies. Propertymark does not believe that the Scottish Government has considered that tenants with substantial debts will be unable to find alternative housing in the future. The financial strain on the landlord may also serve as a catalyst to them leaving the market, to settle unpaid debts that may have meant that they have defaulted on their mortgage a landlord’s best option is likely to be to sell and leave the PRS entirely.
10. Propertymark members believe that the ‘substantial rent arrears’ eviction exemption is an unreasonable and unsustainable clause. Most landlords cannot afford six months without rental income before they are able to apply for an eviction order. There are concerns that the actual length of time before a non-paying tenant is evicted will be a lot longer due to delays in the courts and the potential for the First-Tier Tribunal to suspend the eviction order if it sees fit. The average monthly rent for a two-bedroom property in Scotland is £736⁵, meaning that an average tenant would be in debt of £4,416 before a notice to quit could be issued. The Scottish Government must recognise that for many landlords this is a significant amount of money owed to them which they cannot afford to cover out of their own pocket. Furthermore, if issues with rent payments do arise then a significant amount of time can pass before a notice can be served. This does not help tenants who then dive deeper into debt, making it more difficult for them to get a reference for affordable housing in the future.
11. Landlords are now looking to raise rents when they can in between tenancies. 83% of those we surveyed stated that they would be inclined to increase rents between tenancies as a result of the Act. Landlords want to have reassurance that they can cover any rental loss as well as rising cost of maintenance and repairs, utilities and mortgage interest hikes. In our survey an agent told us that one landlord’s mortgage has gone up by £150 per month and now the rent does not cover the mortgage. Others told us that landlords are “paying out of their own pocket” and “their mortgage payments are more than the rental” meaning that many landlords have decided to sell.

Do you have evidence of behavioural changes as a direct result of the temporary measures coming into force?

12. Yes, we have clearly seen behavioural changes as a result of the temporary measures. There are three main changes. Firstly, landlords becoming more risk adverse and having to be more selective over the tenants that are being accepted for properties. Secondly, landlords raising

⁵ [Private Sector Rent Statistics, Scotland, 2010 to 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/private-sector-rent-statistics-scotland-2010-to-2022/pages/10-introduction-to-the-statistics.aspx)

rents in between tenancies due to covering costs at their own expense. Thirdly, a rise in landlords looking to self-manage their properties to save on costs.

13. Due to demand in the sector landlords and agents are now feeling that they can be more selective with the tenants that are accepted for properties. This is a way for landlords to reduce risk and ensure that the high costs of letting a property can be covered by rent. However, this will have a negative impact on renters, especially those on lower incomes or in vulnerable households who will find themselves forced out of the market, with a distinct lack of social housing this will leave these renters with nowhere to go. The solution is finding a balance in the PRS, encouraging landlords into the market will increase supply and ultimately push rents down.
14. We know that costs for landlords are increasing, with rising mortgage interest rates being the most obvious, but other 'hidden' costs are also impacting the financial viability of renting out properties. The cost of work by tradespeople has increased by 5.7% in the last year⁶, driven by the level of demand in home-improvement work and the cost of material supplies. The costs of these services have not been capped, whereas rent costs have been, this has created a gap which is unsustainable for landlords to afford. Many landlords have said that they will not be completing routine or cosmetic maintenance because of affordability but will only do essential repairs. The quality of the rental market will decline rapidly and will make reaching the Scottish Government's target of private rented properties to meet a minimum energy efficiency level equivalent to EPC Band C from 2025 onwards and a backstop date of 2028 for all private rented properties to comply much less likely.
15. Propertymark agents have told us that they are seeing a rise in landlords looking to self-manage their properties to save on costs. We are concerned that this will have an impact on quality in the sector, especially when considering that 86% of agents who we surveyed said that landlords came to them for advice on the temporary measures. If landlords are looking at cutting costs by not using a qualified and regulated letting agent this could further effect management standards in the sector and may lead to an unintentional rise in reduced service standards to tenants.

Is there any other evidence (qualitative or quantitative) you can provide at this stage about the impact of the temporary measures to date?

16. Lack of confidence has been a big hit to the PRS in Scotland, due to fears that the measures will be extended past the March 2023 deadline. Uncertainty has caused investors to consider pulling out as they cannot currently see a long-term return. A number of our agents said that landlords felt that they had lost control of their own asset, they are unable to raise rents to meet market rates and therefore find that their investments would be better placed elsewhere. One agent said, "until the government realise a massive majority of landlords are actually not looking to exploit tenants and want to provide good quality, safe accommodation

⁶ [Checkatrade's Q1 Job Price Index | Checkatrade](#) The price of home improvement between 1 April 2022 – 30 June 2022.

and actually target those flouting the rules, landlords will continue to leave the sector and invest in other areas, commercial entities for example.”

17. 69% of letting agents surveyed by Propertymark stated that notices had been served to tenants on all grounds since the start of the temporary measures. 40% of these said that they had served between one and five notices in the period. A notice can only be served if there are grounds for eviction, these can include the property being required for another purpose, the conduct of the tenant or if the landlord intends to sell. There will always be reasons why a landlord will serve notice and these measures have only delayed the eviction process. When the temporary legislation is lifted there will be a significant impact on the Tribunal to process outstanding eviction order applications. This further disincentivises landlords from continuing in the market.

Conclusion

18. In order to provide a more stable, balanced PRS there needs to be more measures in place to keep landlords in the sector and to encourage new landlords to invest. Demand for PRS is consistently high showing that there is a need for the sector to provide suitable, affordable and safe housing for a large portion of Scottish residents. Restrictions are forcing landlords out and putting increased pressure on those who remain, this in conjunction with rising costs of services is causing a fall in standards. Market rents are pushed up to meet demand and increases in costs for landlords. The solution is to create a market which meets demand, give landlords powers to evict bad tenants and keep good tenants by providing affordable accommodation which meets their needs.