

Cost of Living (Tenant Protection) (Scotland) Act 2022 Scottish Government consultation on supporting a transition away from the emergency measures
Response from Propertymark
January 2024

Background

1. Propertymark is the UK's leading professional body for estate and letting agents, property inventory service providers, commercial agents, auctioneers and valuers, comprising over 17,500 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Overview

2. In September 2023, the Scottish Parliament approved regulations to extend the remaining provisions within the Cost of Living (Tenant Protection) (Scotland) Act 2022 for a further and final six-month period to the end of March 2024. At the current time the emergency rent cap under the Act remains in force but given the temporary nature of the Act it cannot continue beyond 31 March 2024. The Scottish Government are considering how best to transition away from the rent cap when the Act's provisions end.

Questions

Question 1: What are your views on the principle of amending the approach to rent adjudication as part of the transition away from the emergency rent cap measure?

3. Propertymark think it is positive that the emergency legislation is coming to an end. To this end, we acknowledge that provisions need to be put in place to ensure that rent levels do not accelerate to a level that will cause hardship to some tenants. However, while we are supportive of a return to normal rent setting measures, we believe there remains several points that require further clarity:
 - Clarity is needed on how the Rent Service Scotland will support the new provisions in setting rent and how many rent officers will be supporting landlords and agents in the new process..
 - We would also welcome clarity on the performance of Rent Service Scotland prior to the measures. How many cases did they determine prior to the emergency measures and how many were resolved by the First Tier Tribunal.
 - What data will Rent Service Scotland use to define market rents?

- If a determination is found in favour of the landlord, would rent levels be backdated in full at the start of the determination period or start of issuing the new rent level.
- We are concerned that disputes could be held up by tenants. What action will the Rent Service Scotland take to ensure that rent determination is not delayed by any party and ensure that the process is efficient?

Question 2: If rent adjudication is to be amended, should the ‘taper’ only apply to rent increases where the difference between the tenant’s current rent and open market rent exceeds a certain level?

4. Yes, if rent adjudication is to be amended, we think that the ‘taper’ should only apply to rent increases where the difference between the tenant’s current rent and open market rent exceeds a certain level. A one size fits all approach to a rent taper would not reflect local market conditions and should depend on the local market. Furthermore, it is likely that the differences in market rents would be in urban areas especially in cities such as Edinburgh and parts of Glasgow. In rural areas or some post-industrial areas rents may not have accelerated at the same rate during the time incurred during the emergency measures. It is also likely that the supply of property within the Private Rented Sector will be a defining factor with areas of short supply commanding some of the largest rent increases.

Question 3: If rent adjudication is to be amended, what are your views on having no restrictions on rent increases where the difference between the current rent and open market rent level is below a set percentage, as long as the new rent does not exceed the open market rent?

5. If rent adjudication is to be amended, we are not concerned about having no restrictions on rent increases where the difference between the current rent and open market rent level is below a set percentage, as long as the new rent does not exceed the open market rent.

Question 4: If all rent increases are to be unrestricted where the difference between the current rent and open market rent level is below a set percentage, what is your view of setting this percentage at 6%?

6. We think that rent increases should be always evidenced to protect all parties. Letting agents will almost always use the main property portals (e.g. Rightmove, Zoopla, OnTheMarket) and other rental market reports to evidence open market rent (e.g. City Lets). This should be encouraged as standard practice.¹ We also think that in unrestricted rent increases, the 6% level should be set as the rent increase floor with higher levels considered where rent have increased the greatest since the emergency measures.

Question 5: If rent adjudication is to be amended, what are your views on limiting all rent increases at an upper percentage level, as long as the new rent does not exceed the open market rent?

¹ <https://www.citylets.co.uk/research/reports/>

7. We disagree with this proposal as market rents should be achieved.

Question 6: If rent increases were to be limited at an upper percentage level, what is your view of setting this level at 10% or 15%? If there is an alternative figure that you would propose, please explain your reasons.

8. We think there could be scenarios where a landlord or their letting agent may justifiably wish to set the new rent level at a higher level possibly in advance of 15%. This could be the case where a landlord has not increased the rent level for a substantial period prior to the emergency measures. With costs increasing exponentially for landlords, including mortgage costs, the costs of compliance and building and labour costs, the difference between current rent levels and the market rent could be great. Where this can be evidenced, we would advocate landlords being able to set the new rent level accordingly, but this should be done in special cases where it can be evidenced.

Question 7: If the upper limit were to be triggered where the gap between the proposed rent and the market rent is more than a set level, what is your view on setting this level at 20% where a 10% upper limit applies or 30% where 15% an upper limit applies?

9. We support this proposal.

Question 8: If rent adjudication is to be amended, what are your overall views on the proposed approach of the application of a tapering mechanism based on setting lower and upper percentage levels as described?

10. We do not support this proposal. We feel that this proposal is too complicated and will prove overly complex and time consuming when the sector is facing enormous challenge and is open to clarification. Any proposed measures must be simple and easily interpreted in order for landlords and their agents to implement them as soon as possible.

Question 9: In light of the risk of significant and unmanageable rent increases for tenants on the expiry of the rent cap that were acknowledged in the accompanying documents published alongside the emergency Act, what are your views on the impact of the proposals set out in this paper in terms of your cost of living?

11. Overall, the proposals are complex. Accordingly, consideration should be given to the large proportion of landlords who do not use a letting agent and self-manage. Landlords who self-manage are likely to be the most vulnerable group to fail to adhere to the proposals correctly, while on the other hand, those landlords who have an agent will have greater support.
12. Going forward, we welcome the consideration of return to normal provision and reiterate the need for more clarification surrounding the Rent Officer's ability to assess market rents should the increase go to adjudication. Furthermore, any interim period could be open to abuse, willingly or unwittingly, by some landlords. This could be an opportunity for those landlords who are apprehensive of future measures to consider utilising the support of a property agent

to ensure they are compliant, and this should be encouraged by the Scottish Government, advertising the Scottish Letting Agent Register.

13. We are supportive of measures and would encourage the Scottish Government considers making a calculator to support landlords and property agents set rent under whatever parameters the Scottish Government considers. This would reduce the probability of error or malpractice by ensuring that landlords input base data which calculates the correct rent level. Finally, we would also like clarity on what resources the First Tier Tribunal will have to determine cases where the rent is disputed.

The long-term aim for the Scottish Government must be to re-balance supply and demand levels for private rented property. If demand remains high, we need more rental property which in turn will reduce the cost of rents. To this end, the Scottish Government needs to look at incentivising new landlords and supporting existing investors. A review into all recent tax changes implemented by the Scottish Government and UK Government that impact private landlords is urgently need. Furthermore, there is a desperate need for the Scottish Government to look at reducing and removing the recent increases to Additional Dwelling Supplement rates which is stopping investment into this much needed sector of the market.