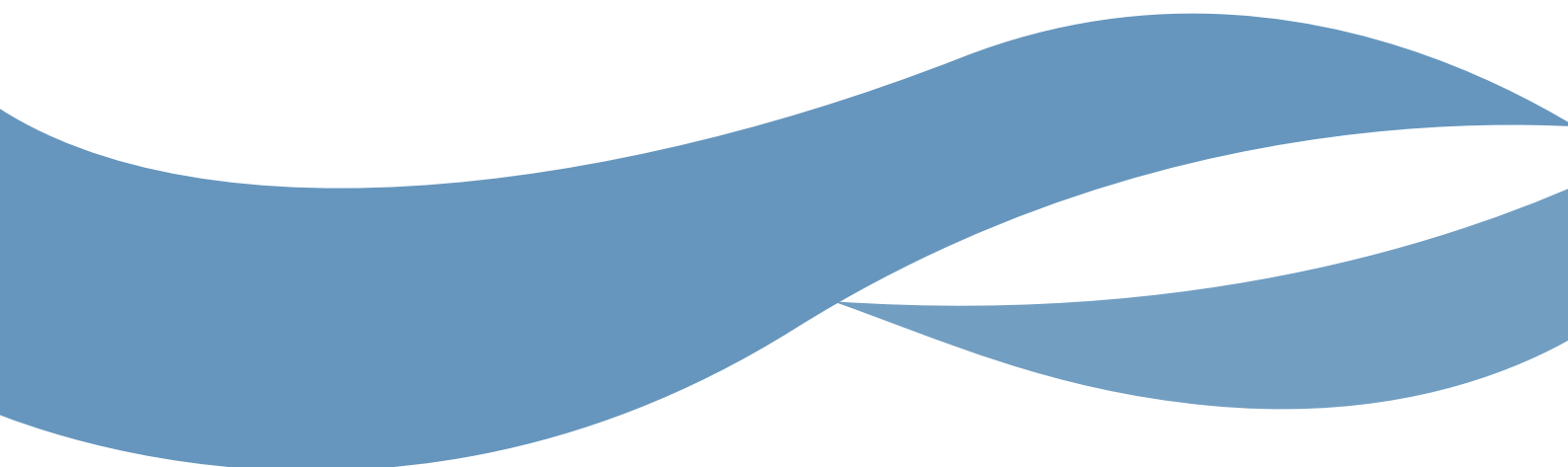


## **Cost of Living (Tenant Protection) (Scotland) Act - Regulations Submission to Local Government, Housing and Planning Committee**

20 February 2024

### **About Scottish Land & Estates**

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



## Key messages

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- **Transitional measures need to take account of factors that are particular to the property's locality, date the current rent was set and any special circumstances that may have changed since the start of the lease.**
- **The proposed tapered system is over complicated, will create confusion and there is a real risk that the Tribunal will be overwhelmed because tenants will refer reviews for adjudication because they will have nothing to lose.**
- **SLE supports the use of the existing adjudication process as laid out in the 2016 Act.**
- **SLE would like to see better targeted transitional measures that provide support in rural areas that focus on the areas that have been identified as the main factors of increased cost of living i.e. fuel poverty and food costs.**
- **Landlords need to be able to charge a fair rent if they are expected to provide good quality housing that is energy efficient.**

## Introduction

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Rural estates provide in the region of 13,000 homes across rural Scotland. As such they are a critical housing provider throughout the countryside and islands.

The nature of the Scottish Land & Estates (SLE) membership is diverse with some members having more than 200 residential properties throughout their estates, while many have only one or two. As a result, different members have been impacted in different ways. This is particularly significant in rural areas where traditional housing is of a style and age that costs more to maintain. However, the common factor is that all rural landlords are key to rural communities as providers of homes, including affordable homes, which make up for the shortage of social housing provision.

In previous representations made to the Scottish Government, SLE warned that the measures introduced under the Cost of Living (Tenant Protection) Act 2022 (CoLA) would result in a contraction of the private rented sector (PRS). A good housing supply is at the heart of sustainable and thriving rural communities and the provision of a range of rental housing, both affordable and otherwise, is an integral part of that because not everyone is able to buy, or indeed wishes to buy, a home. Not only does a contracted PRS create a shortage of housing and distorted housing market, but it reduces choice and population mobility. Without choice and population mobility the less affluent are more exposed to higher fuel poverty, higher food costs and higher travel costs.

The transition out of CoLA needs to be swift to reduce the risk of exasperating housing shortages by damaging the PRS further. Measures that are not balanced between landlord and tenant will exasperate the situation, as will measures that are disproportionate, given that it is expected that most future rent reviews will pass without issue.

## **The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Expiry of Section 10: Extension) Regulations 2024**

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The intention of the changes to the adjudication process is “to smooth the transition out of the rent cap and protect tenants from steep rent increases which could be experienced if there is a sudden move to open market rent from rent levels that have been suppressed.” The distortion of the PRS market has been exasperated by reducing the market liquidity i.e. tenants not moving in order to taking advantage of the terms of the rent cap. Furthermore, this has led to issues of social mobility, limiting choice that could alleviate other cost of living pressures. It has created distorted understanding of open market rents. The CoLA provisions have impacted the supply of available properties, and this has inflated rent. These proposals create a platform to essentially extend the measures and crucially will act to slow the return of the PRS back to a fully functioning market.

Any transitional provisions should consider the need to boost supply of housing which is a key factor in curtailing rent inflation. The importance of tenant mobility and landlord confidence should not be underrated. An essential factor in this is to build back the confidence of PRS landlords to that supply is not curtailed by a continued exodus of landlords from the market. Ultimately changing the existing system acts as a further disincentive to landlords to provide properties to let, which will be counterproductive to the stated intention of the legislation.

## **The Rent Adjudication (Temporary Modifications) (Scotland) 2024**

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The proposal bases the determination on the lowest of three comparators:

### **1. Open Market Rent –**

SLE members have raised concern that the Rent Officer will struggle to establish the open market rent in rural locations where the number of new lettings is historically low and has been extremely low since CoLA. Rural open market values have long posed a challenge to Rent Officers for this reason and rely on landlords providing a defence with evidence. This is the reference point used in the existing adjudication under the 2016 Act. While evidence may be harder to come by, it is a simple system with better scope for considering unique aspects of the tenancy.

### **2. The new rent proposed by the landlord –**

There is a danger that the proposed adjudication method will open the door to tenants “having a punt” as they will literally have nothing to lose, even if the proposed rent is lower than the OMV and the taper alternative. Not only will this put huge pressure on the limited resources at the Tribunal, but also cause a huge amount of work for landlords where they have no choice but to take time to form a defence. If the changes to the adjudication are implemented as proposed, SLE would like to see meaningful efforts put in place that ensure that adequate information is reaching all tenants to minimise these events. With the existing system, should a tenant dispute a rent unreasonably, there is the risk that the rent could get set at a higher level. This acts as a deterrent to spurious applications. The proposed system has no such safeguards.

### **3. A maximum “reasonable” increase for that tenancy, to be defined by reference to a new “taper” –**

The provisions appear to take no account of when the current rent of a property was set. In many cases rents may not have been adjusted since the commencement of a lease, and in some cases were reduced due to a tenant’s circumstances to help during the Covid period.

We understand that there will be a calculator provided to assist landlords setting rent at review, and tenants to understand where the proposed rent sits in relation to the open market rent. In the absence of comprehensive data, it is hard to see how this will assist in locations where the private rented properties are sparse. Nevertheless, to be meaningful such a calculator should also take account of when the current rent was set and inflation in the intervening period. SLE would like to see worked examples provided, which better represent the nuances of the sector across Scotland.

On balance, it is felt that the proposed adjudication is overly complicated and the existing system sufficient. It would be more beneficial to the market as a whole to steer away from further interventions especially as the majority of rent increases are expected by the Scottish Government to “proceed as normal”.

The CoLA legislation has served to be a blunt instrument, not taking into account the financial situation of either the tenant or landlord, rather assuming the landlord is better able to withstand inflationary pressures. These transitional measures continue that imbalance which is why SLE would like to see alternative transitional support that assists with costs other than rent, where there is a clear need for the tenant.

## Conclusion

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The housing shortage in Scotland is severe, and particularly in the PRS. Yet the most effective way of reducing rents is to ensure supply is adequate so that there is a fully functioning market, with offerings from a variety of suppliers, be they private, social housing or hybrid models.

While the transitional provisions are without doubt a well-intentioned attempt to soften the blow of inevitable rent increases after CoLA, they also carry the risk of further damaging an already fragile and contracting sector on which Scotland will continue rely heavily on until such time there is an alternative.

SLE is calling for an urgent redress of the balance between landlord and tenant. Many rural landlords feel undervalued and mistreated by the regulatory intervention that has failed to take account of the nuances within the wider PRS. Sadly, those that will suffer most in the long term are the very people the legislation intended to protect, due to the continuation of the underlying issue which is a shortage of housing supply.

**Anna Gardiner**  
Policy Adviser (Rural Property)

**Cameron Gillies**  
Press & Public Affairs Manager