

*This is a pre-copyedited, author-produced version of an article accepted for publication in the Juridical Review by Malcolm M. Combe following peer review. The definitive published version is available online on Westlaw UK. The print citation is 2022 Jur. Rev. 222.*

### **Shifting grounds for private renters in Scotland: Eviction after the Coronavirus (Recovery and Reform) (Scotland) Act 2022 and during the Cost of Living (Tenant Protection) (Scotland) Act 2022**

In April 2020, reforms were made to landlord and tenant law in Scotland in response to the Coronavirus pandemic. In the private rented sector, mandatory grounds of possession that were previously available to a landlord were removed, requiring all eviction actions to go before a tribunal to be assessed for reasonableness. Related notice periods that were to be provided to tenants before recovery of possession were also extended. Later in the pandemic, pre-action considerations for evictions were introduced. These reforms were designed to be time-limited, but with the passage of the Coronavirus (Recovery and Reform) (Scotland) Act these measures – under exception of the extension of notice periods – now form the baseline legal position as from 1 October 2022.

On 27 October 2022, the Cost of Living (Tenant Protection) (Scotland) Act 2022 received Royal Assent. Although expressly time-limited in nature, this statute restricts evictions in both the private and social rented sectors in many circumstances for the period from 6 September 2022 until at least 31 March 2023. There are further changes in relation to rent increases and damages payable in the event of unlawful eviction (i.e. extrajudicial removal) of a residential occupier.

All of this makes for profound change in the particular context of the private residential tenancy, the modern vehicle for private sector lets in Scotland. This note offers some analysis of these statutory modifications and their implications for the recovery of possession by a private landlord.

#### **Private renting in Scotland – the pre-pandemic position**

As from December 2017, almost all new private sector tenancies where someone moves into accommodation that is to be their main residence will be a private residential tenancy; “private residential tenancy” is the technical term, normally abbreviated to “PRT”. The Private Housing (Tenancies) (Scotland) Act 2016 is the governing statute for PRTs. Some living arrangements are excluded by Schedule 1 from being PRTs (including lets of agricultural land or premises licensed for the sale of alcohol on-site). Also excluded are other, older private renting regimes for leases entered before 1 December 2017: assured tenancies and short assured tenancies entered between 2 January 1989 and 30 November 2017 are governed by the Housing (Scotland) Act 1988; and protected tenancies (or regulated tenancies) entered before 2 January 1989 fall under the Rent (Scotland) Act 1984. For completeness, it can be noted that leases granted by a local authority or registered social landlord are subject to a different social renting regime, flowing from the Housing (Scotland) Act 2001.

It is not the intention of this article to set out what these different regimes mean for the landlord and tenant.<sup>1</sup> What should be noted though is that the introduction of the PRT meant so-called “no fault” evictions were no longer possible, in direct contrast to the situation with fixed-duration short assured tenancies of six months or more in terms of the Housing (Scotland) Act 1988 (assuming relevant formalities were complied with).<sup>2</sup> Instead of having a set duration (albeit one which might roll on if parties took no steps to terminate the arrangement), a PRT subsists until either: a) the tenant brings it to an end, on 28 days’ notice;<sup>3</sup> or b) the landlord brings it to an end, on the basis of a recognised

---

<sup>1</sup> For further detail, see for example Peter Robson and Malcolm M Combe, *Residential Tenancies: Private and Social Renting in Scotland* 4th edn (W. Green, 2019), Adrian Stalker, *Evictions in Scotland* 2nd edn (Edinburgh University Press, 2020) and Peter Robson and Malcolm M Combe, “The first year of the First-tier: private residential tenancy eviction cases at the housing and property chamber” 2019 *Juridical Review* 325.

<sup>2</sup> Housing (Scotland) Act 1988, s.32.

<sup>3</sup> The 2016 Act, s.50.

eviction ground (found in Schedule 3 of the 2016 Act) established before the First-tier Tribunal (Housing and Property Chamber) (the "FtT").<sup>4</sup>

Of course, it is too much of a simplification to refer to "no fault" eviction without further elaboration that some of the grounds in the 2016 Act as first enacted could apply even where the tenant was in full compliance with the terms of the lease. That is to say, whilst fixed-term arrangements cannot be made under the 2016 Act, a tenant could still face eviction where, for example, a landlord wished to move into the let property to make that their home (eviction ground 4) or where the landlord wished to sell the property (eviction ground 1). These "mandatory" grounds contrasted with "discretionary" grounds, where a tribunal was able to consider the overall reasonableness of granting eviction. A mixture of mandatory and discretionary grounds was also apparent with the earlier regimes. There is some crossover between the eviction grounds for PRTs and the grounds for possession in Schedule 5 of the Housing (Scotland) Act 1988 and Schedule 2 of the Rent (Scotland) Act 1984, although they do not map exactly. For present purposes, it is interesting to note that the 2016 Act regime actually contained more mandatory grounds for possession than the 1988 Act regime; this was a feature rather than a bug, acting as something of an offset to the introduction of open-ended PRTs, so any move away from mandatory grounds represents a clear change. As will be discussed now, such a change first took place for emergency reasons relating to public health little more than two years after the 2016 Act came into force.

### **Private renting in Scotland – the pandemic and post-pandemic position**

Among the many legal changes occasioned by the Covid-19 pandemic, the law relating to residential tenancies was reformed by the Coronavirus (Scotland) Act 2020, the emergency legislation passed by the Scottish Parliament as an immediate response to the pandemic. As explained below, various further amendments and extensions followed in other legislation.<sup>5</sup>

These changes affected all private renting regimes, making what were envisaged to be temporary changes to the 1984, 1988 and 2016 Acts.<sup>6</sup> Schedule 1 of the 2020 Act set out modifications for the private letting regimes. For PRTs, section 51 of the 2016 Act was altered, to remove any mandatory eviction grounds. As usual, the FtT could only make an order if one or more of 18 possible eviction grounds existed, but this reform rendered all of the eviction grounds found in Schedule 3 of the 2016 Act subject to a reasonableness test and as such at a tribunal's discretion. What this means will be discussed below, but for now it can be noted that eight normally mandatory grounds, some relating to the situation of the landlord (such as the landlord wishing to move into the let property herself, or the landlord wishing to sell the property with vacant possession) and some related to the conduct of the tenant are now subject to the discretion of the FtT. Two further grounds were potentially mandatory (relating to criminality of the tenant or a change in the tenant's employment situation vis-à-vis the landlord, which was mandatory when acted upon within a certain time period), and these are also now always subject to a reasonableness assessment.

Away from these provisions as to whether an eviction could be granted, separate provisions altered the procedure around, and prerequisites for, an eviction order. The period between a landlord's service of a notice to leave and the raising of an action at the FtT was extended in most circumstances. In terms of s. 54 of the 2016 Act, a landlord would ordinarily need to wait 84 days or, in some situations, 28 days before raising proceedings. The emergency reforms introduced slightly different periods of 28 days, three months, or six months depending on the ground engaged. Further, as a result of the

---

<sup>4</sup> The 2016 Act, s.51.

<sup>5</sup> Notices to leave served prior to 7 April 2020 were not caught by the new regime: *Cowan v Somasundaram* [2021] UT 4.

<sup>6</sup> See further the Appendix in Stalker, *Evictions in Scotland* and Malcolm M Combe, "The Scottish response to the Covid-19 pandemic in the private rented sector" in Zsa-Zsa Temmers Boggenpoel, Elsabé van der Sijde, Mopho Ts'episo Tlale and Sameera Mahomed (eds) *Property and Pandemics: Property Law Responses to Covid-19* (2021, Juta), with an open access version at <<https://pureportal.strath.ac.uk/en/publications/the-scottish-response-to-the-covid-19-pandemic-in-the-private-ren/>>.

Coronavirus (Scotland) (No.2) Act 2020 and related Regulations, additional stipulations were put on private sector landlords for eviction proceedings relating to rent arrears.<sup>7</sup>

As initially drafted, the primary legislation envisaged these measures ending in September 2020, subject to an extension to March 2021, subject to another extension to September 2021. Both options to extend were utilised, and then a further extension for all measures followed (in the Coronavirus (Extension and Expiry) (Scotland) Act 2021) to continue them until 31 March 2022. Provision was also made in the 2021 Act for a further extension to 30 September 2022, but in the first break to the sequence of blanket extension the provisions relating to notice periods were allowed to lapse and only the modifications to mandatory evictions and pre-action stipulations for rent arrears carried on. This was the situation at the time of the passage of the Coronavirus (Recovery and Reform) (Scotland) Act 2022, and the relevant provisions in that legislation carried forward those measures from 1 October 2022.

Once again, the Recovery and Reform Act changes *all* the private renting regimes that can be encountered in Scotland, largely tracking the emergency legislation that preceded it. Whether a society's emergence from a pandemic provides the appropriate time to diminish a private landlord's rights to recover possession from a tenant is not something that will be explored here.<sup>8</sup> That notwithstanding, arguments can and have been made that such a reform is justified,<sup>9</sup> plus the simple fact that the law was once reformed in this way demonstrated the functional possibility of doing so.

### **More reasonable steps**

Neither the Coronavirus (Scotland) Act 2020 nor the Recovery and Reform Act offer any fresh direction as to how the reasonableness test was to apply in relation to the formerly mandatory grounds. Accordingly, established case law in relation to other grounds from current or older private sector regimes, or indeed comparable social regimes,<sup>10</sup> comes into play.

From such case law, it is clear that the existence of a reasonableness test means that establishing the factual elements of a relevant ground will only take you so far, and there remains a duty on the tribunal to determine whether it is reasonable to grant an order for possession. In the important case of *Barclay v Hannah*,<sup>11</sup> Lord Moncrieff noted that such a reasonableness test "charges the Court with a judicial duty to consider the whole circumstances in which the application is made". What is reasonable will depend on the relevant circumstances of either party, such as their conduct and any possible hardship that could result from the order, and also the interests of the public.<sup>12</sup> As to the

---

<sup>7</sup> In terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/304), a landlord seeking to evict on the basis of rent arrears must: provide clear information to the tenant (including the amount of rent arrears, details of rights in relation to eviction, and signposting of information and advice); make reasonable efforts to agree a reasonable plan with the tenant regarding future rent and rent arrears; and consider steps taken by tenant and any changes of circumstances.

<sup>8</sup> See further the discussion in Malcolm Combe, "Ending private Tenancies post-COVID" (2022) 67(8) JLSS 20, also at <<https://www.lawscot.org.uk/members/journal/issues/vol-67-issue-08/ending-private-tenancies-post-covid/>>.

<sup>9</sup> See Jill Robbie and Elsabé van der Sijde, "Assembling a sustainable system: exploring the systemic constitutional approach to property in the context of sustainability" (2020) 66 Loyola Law Review 553, especially 609-613.

<sup>10</sup> Reasonableness is still a factor in the core grounds for possession in the Scottish social sector (found in paragraphs 1-7 of Schedule 1 to the Housing (Scotland) Act 2001), although some grounds focus on providing other suitable accommodation rather than the reasonableness of eviction from the let property (paragraphs 8-14 of Schedule 1 to the 2001 Act). Relevant case law includes: *Midlothian Council v Greens* 2017 Hous. L.R. 111, 2017 G.W.D. 30-484; *East Lothian Council v Duffy* 2012 S.L.T. (Sh Ct) 113; 2012 Hous. L.R. 73; and *Edinburgh City Council v Forbes* 2002 Hous. L.R. 61.

<sup>11</sup> *Barclay v Hannah* 1947 S.C. 245, at 249, in the context of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s.3.

<sup>12</sup> As discussed at the annotation to the Rent (Scotland) Act 1984 at A.056.2 of Malcolm M. Combe (General Editor), *Scottish Landlord & Tenant Legislation* (W. Green), annotated by A. G. M. Duncan and J. A. D. Hope (updated by Peter Robson). Consider also *Cumming v Danson* [1942] 2 All ER 653 and *Manchester City Council v Pinnock* [2011] 2 AC 104, discussed in Stalker, *Evictions in Scotland* at 144-146.

direct application of the test, decision makers should weigh up the effect on each party, imagining their respective situations where the order is made and where the order is not.<sup>13</sup>

As noted above, the removal of all mandatory grounds does make for quite a change from what was envisaged in the 2016 Act as originally enacted. When coupled with the open-ended nature of the PRT a private landlord now has no guarantee as to when possession of the let property can be recovered. The existence of a reasonableness test will allow for recovery of possession in some circumstances, but there could be a concern at a more macro level of private landlords no longer offering accommodation for let on this basis. It also raises the curious prospect of the interests of a secured lender – who presumably would prefer not to be an accidental landlord and may not have great experience of letting out property in Scotland – in securing vacant possession, being measured against the circumstances of a sitting tenant when the ground that the lender intends to sell the let property applies.<sup>14</sup>

That being said, there has been some concern that the 2016 Act as originally enacted was susceptible to abuse, notwithstanding the existence of rules designed to stop a landlord from abusing eviction grounds,<sup>15</sup> by providing circumstances where a tribunal was bound to grant an eviction order when a particular ground was established on the balance of probabilities. Research by the campaign group Generation Rent suggests that almost one third of the landlords who used the mandatory ground for possession relating to the sale of the let property<sup>16</sup> had in fact failed to sell the home more than a year later.<sup>17</sup> The existence of a reasonableness test may remove this problem, in that it will (or should) fortify tenants in the knowledge that a trip to the FtT is not a foregone conclusion, and also allows for a genuine analysis – for both parties – of what is appropriate in the circumstances.

Furthermore, whilst a landlord might no longer have the guaranteed possibility of recovery, one ought to consider that a tenant entering into a private let might not have many housing options, particularly in areas of acute housing pressure. As such, measures to make them secure at home could be seen as welcome.<sup>18</sup>

The net effect of all of this to the general housing mix in Scotland is not something that is considered here. What will be considered now is a further, temporary reform that will restrict recovery of possession by even removing the prospect of eviction in some situations where eviction would ordinarily have been a possibility.

### **Private renting in Scotland – the cost of living position**

The latest reform to residential tenancy law in Scotland is contained in the Cost of Living (Tenant Protection) (Scotland) Act 2022. Like the Coronavirus (Scotland) Act 2020, this new measure was passed as an emergency bill. It operates to restrict rent increases and narrow the circumstances where an eviction can be obtained and enforced during the period when it is in force: some background context to these headline measures can be found in two briefings by the Scottish Parliamentary

---

<sup>13</sup> *Cresswell v Hodgson* [1951] 2 KB 92, See also *Whitehouse v Lee* [2010] HLR 11, discussed in Stalker, *Evictions in Scotland* at 151.

<sup>14</sup> The 2016 Act, Schedule 3, Ground 2.

<sup>15</sup> There are rules against a landlord abusing eviction grounds, perhaps by contriving a situation where an eviction ground appears to apply or fooling a tenant into thinking they must otherwise leave. The 2016 Act itself provides for a “wrongful-termination order”, such that an affected tenant can apply to the FtT for a penalty award of up to six times the rent that was payable under the tenancy. The application of this regime in real situations has not been without issue (as discussed in Malcolm M. Combe and Peter Robson, “A review of the first wrongful-termination orders made under the Private Housing (Tenancies) (Scotland) Act 2016: do they sufficiently protect those misled into giving up a tenancy?” 2021 Jur. Rev. 88), not to mention a tenant must proactively pursue this remedy, but it does at least exist on paper.

<sup>16</sup> The 2016 Act, Schedule 3, Ground 1.

<sup>17</sup> <[https://www.generationrent.org/evictions\\_in\\_scotland\\_what\\_do\\_we\\_know](https://www.generationrent.org/evictions_in_scotland_what_do_we_know)>.

<sup>18</sup> The campaign group Living Rent would align itself with this argument: see <<https://www.livingrent.org/>>.

Information Centre.<sup>19</sup> Given the inherent transience of this 2022 Act, it may seem unnecessary to offer this the same level of scrutiny as the other, less temporary, 2022 Act. That may be so, but the provisions are interesting in and of themselves and, given elements of a previous temporary reform found their way into the future baseline position, it is prudent to analyse these new measures now lest it be possible to inform a future journey.<sup>20</sup> With that in mind, a comparative nod can be made to France, where the *trêve hivernale* applies. This brings about a partial eviction ban (or truce) over the winter, and this truce has been extended in recent years for reasons connected to coronavirus.<sup>21</sup>

Like the emergency Coronavirus Acts discussed above, two possible extensions to this new measure's core provisions – of six months at a time – are catered for. The “rent cap” and “protection against evictions” content, made operative by schedules 1 and 2 respectively, are initially programmed to end on 31 March 2023, with extensions until 30 September 2023 and 31 March 2024 (although there is a separate possibility of all or part of the scheme ending earlier or later – much is left to Regulations).

The provisions relating to rent limit what sort of increase can be made, suspending the usual annual possibility of a landlord choosing a new figure (with that figure being subject to review and replacement with a market rent).<sup>22</sup> Increases are to be generally restricted to a permitted rate (currently set at 0%) and any passing down of a share (currently set at 50%) of certain prescribed landlord costs (relating to interest payable on secured lending, insurance, and any service charge connected to the property).<sup>23</sup> There is also provision for Regulations to be made in relation to rent adjudication in the private sector, and reform of the damages payable under s.37 of the Housing (Scotland) Act 1988 where unlawful eviction of a residential occupier takes place. These provisions are not analysed here.<sup>24</sup>

Returning to the topic of evictions, Schedule 2 restricts the effectiveness of decrees for removing from 6 September 2022 onwards. The restriction operates to catch decrees as from that date, and also those obtained but not yet implemented. Such decrees remain ineffective until either a) the end of a period of six months beginning with the day on which the decree is or was granted, or b) the expiry or suspension of the restriction in accordance the legislation.

Some evictions, however, can still take place. Specific grounds from the prevailing private sector regimes can apply, as can certain new grounds (which, as shall be discussed below, are essentially modified grounds).<sup>25</sup> For PRTs, possible grounds for eviction include: the existing grounds of property to be sold by lender, tenant no longer being an employee, tenant not occupying let property, criminal behaviour, anti-social behaviour, and association with a person who has a relevant conviction or engaged in relevant anti-social behaviour; and the new grounds of landlord intention to sell the

---

<sup>19</sup> <<https://spice-spotlight.scot/2022/09/21/the-scottish-governments-planned-rent-freeze-background/>> and <<https://spice-spotlight.scot/2022/09/21/the-scottish-governments-planned-evictions-moratorium-background-information/>>.

<sup>20</sup> In this context, it is worth remembering that the very first Rent Act – the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 was supposed to end six months after the cessation of Great War hostilities. The Rent Acts were not actually abolished until 1959, and then only temporarily.

<sup>21</sup> See <<https://www.service-public.fr/particuliers/actualites/A14632>>. The dates of the *trêve hivernale* are set by the *loi Alur* or *loi Duflo II* of 24 March 2014: 1 November-31 March (*Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové*). In some circumstances, notably including sanitary crisis, the government may decide to prolong the *trêve hivernale*. In 2020, the *trêve hivernale* was extended to 10 July owing to the pandemic (*Ordonnance n° 2020-331 du 25 mars 2020 relative au prolongement de la trêve hivernale*). In 2021, it was extended to 31 May for the same reason (*Ordonnance n° 2021-141 du 10 février 2021 relative au prolongement de la trêve hivernale*).

<sup>22</sup> Found in Part 4 of the 2016 Act.

<sup>23</sup> Per the scheme found in the Cost of Living (Tenant Protection) Scotland Act 2022, Schedule 1.

<sup>24</sup> See Malcolm Combe, “Tenants’ rights: the scales tip further” (2022) 67(11) JLSS 28, also at <>.

<sup>25</sup> For completeness, it can be noted that there are tailored rules in the social sector. Student residential tenancies (which normally escape statutory regulation as residential tenancies) now have their own eviction grounds that can apply in the protected periods, such that students who engage in relevant criminal or antisocial behaviour can be evicted.

property to alleviate financial hardship, landlord intention to live in the property to alleviate financial hardship, and substantial rent arrears.<sup>26</sup>

Whilst these latter grounds stand alone in the legislation and appear to be new accordingly, they are in fact more tenant-friendly versions of existing grounds (with those corresponding grounds being suspended). The existing grounds relating to a landlord's plans for the property, namely sale with vacant possession or the landlord moving into the let property, are now made subject to a financial hardship criterion, as properly evidenced. Evidence tending to show a landlord is seeking to sell or live in the property to alleviate financial hardship could include: an affidavit from the landlord or a letter of advice from an approved money advisor, local authority debt advice service, independent financial advisor or chartered accountant.<sup>27</sup> Meanwhile, being in rent arrears for three or more months would normally be an eviction ground. The Cost of Living Act bases the new rent arrears ground on "substantial rent arrears", which is defined as a situation where the cumulative arrears equate to, or exceed, the equivalent of six months' rent under the tenancy at the point when notice to leave is given to the tenant.<sup>28</sup> It will also be recalled that all of these grounds are subject to a reasonableness test as well, if put before the FtT.

Prior the Act receiving Royal Assent, four groups with an interest in the provision of private sector lettings in Scotland – the Scottish Association of Landlords, Propertymark, the National Residential Landlords Association, and Scottish Land and Estates – announced they were seeking a legal opinion on whether this measure might amount to a breach of landlords' rights under Article 1 of the First Protocol to the ECHR (A1P1).<sup>29</sup> A successful challenge to the scheme in part or in whole would mean offending provisions are not law, as demonstrated in the case of *Salvesen v Riddell*<sup>30</sup> with reference to section 72(10) of the Agricultural Holdings (Scotland) Act 2003.<sup>31</sup> It is also clear that temporary measures are still susceptible to challenge, following the judicial review of the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 11) Regulations 2021<sup>32</sup> in relation to enforced closure of places of worship in the case of *Philip v Scottish Ministers*.<sup>33</sup>

The European Court of Human Rights has itself produced a *Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights*, which contains coverage on "Tenancies and Rent Control" that discusses contrasting case law on rent and eviction measures.<sup>34</sup> This makes clear that A1P1 is engaged, but the Act is not without safeguards against challenge, and in the context of eviction this would include the possibility of eviction proceedings with certain levels of arrears and the financial hardship ground for a landlord to recover possession when in need of the property. Finally, the case of *Hughes v Glasgow City Council*<sup>35</sup> may offer some guidance, in that it demonstrates a Scottish statute relating to residential tenancies surviving a human rights assessment. There, a landlord sought to characterise the operation of the rent penalty notice regime found in section 94 of the Antisocial Behaviour etc. (Scotland) Act 2004 – which meant no rent was lawfully

---

<sup>26</sup> Cost of Living (Tenant Protection) (Scotland) Act 2022, Schedule 2, Paragraph 1(5).

<sup>27</sup> Cost of Living (Tenant Protection) (Scotland) Act 2022, Schedule 2, Paragraph 4(3), introducing relevant new paragraphs to the 2016 Act, Schedule 3.

<sup>28</sup> Cost of Living (Tenant Protection) (Scotland) Act 2022, Schedule 2, Paragraphs 4(2) and 4(3), introducing new wording into s.54(3)(b) of the 2016 Act and a new paragraph to the 2016 Act, Schedule 3.

<sup>29</sup> See, for example, Scottish Land and Estates' press release of 12 October 2022, "Lettings Coalition Will Seek Legal Opinion On Scotland's Rent Freeze And Eviction Ban":

<https://www.scottishlandandestates.co.uk/news/lettings-coalition-will-seek-legal-opinion-scotlands-rent-freeze-and-eviction-ban>.

<sup>30</sup> [2012] UKSC 22.

<sup>31</sup> See Malcolm M. Combe, "Peaceful enjoyment of farmland at the Supreme Court" 2013 S.L.T. (News) 201 and "Remedial works in agricultural holdings" 2014 S.L.T. (News) 70.

<sup>32</sup> SSI 2021/3.

<sup>33</sup> [2021] CSOH 32; 2021 S.L.T. 559.

<sup>34</sup> [https://www.echr.coe.int/Documents/Guide\\_Art\\_1\\_Protocol\\_1\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf). Relevant content begins at page 57.

<sup>35</sup> 2021 UT 12.

due in the period of the notice – as an unwarranted and disproportionate interference with A1P1 rights. The challenge was unsuccessful, with it being noted by Sheriff McCartney that the legislation pursued a legitimate aim in terms of the regulation of private landlords and the impact on this landlord was not disproportionate, there was “a strong policy purpose underlying the scheme of registration”<sup>36</sup> (that is, landlord registration as a whole), and as such it survived a human rights challenge. That is not an exact or perhaps even a close analogy to the Cost of Living Act, but it at least offers some insight as to how a Scottish court may approach a challenge to it.

## **Conclusion**

2022 has proven to be an important year for statutory reform of the residential tenancy sector, with the passage of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 and then the Cost of Living (Tenant Protection) (Scotland) Act 2022. The earlier of those 2022 Acts – unlike the coronavirus emergency legislation that preceded it – is here to stay. It has already made significant changes to the main letting vehicle in Scotland, despite being secreted in a miscellaneous statute with a short title that offers no clue as to this effect. The second 2022 Act is not so discreet and burst onto the scene with a suitably clear and tubthumping short title, although it is supposed to be but a temporary visitor. If it beds in though, some or all of its provisions may yet find an extended residency in Scots law, and the example of France demonstrates that eviction restrictions can operate over the winter. The French context, not to mention relevant human rights law, also suggest that evictions cannot be restricted on a blanket basis. For now, though, we must wait to see what pans out in Scotland, safe only in the knowledge that the future is likely to include even more change in the regulation of residential tenancies.

---

<sup>36</sup> At para [44].