



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

PART 4

RENT

CHAPTER 1

RESTRICTIONS IN RELATION TO RENT, OTHER CHARGES AND DILIGENCE

Restrictions on rent increases

18 Method by which rent may be increased

The rent payable under a private residential tenancy may be increased only in accordance with Chapter 2.

19 Frequency with which rent may be increased

- (1) The rent payable under a private residential tenancy may not be increased more than once in a 12 month period.
- (2) For the purpose of subsection (1), in a case where the last rent increase resulted from an order of the rent officer or the First-tier Tribunal, the 12 month period is to be regarded as commencing on the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made.

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Restrictions on other charges and diligence

20 No premiums, advance payments, etc.

- (1) Sections 82, 83 and 86 to 90 of the Rent (Scotland) Act 1984 apply in relation to a private residential tenancy as they apply in relation to a tenancy of the kind to which those sections refer.
- (2) But—
 - (a) section 83(5) of that Act is to be ignored,
 - (b) the date mentioned in section 88(1) of that Act is to be read as if it were the date on which this section comes into force.

21 Restriction on diligence

Except with the leave of the First-tier Tribunal, no diligence is to be done in respect of—

- (a) the rent due by a tenant or former tenant under a private residential tenancy,
- (b) any liability of a tenant or former tenant arising under section 31.

CHAPTER 2

RENT VARIATION INSTIGATED BY LANDLORD'S NOTICE

Process by which rent may be varied

22 Landlord's power to increase rent

- (1) The landlord under a private residential tenancy may increase the rent payable under the tenancy by giving the tenant a notice in accordance with this section (“a rent-increase notice”).
- (2) The notice must—
 - (a) specify—
 - (i) the rent that will be payable once the increase takes effect,
 - (ii) the day on which the increase is to take effect, and
 - (b) fulfil any other requirements prescribed by the Scottish Ministers in regulations.
- (3) The rent increase takes effect on the effective date, unless before that date—
 - (a) the landlord intimates to the tenant that the notice is rescinded, or
 - (b) the tenant makes a referral to a rent officer under section 24.
- (4) For the purpose of subsection (3), the effective date is the date of the later of—
 - (a) the day specified in the notice in accordance with subsection (2)(a)(ii), or
 - (b) the day after the day on which the minimum notice period ends.
- (5) In subsection (4)(b), “the minimum notice period” means a period which—
 - (a) begins on the day the notice is received by the tenant, and
 - (b) ends on the day falling—

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- (i) three months after it began, or
 - (ii) whatever longer period after it began as the landlord and tenant have agreed between them.
- (6) In subsection (5), the reference to a period of three months is to a period which ends in the month which falls three months after the month in which it began, either—
- (a) on the same day of the month as it began, or
 - (b) if the month in which the period ends has no such day, on the final day of that month.

23 Modification of rent-increase notice by parties

- (1) Anything specified in a rent-increase notice in accordance with section 22(2)(a) may be modified by agreement between the landlord and tenant concerned.
- (2) A modification made to a rent-increase notice by virtue of subsection (1) ceases to have effect if the notice subsequently prompts a referral to a rent officer under section 24(1).

24 Tenant's right to refer increase to rent officer

- (1) Having received a rent-increase notice, a tenant may make a referral to a rent officer for the area in which the let property is situated seeking an order under section 25.
- (2) But, a tenant may not make a referral under subsection (1) if the let property is in a rent pressure zone.
- (3) A referral to a rent officer under subsection (1) must be—
 - (a) in the prescribed form,
 - (b) accompanied by the prescribed fee (if any),
 - (c) intimated by the tenant to the landlord in the prescribed manner, and
 - (d) made before the end of the day falling 21 days after the tenant receives the notice.
- (4) In subsection (3), “prescribed” means prescribed by the Scottish Ministers by regulations.

25 Rent officer's power to set rent

- (1) Where a rent officer receives a referral under section 24(1), the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer in accordance with section 32.
- (2) For the purpose of subsection (1), the effective date is—
 - (a) where the rent officer makes the order 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.
- (3) In an order made under subsection (1), the rent officer must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.
- (4) In subsection (2)—

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“original effective date” means the date on which the rent would have been increased in accordance with section 22(4) had the referral to the rent officer not been made, and

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

26 Rent officer’s duty to issue provisional order

- (1) Before making an order under subsection (1) of section 25, a rent officer must issue a provisional order stating—
 - (a) the rent which the rent officer proposes to specify under that section, and
 - (b) the amount which the rent officer proposes to record for the purpose of subsection (3) of that section.
- (2) Where a rent officer has issued a provisional order under subsection (1), the landlord or the tenant may ask the rent officer to reconsider the proposed amounts.
- (3) A request under subsection (2) may not be made more than 14 days after the provisional order is issued.
- (4) If a request is made under subsection (2), the rent officer must reconsider the proposed amounts prior to making an order under section 25(1).

27 Rent officer’s power to correct final order

- (1) A rent officer may, within 14 days of making an order under section 25(1), re-make the order for the purpose of curing an error in the original order.
- (2) The effective date of the re-made order is to be specified in accordance with subsection (2) of section 25 as though it were an order made under that section.
- (3) Where an order has been re-made under this section—
 - (a) the original order is of no effect,
 - (b) references in this Chapter to an order made under section 25(1) are to be read as references to the re-made order,
 - (c) if the original order has been appealed against under section 28(1), the appeal is to be regarded as having been made against the re-made order.
- (4) Subsection (3)(b) does not apply in relation to—
 - (a) subsection (1),
 - (b) section 26.

28 Right of appeal to First-tier Tribunal

- (1) Where a rent officer has made an order under section 25(1) 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 25(1) may not be appealed against—
 - (a) more than 14 days after the order is made, or
 - (b) where the order is made by virtue of section 33(2).

- (3) Making an appeal under subsection (1) renders the order being appealed against of no effect.

29 First-tier Tribunal’s power to set rent

- (1) Where an appeal is made to the First-tier Tribunal under section 28(1), the First-tier Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the First-tier Tribunal in accordance with section 32.
- (2) For the purpose of subsection (1), the effective date is—
- (a) where the First-tier Tribunal makes its order on or before the original effective date, the original effective date,
 - (b) otherwise, the first payment date falling on or after the day on which the First-tier Tribunal makes its order.
- (3) In an order made under subsection (1), the First-tier Tribunal must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.
- (4) In subsection (2)—
- “original effective date” means the date on which the rent would have been increased in accordance with section 22(4) had a referral to the rent officer not been made, and
 - “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

30 Finality of First-tier Tribunal’s decision

- (1) An order under section 29(1) 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 29(1) 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 29(1)—
- (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.

31 Liability for over or under paid rent

- (1) This section applies where—
- (a) the rent payable under a private residential tenancy has been changed by an order made under section 25(1) or 29(1),
 - (b) the effective date stated in the order (“the actual effective date”) falls later than the date on which the rent would have been increased in accordance with

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- section 22(4) had a referral to a rent officer not been made (“the originally proposed effective date”), and
- (c) the rent payable from the actual effective date (“the new rent”) differs from the rent payable immediately before that date (“the old rent”).
- (2) If the new rent is less than the old rent, on the date the order is made the landlord becomes liable under this subsection to pay the tenant the difference between—
- (a) the amount actually paid in rent between the originally proposed effective date and the actual effective date, and
- (b) the amount that would have been payable in rent during the same period had the new rent been the rent payable from the originally proposed effective date.
- (3) If the new rent is more than the old rent, 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).
- (4) Subsection (5) applies if, at the end of the day falling 28 days after a tenant’s liability under subsection (3) arose, that liability is (in whole or in part) still outstanding.
- (5) For the purposes of paragraph 12 of schedule 3, the liability mentioned in subsection (4) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.
- (6) In this section, a reference to a period between two dates includes both of those dates.

32 Determination of open market rent

- (1) Where an order maker is to determine the rent under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would—
- (a) be a private residential tenancy,
- (b) begin on the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made,
- (c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.
- (2) In determining the open market rent of the property under subsection (1), the order maker is to disregard—
- (a) any positive effect on the rental value of the property that is attributable to work paid for or carried out by the tenant or a previous tenant under the same tenancy, unless the work was paid for or carried out pursuant to a requirement under the terms of the tenancy,
- (b) any negative effect on the rental value that is attributable to a failure by the tenant or a previous tenant under the same tenancy to comply with the terms of the tenancy.
- (3) In a case where two or more persons jointly are the tenant under a tenancy, a reference to the tenant in subsection (2) includes any one of them.

33 Withdrawal of referral or appeal

- (1) This section applies—
 - (a) where a referral made under section 24(1) is withdrawn by the tenant, or
 - (b) where—
 - (i) an appeal made under section 28(1) is withdrawn by one party, and
 - (ii) the other party has not made an appeal in respect of the tenancy in question, or any appeal made by the other party has been withdrawn.
- (2) The order maker must make an order under section 25(1) or (as the case may be) 29(1) stating that from the effective date the rent payable under the tenancy is—
 - (a) the rent specified in the rent-increase notice, or
 - (b) an amount which the parties have asked the order maker to state in the order.
- (3) Where the order maker is the First-tier Tribunal, an order may not be made by virtue of subsection (2) until the earlier of—
 - (a) the expiry of the period within which an appeal under section 28(1) may be made, or
 - (b) the date on which both parties become ineligible to make an appeal (whether by withdrawing an appeal or by waiving the right to appeal).
- (4) The following do not apply in relation to an order made by virtue of subsection (2)—
 - (a) the requirement to record in the order an amount in accordance with section 25(3) or (as the case may be) 29(3),
 - (b) the duty to issue a provisional order under section 26.
- (5) In subsection (2), “the rent-increase notice” means the rent-increase notice which prompted the referral or (as the case may be) led to the appeal.

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.

CHAPTER 3

RENT PRESSURE ZONES

Designation and effect of rent pressure zone

35 Request by local authority that a zone be designated

- (1) A local authority may make an application to the Scottish Ministers asking that all or part of the authority's area be designated as a rent pressure zone.
- (2) An application under subsection (1) is valid only if it fulfils any requirements which, prior to the application being made, the Scottish Ministers told the local authorities in Scotland an application must fulfil in order for it to be valid.

36 Scottish Ministers' duty to react to request

Within 18 weeks of receiving a valid application under section 35, the Scottish Ministers must lay before the Scottish Parliament either—

- (a) a draft of a Scottish statutory instrument containing regulations under section 37 designating the area specified in the application as a rent pressure zone, or
- (b) a document explaining why the Ministers have not laid before the Parliament the draft instrument described in paragraph (a).

37 Power to designate a zone

- (1) After receiving an application under section 35, the Scottish Ministers may by regulations—
 - (a) designate an area as a rent pressure zone, and
 - (b) prescribe in relation to that zone a number of percentage points as the value of X for the purposes of section 38(1).
- (2) In subsection (1)(b), “a number”—
 - (a) includes zero and fractional parts of a whole number, but
 - (b) does not include negative numbers.

38 Restriction on rent increases within a zone

- (1) A rent-increase notice may not increase the rent payable under a private residential tenancy where the let property is in a rent pressure zone to an amount greater than—

$$R \times \left(1 + \frac{CPI + 1 + X}{100} \right) + Y$$

where—

R is the rent payable under the tenancy immediately before the rent-increase notice in question takes effect,

CPI is the percentage increase in the consumer prices index over the period—

- (a) from—
 - (i) the day of the last increase in the rent payable under the tenancy,
 - or

- (ii) if the rent payable under the tenancy has not previously been increased, the day on which the tenancy was granted,
 - (b) to the day that the rent-increase notice in question is given to the tenant,
- X is the number of percentage points prescribed in relation to the rent pressure zone under section 37(1)(b),
- Y is the amount (if any) by which the rent may be increased by virtue of a rent officer's determination under section 42.
- (2) In subsection (1), “the consumer prices index” means the all consumer prices index published by the Office of National Statistics.

39 Limits on power to designate a zone

- (1) An area may not be designated as a rent pressure zone unless it is an area which the Scottish Ministers have been asked to designate as a rent pressure zone in an application under section 35.
- (2) An area may not be designated as a rent pressure zone more than once on the basis of the same application under section 35.
- (3) Regulations designating a rent pressure zone cease to have effect 5 years after they come into force, unless—
 - (a) they provide, or another enactment provides, that they cease to have effect sooner, or
 - (b) they are revoked.

40 Procedure for designating a zone: consultation and information

- (1) This section applies in relation to the making of regulations under section 37 which designate an area as a rent pressure zone.
- (2) Before laying a draft of a Scottish statutory instrument containing the regulations before the Scottish Parliament, the Scottish Ministers must consult—
 - (a) persons appearing to the Ministers to represent the interests of persons who offer residential property for let within the area mentioned in subsection (4), and
 - (b) persons appearing to the Ministers to represent the interests of persons who are tenants of residential property within the area mentioned in subsection (4).
- (3) Along with a draft of a Scottish statutory instrument containing the regulations, the Scottish Ministers must also lay before the Scottish Parliament a document which—
 - (a) sets out the evidence which leads them to believe that—
 - (i) rents payable within the proposed rent pressure zone are rising by too much,
 - (ii) the rent rises within the proposed zone are causing undue hardship to tenants, and
 - (iii) the local authority within whose area the proposed zone lies is coming under increasing pressure to provide housing or subsidise the cost of housing as a consequence of the rent rises within the proposed zone,
 - (b) summarises the responses they received to the consultation carried out in accordance with subsection (2).

- (4) The area referred to in subsection (2) is that of the local authority within whose area the proposed rent pressure zone lies.

41 Power to change inflation index

The Scottish Ministers may by regulations amend section 38 to replace references in that section to one prices index with references to another.

Improvements to let property

42 Rent officer’s power to allow rent rise in consequence of improvement

- (1) On an application by the landlord under a private residential tenancy, a rent officer is to determine the amount (if any) by which the rent payable under the tenancy may be increased in consequence of an improvement made to the let property.
- (2) The rent payable under a tenancy may not be increased by virtue of a determination made in respect of an improvement which was completed before—
- (a) the tenancy was granted, or
 - (b) if the rent payable under the tenancy has changed previously, the day on which it last changed.
- (3) The rent payable under a tenancy may not be increased more than once by virtue of a single determination.
- (4) In subsection (1), “improvement” does not include anything done to the let property—
- (a) which is paid for in whole or in part by the tenant, or
 - (b) by way of repair, maintenance or decoration.
- (5) In a case where two or more persons jointly are the tenant under a tenancy, the reference to the tenant in subsection (4)(a) includes any one of them.

43 Further provision about making and determining an application under section 42

- (1) An application under section 42(1) must be made—
- (a) in such form as may be prescribed by the Scottish Ministers in regulations,
 - (b) to a rent officer for the area in which the let property in question is situated.
- (2) On receiving an application under section 42(1), a rent officer must send a copy of it to the tenant concerned.
- (3) Before making a final determination under section 42, a rent officer must send—
- (a) to both the landlord and tenant concerned a draft of the determination which the rent officer proposes to make,
 - (b) to the tenant a copy of any timeous representations received from the landlord in relation to the draft determination.
- (4) In making a determination under section 42, a rent officer must—
- (a) follow any guidance published by the Scottish Ministers which sets out for the purposes of that section—

- (i) what does, and does not, constitute an improvement made to a let property, and
 - (ii) the amount by which the rent payable under a tenancy may be increased in consequence of a particular improvement, or the methodology by which the assessment of that amount is to be made, and
 - (b) have regard to any timeous representations received from the landlord or tenant concerned.
- (5) For the purposes of subsections (3)(b) and (4)(b), representations are timeous if they are sent to the rent officer by—
 - (a) the landlord within 14 days of the landlord receiving the draft determination sent in accordance with subsection (3)(a),
 - (b) the tenant—
 - (i) within 14 days of the tenant receiving the copy of the application for a determination in accordance with subsection (2), or
 - (ii) if the rent officer sends to the tenant a copy of representations received from the landlord in accordance with subsection (3)(b), not more than 14 days after the tenant received the copy of the landlord's representations.
- (6) In a case where two or more persons jointly are the landlord under the tenancy, references to the landlord in section 42 and this section are to any one of those persons.