



Private Housing (Tenancies) (Scotland) Act 2016 2016 asp 19

PART 4

RENT

[^{F1}CHAPTER 2A

RENT VARIATION INSTIGATED BY LANDLORD'S APPLICATION TO RENT OFFICER

Textual Amendments

- F1** Pt. 4 Ch. 2A treated as inserted (temp.) (28.10.2022) by virtue of [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(asp 10\)](#), s. 13(1), [sch. 1 para. 1\(1\)\(17\)](#) (with ss. 1(2), 6, 7, 8) (as amended: (1.4.2023) by [S.S.I. 2023/82](#), regs. 1(3), [2\(2\)](#)); and (27.9.2023) by [S.S.I. 2023/275](#), regs. 1(2), [2\(2\)](#))

33A Landlord application to rent officer to increase rent above permitted rate

- (1) A landlord under a private rented tenancy may make an application to the relevant rent officer to increase the rent payable under the tenancy by more than the permitted rate in order to recover up to 50% of the increase in any prescribed property costs that the landlord has incurred during the relevant period.
- (2) An application under [subsection \(1\)](#) must include—
 - (a) evidence of an increase in any prescribed property costs of the landlord incurred during the relevant period, and
 - (b) a statement of—
 - (i) the rent payable under the tenancy, and
 - (ii) the rent that would be payable under the tenancy if the proposed rent increase took effect (“the proposed rent”).
- (3) The landlord must give notice in writing to the tenant under the private residential tenancy of any application under [subsection \(1\)](#) which must include—

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- (a) a statement of the proposed rent,
 - (b) a statement that the proposed rent would be an increase to the rent payable under the tenancy of more than the permitted rate,
 - (c) a statement that the rent payable under the tenancy is not increased unless and until—
 - (i) the relevant rent officer makes an order determining the rent payable under the tenancy, or
 - (ii) if the order is appealed to the First-tier Tribunal, the Tribunal makes an order determining the rent payable under the tenancy,
 - (d) a description of the prescribed property costs of the landlord that have increased during the relevant period prompting the proposed rent, and
 - (e) where an increase mentioned in [paragraph \(d\)](#) includes an increase in the landlord's service costs, details of the nature of the increase in the service costs and the amount.
- (4) In this Chapter, “prescribed property costs”, in relation to a landlord, are—
- (a) interest payable in respect of a mortgage or standard security relating to the let property,
 - (b) a premium payable in respect of insurance (other than general building and contents insurance) relating to the let property and the offering of the property for let,
 - (c) service charges relating to the let property that are paid for by the landlord but the payment of which the tenant is responsible for (in whole or in part) in accordance with the terms of the tenancy.
- (5) The Scottish Ministers may by regulations modify the list in [subsection \(4\)](#) so as to amend, remove or add to the matters for the time being mentioned in the list.
- (6) In this Chapter—
- “proposed rent” has the meaning given in [subsection \(2\)\(b\)\(ii\)](#),
 - “relevant period” means the period of 6 months occurring immediately before the day on which the application under [subsection \(1\)](#) is made,
 - “relevant rent officer”, in relation to a private rented tenancy, means the rent officer of the area in which the let property is situated.

33B Rent officer's power to apply rent increase above permitted rate

- (1) Where a rent officer receives an application under [section 33A\(1\)](#), the rent officer must decide whether the following conditions are met—
- (a) the rent officer is satisfied that the landlord's prescribed property costs that are specified in the application have increased during the relevant period, and
 - (b) the rent officer is satisfied that the amount of the proposed increase to the rent payable under the tenancy represents no more than 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application.
- (2) If both conditions mentioned in [subsection \(1\)](#) are met, the rent officer must make an order stating that from the effective date the rent under the tenancy is the lower of—
- (a) the proposed rent, or
 - (b) the rent payable under the tenancy as increased by 3%.

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- (3) If either or both of the conditions mentioned in [subsection \(1\)](#) is or are not met, the rent officer may make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer.
- (4) In determining the rent under [subsection \(3\)](#), the rent officer—
- (a) may not determine that the rent payable under the tenancy from the effective date is an amount that would be an increase to the rent payable under the tenancy of more than an amount representing 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application under [section 33A\(1\)](#), and
 - (b) in any event, may not determine that the rent payable under the tenancy from the effective date is more than the rent payable under the tenancy as increased by 3%.
- (5) For the purpose of [subsection \(2\)](#) or [\(3\)](#), the effective date is—
- (a) where the rent officer makes the order under either of those subsections 14 days or more before the original effective date, the original effective date,
 - (b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.
- (6) In this section—
- “original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under [section 33A\(3\)](#),
- “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

33C Appeal to the First-tier Tribunal

- (1) Where a rent officer makes an order under [section 33B\(2\)](#) or [\(3\)](#) in relation to the rent payable under a private residential tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.
- (2) An order under [section 33B\(2\)](#) or [\(3\)](#) may not be appealed against more than 14 days after the order is made.
- (3) Where an appeal is made to the First-tier Tribunal under [subsection \(1\)](#), the First-tier Tribunal may make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the First-tier Tribunal.
- (4) In determining the rent under [subsection \(3\)](#), the First-tier Tribunal—
- (a) may not determine that the rent payable under the tenancy from the effective date is an amount that would be an increase to the rent payable under the tenancy of more than an amount representing 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application under [section 33A\(1\)](#), and
 - (b) in any event, may not determine that the rent payable under the tenancy from the effective date is more than the rent payable under the tenancy as increased by 3%.
- (5) For the purpose of [subsection \(3\)](#), the effective date is—
- (a) where the First-tier Tribunal makes its order 14 days or more before the original effective date, the original effective date,

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- (b) otherwise, the first payment date falling at least 14 days after the day on which the First-tier Tribunal makes its order.
- (6) Making an appeal under [subsection \(1\)](#) renders the order under [section 33B\(2\)](#) or [\(3\)](#) that is being appealed against of no effect.
- (7) In this section—
 - “original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under [section 33A\(3\)](#),
 - “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

33D Withdrawal or dismissal of appeal to the First-tier Tribunal

If an appeal under [section 33C\(1\)](#) is withdrawn or dismissed, [subsection \(6\)](#) of that section ceases to have effect (and the order under [section 33B\(2\)](#) or [\(3\)](#) that was being appealed against is reinstated).

33E Finality of First-tier Tribunal's decision

- (1) An order under [section 33C\(3\)](#) may be reviewed in accordance with this section only.
- (2) Accordingly (and without prejudice to the generality of [subsection \(1\)](#)), a decision of the First-tier Tribunal to make an order under [section 33C\(3\)](#) may be neither—
 - (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
 - (b) appealed against under section 46 of that Act.
- (3) The First-tier Tribunal may review an order under [section 33C\(3\)](#)—
 - (a) at its own instance, or
 - (b) at the request of the landlord or the tenant under the tenancy to which the order relates.
- (4) In a review under [subsection \(3\)](#), the First-tier Tribunal may—
 - (a) take no action, or
 - (b) correct a minor error contained in the order.

33F Powers to adjust maximum amount of increased costs by which rent may be increased

- (1) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in each of the following provisions—
 - (a) [section 33A\(1\)](#),
 - (b) [section 33B\(1\)\(b\)](#),
 - (c) [section 33B\(4\)\(a\)](#),
 - (d) [section 33C\(4\)\(a\)](#).
- (2) The Scottish Ministers may by regulations substitute a different percentage (which percentage must be no lower than the permitted rate) for the one for the time being mentioned in each of the following provisions—
 - (a) [section 33B\(2\)\(b\)](#),
 - (b) [section 33B\(4\)\(b\)](#),

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- (c) [section 33C\(4\)\(b\)](#).

33G Liability for underpaid rent

- (1) This section applies where—
- (a) the rent payable under a private residential tenancy has been changed by an order made under [section 33B\(2\)](#) or (3) or [section 33C\(3\)](#),
 - (b) the effective date stated in the order (“the actual effective date”) falls later than the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under [section 33A\(3\)](#) (“the originally proposed effective date”), and
 - (c) the rent payable from the actual effective date (“the new rent”) is more than the rent payable immediately before that date (“the old rent”).
- (2) On the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—
- (a) the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and
 - (b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).
- (3) [Subsection \(4\)](#) applies if, at the end of the day falling 28 days after a tenant’s liability under [subsection \(2\)](#) arose, that liability is (in whole or in part) still outstanding.
- (4) For the purposes of paragraphs 12 and [12A](#) of schedule 3, the liability mentioned in [subsection \(2\)](#) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.
- (5) In this section, a reference to a period between two dates includes both of those dates.

Information about open market rent determinations

34 Duty to make information available

- (1) Rent officers and the First-tier Tribunal collectively must make publicly available information about—
- (a) the rents they have taken into account in determining the open market rents for let properties under section 32, and
 - (b) what rents they have determined to be payable in accordance with that section.
- (2) The Scottish Ministers may by regulations—
- (a) specify—
 - (i) the information that is to be made available under subsection (1),
 - (ii) the manner in which it is to be made available,
 - (b) prescribe the fees (if any) which may be charged for supplying the information.

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Modifications etc. (not altering text)

- C1** S. 34 modified (temp.) (28.10.2022) by [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(asp 10\)](#), s. 13(1), [sch. 1 para. 1\(1\)\(18\)](#) (with ss. 1(2), 6, 7, 8) (as amended: (1.4.2023) by [S.S.I. 2023/82](#), regs. 1(3), [2\(2\)](#); and (27.9.2023) by [S.S.I. 2023/275](#), regs. 1(2), [2\(2\)](#))

Commencement Information

- I1** S. 34(1) in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)
I2 S. 34(2) in force at 31.10.2016 by [S.S.I. 2016/298](#), reg. 2, [sch.](#)

F²Power to modify Chapter

Textual Amendments

- F2** S. 34A and cross-heading inserted (temp.) (28.10.2022) by virtue of [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(asp 10\)](#), s. 13(1), [sch. 3 para. 1\(2\)](#) (with s. 11)

34A Power to modify Chapter

- (1) On or in anticipation of the expiry or suspension of [paragraph 1](#) of [schedule 1](#) of the [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022](#), the Scottish Ministers may by regulations modify the provisions of this Chapter in connection with the determination of the rent payable under a private residential tenancy by a rent officer or the First-tier Tribunal.
- (2) Regulations under subsection (1) may in particular make provision—
 - (a) about the basis on which the rent is to be determined by a rent officer or the First-tier Tribunal which may include—
 - (i) matters to be taken into account in determining the rent,
 - (ii) matters to be disregarded in determining the rent,
 - (iii) assumptions to be made in determining the rent,
 - (b) limiting the rent that may be determined to an amount that is no more than the rent specified in accordance with section 22(2)(a)(i) in a rent-increase notice prompting the referral to the rent officer in question or (as the case may be) leading to the appeal to the First-tier Tribunal,
 - (c) about the procedure relating to referral to a rent officer or appeal to the First-tier Tribunal.
- (3) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers—
 - (a) must consult such persons as appear to them to represent the interests of tenants and landlords under private residential tenancies, and
 - (b) may consult any other person they consider appropriate.]]

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Private Housing (Tenancies) (Scotland) Act 2016, Chapter 2A.