

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

Response from Propertymark

May 2023

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. Feedback from Propertymark members continues to show that since the Cost of Living Act was introduced in September 2022 and subsequently extended it is now having a much wider impact on the property market that we saw initially. In May 2023, 100% of Propertymark agents surveyed said that they have seen an increase in landlords looking to exit the market.
3. Our membership surveys repeatedly return comments from property agents in Scotland who have seen mortgage increases of hundreds of pounds, far greater than the new 3% rental increase cap, on top of rising administration, energy and maintenance costs. There is no cap imposed by the Scottish government on trades and services such as plumbers and electricians whose costs have exponentially increased in line with inflation. There are three key themes which come out of our membership engagement surveys:
 - **Firstly, the negative impact on tenants.** Letting agents suggest that the legislation has been detrimental to tenants. They argue that the lack of available properties and rent caps have resulted in higher rents.
 - **Secondly, the increased financial burden on landlords.** The Act places an additional financial burden on landlords. They mention increasing costs for landlords, including mortgages, and claim that rent increases are necessary to offset these expenses.
 - **Thirdly, the decision by the Scottish Government to treat the social rented sector differently to the private rented sector.** Agents criticise the Scottish Government for not engaging with industry representatives when formulating policy changes. They argue that involving stakeholders from the private rented sector as was done with the social rented sector is crucial to avoid negative consequences and maintain a balanced market.

Questions

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?

4. The main effect the temporary measures brought in through the Act have had on letting agents' planning and business models is uncertainty. As a result of this uncertainty, which is causing less supply and much higher demand for private rented property, it means that letting agents, landlords

and tenants are all impacted and renting in Scotland is a much more competitive and expensive market. This ongoing uncertainty is evident in three ways:

- **Firstly, through landlords looking to remove their properties from the rented market in Scotland.**
- **Secondly, an increase in landlords serving notices to sell their buy to let property.** For instance, when we surveyed our members in Scotland in November last year 69% said they had seen an increase in notices to sell, this rose to 83% in February 2023 and to 97% in May 2023.
- **Thirdly, there are now less properties for people to rent.** Propertymark's March Insight Report showed that on average for each available property across the UK there were 10 prospective tenants, in some areas this was significantly higher.¹

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 landlords will be?

5. Despite the uncertainty that the legislation continues to create for the private rented sector, letting agents and landlords will welcome the decision to increase the rent cap from 0% to 3%. However, this is clearly not enough and will impact landlords in three ways:

- **Firstly, not enough to cover mortgage costs.** Our agents have repeatedly told us that 3% is not enough to cover rising costs. Landlords who have variable mortgages or who have needed to re-mortgage over the last six months have seen a significant increase in their outgoings. A stark example is from an agent in Lanarkshire who said, "one landlord has had an increase in mortgage payments from £151 to £560. So even 6% does not even dent his additional costs." This is an increase of 270%.
- **Secondly, not enough to cover increased management costs.** Propertymark represents property agents, who, as businesses have also seen their own costs increase. Evidence from a large letting agency managing over 3,000 properties across Scotland told us that costs have risen by up to 84% as compared to pre-pandemic levels. The cost of completing an inventory on a new tenancy has risen from £95 in 2019 to £175 in 2023. Agents' set up (admin) fees have increased from £350 in 2019 to £550 in 2023.
- **Thirdly, not enough to cover landlord overheads and ongoing costs.** Rental income is not entirely profit and landlords like other businesses have their own expenses and outgoings to manage, coupled with time spent on administration and property management. A cap of 3% is significantly below inflation and does not represent a real increase in income when adjusted for inflation. According to Office of National Statistics (ONS) calculations², in order to see an increase in income should be around 8.9% more in 2023.

¹ Housing Insight Report: March 2023 [Housing Insight Report: March 2023 | Propertymark](#)

² What are your wages worth? [What are your wages worth? - Office for National Statistics \(ons.gov.uk\)](#)

Do you think the changes that came into force from 1 April will impact investment assessments in the private rental sector in Scotland?

6. Yes, PropertyMark does think the changes that came into force from 1 April will impact investment assessments in the private rental sector in Scotland. We think this for two reasons:

- **Firstly, in our latest member survey (May 2023) 100% of agents said that they have seen more landlords than before express a desire to withdraw their property from the private rented sector because of the temporary measures.** In order to get a balanced picture, in our February 2023 survey we asked if agents had seen a rise in landlords seeking to increase the size of their portfolio, perhaps by taking advantage of low property prices in Scotland, but we found that 93% said that this is not the case.
- **Secondly, the housing market has stagnated in Scotland.** House prices have been hit hardest in Scotland. According to the ONS Cost of living insights: Housing³ “House prices grew the least in Scotland at a rate of 1.0%, which was lower than all regions of England and substantially lower than the rates seen across England (6.0%).” Buy-to-Let properties do not present an attractive investment and new purchases are actively discouraged by policies such as Direct Line’s, who state on their website that as a result of the Cost of Living legislation, their “rent guarantee insurance excludes rental arrears while possession proceedings are delayed or prevented by legislation, government, or court.”⁴

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

7. The most apparent behavioural change has been landlords increasing rents between tenancies. Survey data from our members shows that 94% of agents finding that landlords were more inclined to raise rents between tenancies as a result of the Act in February 2023, this had risen to 100% of agents surveyed in May 2023. Landlords increasing rents between tenancies is evidenced in two ways:

- **Firstly, generally, before the introduction of the Cost of Living Act, rent increases have not been significant.** Data from the Private Sector Rent Statistics, Scotland, 2010 to 2022⁵ shows that average rents have increased by 2.92% year-on-year between 2010 and 2022. Between 2020 and 2021 the average increase in rents across Scotland was just 0.66%. PropertyMark member agents tell us that landlords are raising rents between tenancies to ensure that higher costs can be met.
- **Secondly, landlords are raising rents because they fear that further rent controls will restrict their ability to raise rents to cover rising costs.** This is supported by data from the

³ Cost of living insights: Housing [Cost of living insights - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/cost-of-living/insights/housing)

⁴ Direct Line [Rent Guarantee Insurance - Guarantee to Beat - Direct Line for Business](https://www.directline.co.uk/rent-guarantee-insurance) (Accessed 15/5/23)

⁵ Private Sector Rent Statistics, Scotland, 2010 to 2022 [Supporting documents - Private Sector Rent Statistics, Scotland, 2010 to 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/private-sector-rent-statistics-scotland-2010-to-2022)

ONS Index of Private Housing Rental Prices, UK: March 2023⁶, which shows that Scotland saw the biggest increase in rents in the last 12 months across Great Britain, despite being the only country to have imposed a rent cap. The data used for Scotland is based predominantly on new lets and does not reflect in-tenancy rental changes. “Annual private rental prices increased by 4.6% in England, 4.4% in Wales and 5.1% in Scotland in the 12 months to March 2023.” This surpassed the increase in rents in London which, although above the England average and highest rate since 2012, was only 4.8%.

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?

8. Propertymark has continually argued that the blanket, one-sized fits all approach has been unsuccessful and disproportionate to the issue that the Scottish Government want to tackle. Many agents and landlords tell us how they have been personally affected by increased costs but unable to recuperate losses. One property agent told us how the rent cap has affected their business model for affordable housing, “We are an affordable accommodation provider, all of our stock is let on a Mid-Market Rent (MMR) basis, and we've been told that despite freezing our rents in 2021 and implementing a 2.5% increase in 2022 (despite inflation being at 10%) that we will need to complete an individual application for each of our 250+ MMR tenancies because we really needed a 5% increase.” Engagement with the sector would have brought rise to these issues and challenges before the introduction of the Act. Furthermore, the ongoing temporary nature of the Act creates uncertainty and insecurity in the market, not only for landlords and investors but for tenants. As well as a worrying build-up of cases waiting for the First Tier Tribunal.

What are your views on the transitional options presented?

9. Generally, agents believe that the option presented to cap rent adjudication levels to the amount proposed by the landlord, rather than opening up to the possibility of rising above this, is acceptable. As stated in the proposal, it will give security to tenants and takes into account that landlords will have made a fully considered application to the Rent Officer or Tribunal for an increase. However, if the rent cap of 3% (6% in exceptions) is still imposed then this will restrict landlords’ ability to increase rents to fairly and accurately reflect their own rising costs.
10. The second proposal to temporarily introduce another comparator for rent adjudication alongside open market rent is less favourable, this is for two reasons. Firstly, this presents a confusing situation for both landlords and tenants. Introducing a temporary comparator gives little guarantee to either landlord or tenant, with neither knowing what the outcome would be. Secondly, it would create a great administrative burden on Rent Officers, further slowing down the process and leaving landlords with spiralling costs and no resolution.

⁶Office for National Statistics. Index of Private Housing Rental Prices, UK: March 2023 [Index of Private Housing Rental Prices, UK - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/indices/articles/index-of-private-housing-rental-prices-uk)